

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 F. Lewis

**City of Fayetteville Arkansas
City Council Meeting Minutes
July 5, 2011**

A meeting of the Fayetteville City Council was held on July 5, 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 Boudreaux, Kinion, Petty, Tennant, Ferrell, Adams, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Alderman Gray

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

Walton Arts Center Foundation Appointment – Mayor and Chancellor of the University of Arkansas appointment – Three directors shall be jointly appointed by the Mayor of the City of Fayetteville, and the Chancellor of the University of Arkansas, Fayetteville. Subject to the approval of the City Council and the Board of Trustees of the University of Arkansas.

Mayor Jordan and Chancellor Gearhart recommended the appointment of Dale Caudle to the Walton Arts Center Foundation.

Alderman Ferrell moved to approve the appointment of Dale Caudle to the Walton Arts Center Foundation. Alderman Lewis seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

Dale Caudle was appointed.

Agenda Additions:

Mayor Jordan: I have a resolution that I am walking on tonight.

Alderman Petty moved to add Earl F. Webb & Murlene Webb Settlement Agreement resolution to the City Council agenda. Alderman Boudreaux seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

Earl F. Webb & Murlene Webb Settlement Agreement: A resolution approving a settlement agreement with Earl F. Webb and Murlene Webb concerning condemnation litigation filed as part of the Cato Springs Road Improvement Project in a total amount of \$34,000.00.

Chris Brown, City Engineer gave a brief description of the item and stated this is one of the properties that required condemnation for the Cato Springs road project.

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

Resolution 107-11 as recorded in the office of the City Clerk.

Mayor Jordan: I would like to recognize the Ford Fellows International Grad Students from the University of Arkansas and Ron Massey is here with them. They are representing China, Indonesia and Mexico. He asked them to stand and be recognized.

Mayor Jordan announced that the revised Master Street Plan item would be tabled for one month.

Consent:

Approval of the June 21, 2011 City Council meeting minutes.

Approved

Fayetteville Police Department Donations: A resolution to thank several donors to the Fayetteville Police Department and to approve a budget adjustment in the amount of \$4,880.00 recognizing the donations.

Resolution 108-11 as recorded in the office of the City Clerk.

Wal-Mart Foundation and Facility #5737: A resolution to thank the Wal-Mart Foundation and Facility #5737 and accept its \$1,000.00 donation to the Fayetteville Police Department for CPR training and certification.

Resolution 109-11 as recorded in the office of the City Clerk.

Bid #11-40 Fochtman Enterprises, Inc.: A resolution awarding Bid #11-40 and authorizing a contract with Fochtman Enterprises, Inc. in the amount of \$92,377.40 for construction of a parking lot at Bryce Davis Park, and approving a fifteen percent (15%) project contingency.

Resolution 110-11 as recorded in the office of the City Clerk.

Youth Bridge, Inc.: A resolution approving a lease with Youth Bridge, Inc. for property located at 1932 South Garland pursuant to the Community Development Block Grant Public Facility Lease Program.

Resolution 111-11 as recorded in the office of the City Clerk.

Government Channel Budget Adjustment: A resolution approving a budget adjustment in the amount of \$750.00 representing revenue from public access television fees collected by the public access television contractor.

Resolution 112-11 as recorded in the office of the City Clerk.

Amend Resolution No. 160-10: A resolution amending Resolution No. 160-10 approving an amendment to the Access Management Plan Agreement, as prepared by the Arkansas Highway and Transportation Department, for State Highway 265.

Resolution 113-11 as recorded in the office of the City Clerk.

Taylor Settlement Agreement: A resolution approving a settlement agreement with Murphy R. Taylor and Betty N. Taylor concerning condemnation litigation filed as part of the Crossover Road Water and Sewer Improvement Project in a total amount of \$27,000.00.

Resolution 114-11 as recorded in the office of the City Clerk.

Edward Byrne Memorial Justice Assistance Grant: A resolution to accept an Edward Byrne Memorial Justice Assistance Grant for the 4th Judicial District Drug Task Force in the amount of \$164,444.66 for federal funding and \$32,999.93 for state funding.

Resolution 115-11 as recorded in the office of the City Clerk.

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

Unfinished Business:

City Plan 2030: A resolution approving and adopting City Plan 2030 and the future land use map as the comprehensive land use plan. *This resolution was tabled at the June 21, 2011 City Council meeting to the July 5, 2011 City Council meeting.*

City Attorney Kit Williams: Are you going to table it to August 2, 2011?

Alderman Boudreaux: It seems to me like the public has had their say about it and I feel like it's a good plan. I would rather move it on forward and vote on it tonight.

A discussion followed on whether it should be voted on or tabled to the August 2nd meeting.

Alderman Petty moved to approve the resolution. Alderman Adams seconded the motion. Upon roll call the resolution passed 6-1. Alderman Ferrell voting no. Alderman Gray was absent.

Resolution 116-11 as recorded in the office of the City Clerk.

Revised Master Street Plan: A resolution approving and adopting a revised Master Street Plan and street cross-sections. *This resolution was tabled at the June 21, 2011 City Council meeting to the July 5, 2011 City Council meeting.*

Alderman Petty: I would make a request that we table this to August 16, 2011.

Alderman Petty moved to table the resolution to the August 16, 2011 City Council meeting. Alderman Ferrell seconded the motion.

Michael Mauldin, resident of 3623 Howard Nickell Road and President of The Estates of Salem Hills spoke on the meeting of the Fayetteville Council of Neighborhoods he attended and stated I wanted you all to know that they are all in support of the plan the way that it is. I hope you will follow their guidance.

Susan Slaughter, resident of 3606 Howard Nickell Road stated we support downgrading that road to a two lane.

Cliff Grisham, resident of 3634 Howard Nickell Road asked that a four lane highway not be put in this area.

Alderman Ferrell: Most of the people on Highway 265 did not want that road the way that it is but for safety and for carrying the traffic sometimes you have to do that.

Dorothy Raider, resident of 2733 W. Howard Nickell Road stated the idea of four lanes is not something I would want and I am opposed to it.

Bob Costrell, resident of 3683 Howard Nickell Road gave a brief presentation on neighborhood preservation, safety and distributed traffic flow. He expressed his concerns about a wider street in that neighborhood.

Alderman Ferrell: You said the median does nothing for safety. Were you referring to medians in general or this particular median?

Bob Costrell: I am referring to this particular median. He continued on with his presentation and asked the Council to keep the new map as recommended by the Planning Commission and also by the Fayetteville Council of Neighborhoods.

Alderman Petty: What would your recommendation be if four lanes were needed?

Bob Costrell: If you have done the grid stuff first and it turns out that you still have traffic problems, you are going to have to face the same kind of dilemma that was faced across the country in large cities. I would point out that if the City in its wisdom decides that they need to destroy the neighborhood for the purposes of growth you will have the right of way in our neighborhood.

Alderman Petty explained the costs that would be avoided over time if this line were on the map and stated that as a Council member I have to think of the entire community.

Alderman Ferrell discussed the Street Committee's strategies over the years and he stated we decided to be proactive and to look ahead.

Bob Costrell: I think where the City went wrong on this was when they approved the neighborhood that was constructed there. If the city was determined to have a four lane through there it should have approved a neighborhood that backed onto it.

Alderman Lewis: I am hoping the city staff can talk more about the cross sections. Also to clarify, Bob mentioned the development of that neighborhood. Was the City involved in that plan?

Jesse Fulcher: The development for the plan for The Estates at Salem Hills, we reviewed that as a preliminary plat. It was in our planning area so we had jurisdiction over the division of land. The design, layout and positioning of the homes, the city had no input or review on that. We could not direct that developer to face his homes in any direction at all.

Alderman Lewis: Because it is in the County?

Jesse Fulcher: Yes, lot size is what we have jurisdiction over in street standards.

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

This resolution was tabled to August 16, 2011.

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. *This ordinance was left on the Second Reading at the June 21, 2011 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Alderman Ferrell: I looked at some of the other PZD's that have timed out and there seems to be that there is an assumption that all they have to do when they want to change is ask for a conditional use. When I looked at it I thought it should be Neighborhood Services. What would you consider one step up from Neighborhood Conservation?

Andrew Garner, Senior Planner gave a brief description of the ordinance and stated if you want to go one step up from Neighborhood Conservation you would probably be looking at either a multi-family zoning or a Neighborhood Services which is primarily a commercial zoning and would allow commercial uses throughout the whole neighborhood.

Alderman Ferrell: How far would you say it is from this plat of land to Highway 265 on one end and how far the other way to College?

Andrew Garner: Along Crossover road it's within walking distance. Across to College it must be a couple of miles.

Alderman Ferrell: I was thinking more along the proximity of Highway 265 and Center right there on the corner. If the bank sells that property I don't know that they plan to develop it. I was trying to think of a way to help whoever is going to buy it. It seems to me if we could make it one step higher it would make it easier for development.

Alderman Boudreaux: I looked at the surrounding zoning and this seems to compliment that. If this is what the bank thought was a good zone then this is the way to go.

Alderman Ferrell: I don't think the bank is going to be the developer on it. Most of the R-A property there is for sale.

Alderman Petty: If that is something you want to look into at the bank, I would support giving you that time to do that. I would support the zoning you suggested if we can get the applicant to go along with it.

Alderman Ferrell: I would be glad to go visit with the bank if you would hold it until the next meeting.

Alderman Tennant: I would support that as well with the growth in that area of town.

Alderman Lewis: So Neighborhood Services would allow for residential and business?

Andrew Garner: Yes, it would also allow for multi-family. We did hear from some of the neighbors and we would want to make sure that they were notified. Some of them were concerned with going to a higher density single family so I would imagine they would not be in favor of a commercial zoning around their homes.

Alderman Ferrell moved to table the ordinance to the July 19, 2011 City Council meeting. Alderman Lewis seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

This ordinance was tabled to July 19, 2011.

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. *This ordinance was left on the Second Reading at the June 21, 2011 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Alderman Lewis: This was discussed at Ward 4.

Alderman Adams: We didn't hear any objections to it.

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

Ordinance 5416 as Recorded in the office of the City Clerk

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. *This ordinance was left on the Second Reading at the June 21, 2011 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Alderman Lewis: This was also talked about at Ward 4.

Mayor Jordan: Did everything go okay?

Alderman Lewis: Yes.

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

Ordinance 5417 as Recorded in the office of the City Clerk

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. *This ordinance was left on the First Reading at the June 21, 2011 City Council meeting.*

Alderman Ferrell 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 Gray** was absent.

City Attorney Kit Williams read the ordinance.

Jesse Fulcher, Planner of Current Planning gave a brief description of the ordinance and stated the applicants are going to stick with their appeal. They are requesting Neighborhood Commercial C-1. Staff is recommending Community Services and that is what the Planning Commission recommended in favor of and forwarded to the City Council. So should you choose to make the recommendation for it to go to Community Services, you would have to amend the ordinance.

Alderman Lewis: So the Planning Commission never heard the new proposed zoning?

City Attorney Kit Williams: Yes, it was an appeal from the Planning Commission.

Alderman Lewis: Did they discuss what we are discussing?

Jesse Fulcher: They did not review a C-1 recommendation. They were looking at Urban Thoroughfare which was the applicant's original request and staff was recommending Community Services. Their discussion was based on those two zoning districts.

Alderman Lewis: Is that normal? That seems different than we usually do.

City Attorney Kit Williams: You might ask the applicant. There was some discussion of C-1 at the Planning Commission level even though that was not submitted on the petition.

Alderman Lewis: I am mostly asking from a city's process point of view. Is that okay?

City Attorney Kit Williams stated it is okay especially when you look at the particular zoning districts involved. Community Services and Neighborhood Commercial are virtually identical in their uses so there is no issue about whether or not this is a proper use. He explained the differences between the two zonings.

Don Marr, Chief of Staff explained the appeal process and stated very seldom do we see a change to another zone between the Planning Commission and the City Council meeting.

Alderman Petty clarified the approval process for this appeal.

City Attorney Kit Williams stated the proper course would be that if you felt like Community Services or another district besides C-1 was the proper zoning district then you would move to amend this ordinance to whatever the proper district is that you believe.

Alderman Petty: Would it be possible to look at the Future Land Use Map on the projector after public comment?

Dennis Blind with CEI Engineering stated we did present all of our concerns regarding the form based zoning. C-1 is a conventional zoning district that is very applicable to our client who is wanting to purchase this property and put that use on the site. So it is unusual but it is available to the applicant to do so because it is in compliance with the plan, area and the user and their needs.

Mr. Blind explained the appeal and stated we are just standing in for our client and making sure that we still have a firm foundation should we need to move forward with a Board of Adjustment request for a variance.

Alderman Petty: What are the typical dimensions of the canopy for which you might build?

Dennis Blind: The building is approximately 50 x100 feet and 200 x 25 feet

Alderman Petty: Does that include the pavement?

Dennis Blind: That would be the canopy size. It's about 5,000 sq. ft.

Alderman Ferrell: What do you think about form based zoning?

Dennis Blind: I have written form based zoning ordinances and trying to throw out form based zoning districts as a band-aid to correct urban form I don't agree with. In this situation it doesn't fit.

Alderman Lewis: Talking about the three frontages, doesn't that mean you have more choices for the front? It doesn't mean you have to build to all three frontages but that you have three options.

Jesse Fulcher: I think what he was referring to is that it is not necessary to develop this entire piece of property with one single project. In looking at other properties developed for similar uses and by this user the property hasn't been as large. Our thought is when you start to look at that development size, even though we have not seen that plan yet, it is not necessary to utilize this entire piece of property, in which case you would reduce the amount of street frontage potentially eliminating the entire street from the equation.

Alderman Lewis: It's important to remember that this is about zoning and what's appropriate for that, not necessarily what is going on there.

Jesse Fulcher displayed the Future Land Use Plan on the projector screen.

Alderman Petty: Kit has told us that if we zone this Community Service it may be able to be considered a spot zoning. I look at this and say we planned all along to zone properties like this and my philosophy is rezone land appropriately for the future and not for how things are now.

He discussed why the proposed zoning was appropriate for that particular location. He also stated we might should table this and figure out how to rewrite the law to represent what we are actually doing.

City Attorney Kit Williams: I think it depends upon the parcel. If there are several parcels you don't have to develop more than one parcel. I don't think Planning is going to tell you to choose a small part of your parcel, develop it and ignore the rest for setback, bulk in area and everything else.

Alderman Petty: I think there is a misunderstanding on what I just said. For instance if I only want to develop the very middle part I may only have to honor my build to lines for that middle part for the west and east side, which I am doing no construction on. I don't have to build my building in those areas at all. I only have to honor the build to line for the portion that I am developing.

City Attorney Kit Williams: Is that what Planning has said? That without doing a lot split you still can ignore the part that you are not actually working on?

Jesse Fulcher stated yes sir. We would look at it similar to other developments that we see throughout the city. He described the current process used in the Planning Division.

City Attorney Kit Williams: And that is without doing any kind of lot split or anything?

Andrew Garner: Correct, this would be the first time we have ever had that issue come up under this zoning but I think that is certainly something we could look at.

Alderman Petty: Even if this lot wasn't split there is 388 ft. of street frontage, but according to the dimensions that we were just given, if they were to align the canopy so that the longest edge was along MLK that would be 51% of the 388 ft. The canopy plus the short side of the building itself that would be 64 ½%, and if it was the canopy plus the long side of the building it would be

77%. Those numbers lead me to believe that this is quite doable and that there is no challenge with the building frontage itself.

Alderman Ferrell: So if someone is applying for a rezoning in one parcel that whole parcel carries that zoning if there is no split. Is that correct?

Andrew Garner: Yes sir.

Alderman Ferrell: You are saying you could look at just a certain portion of that in this instance?

Andrew Garner: Correct, as this particular application has come through we have had internal discussions on how we would interpret that if it were developed as a gas station. We have had those conversations internally to try and figure out how we would actually do that. We have come to a consensus that if they had an outlot that could be developed in the future, even if it weren't subdivided but it were developable land, we would not necessarily penalize them and count that against them for the frontage requirement.

City Attorney Kit Williams: I am just confused about what the ordinance actually says. For that one it says minimum buildable street frontage 65% of the lot width so I thought they counted the lot. That is Planning's interpretation so that is their determination.

Alderman Ferrell: In light of what you have heard here would you be interested in visiting with staff and having us table this to the next meeting?

Dennis Blind: We met with staff two days after the last Council meeting and it was explained to us. We are still trying to meet all the design criteria of our client plus meeting the criteria of the ordinance. That is where we learned their interpretation of this and I am reading it as it is written in the ordinance and it doesn't work. That is why I was still standing on our appeal.

Alderman Ferrell: What I am saying is if we left it on the second reading tonight there would be two weeks if there is anything that comes up.

Dennis Blind: I don't know what would change because we had a good meeting with staff.

Alderman Petty: Bobby I appreciate you asking that because I remember at the beginning of the last meeting there was even more confusion about how this lot is applied. We do still have confusion about what a lot split means for this property or this zone and speaking for myself I do not feel comfortable making that determination until I know what the law is suppose to say. I would appreciate leaving this on the second reading.

Mayor Jordan: Would the Council be in agreement of leaving this on the second reading?

Alderman Boudreaux: Yes I would because it really concerns me that the whole point of the form based code is to comply with certain setbacks and sizes and now we are saying that we

don't have to do it that way. If that is the case then what is the advantage of the form based code? I definitely think there is some confusion here.

Mayor Jordan: If we make a motion to go to the third and final reading it takes how many votes Kit?

City Attorney Kit Williams: It takes six and I would recommend that it be left here too. I know the applicant wants a final decision but I think maybe you can work with staff and get some of these things hammered out so that it actually can be resolved at the next meeting.

This ordinance was left on the Second Reading

New Business:

RZN 11-3824 (East of Intersection of College and Township/Summit Place): An ordinance rezoning that property described in rezoning petition RZN 11-3824 (Summit Place), for approximately 30.13 acres, located east of the intersection of College and Township Avenues from RSF-4, Residential Single Family four units per acre to NC, Neighborhood Conservation subject to a Bill of Assurance.

City Attorney Kit Williams read the ordinance.

Andrew Garner gave a brief description of the ordinance.

Alderman Lewis: Does the hillside ordinance apply to this?

Andrew Garner: As each lot, yes it will. When the original subdivision came through it was right at the time that the hillside ordinance was being adopted but it would apply as each building permit is pulled.

Alderman Boudreaux: My understanding of this is that they will have the same density and amount of residences?

Andrew Garner: The intent is to re-plat the subdivision to allow for smaller single family homes so they would intend on building more homes. Right now it is only plotted for 50 lots which is only two homes per acre. They are wanting to increase the density to allow for four homes per acre.

Alderman Boudreaux: It was already zoned RSF-4, why couldn't they do the four units per acre?

Andrew Garner: On the aerial photo you can see there is a lot of tree canopy and there is a lot of cleared areas right along the roadways. Under the RSF-4 zoning you are required to setback the house at least 15 feet. Under the Neighborhood Conservation you are allowed to push the

home all the way up to the right of way line. You have to build it between zero and fifteen feet. That would allow them to reduce impacts in the tree canopy and it would have smaller lots.

Alderman Boudreaux: I understand they do have committed for tree preservation and that sort of thing but by passing this rezoning does that make that law or is that just what they have made a commitment to?

Andrew Garner: The Bill of Assurance does not mention tree preservation but it would be subject to the tree preservation ordinance as it is re-platted and as each home is built.

Alderman Lewis: Really what we are deciding on is just the neighborhood conservation zoning part.

Andrew Garner: Correct, the Bill of Assurance that is offered would run with the land.

Alderman Lewis: So if this applicant didn't continue that Bill of Assurance would stay?

Andrew Garner: Correct.

Alderman Kinion: I believe as we discussed at the Agenda Session this Bill of Assurance does basically say that we will have deeper lots and with the deeper lots we have better protection of the tree canopy and less possibility for erosion. This was also handling concerns that the residents on Juneway Terrace had the potential for erosion in that area.

City Attorney Kit Williams: I think the Bill of Assurance only does the density really. It gives the opportunity for the builders not to disturb the trees and of course the tree and hillside ordinance itself will help there also.

Alderman Kinion: But the whole idea as mentioned is to move the houses closer to the area that is already cleared?

Andrew Garner: That's correct and under the proposed zoning Neighborhood Conservation it's another one of the form based zones. The code requires the homes to be built between zero ft. and fifteen ft. so that is something that will be enforced.

Alderman Kinion: If you look at the infrastructure if they have to be built in that area then it would only be logical that they are moving up to where the infrastructure is in place, thereby making deeper lots.

Andrew Garner: We don't necessarily think the lots will be deeper but they will be narrower to allow for smaller lots. We do feel like it makes good sense for the development build out of this site to take advantage of where the road is, the streets are, and where the water and sewer lines are to go with this zone.

Alderman Kinion: And to be in compliance they are going to have to be closer.

Andrew Garner: That's correct.

Alderman Kinion: That's how I am seeing this, they have to be closer and that is going to pull them up out of the tree canopy based on the current infrastructure that is in place in the subdivision.

Don Marr: That is correct. It also is utilizing areas that were already impacted due to the building of the infrastructure.

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

City Attorney Kit Williams read the ordinance.

Alderman Boudreaux: I am having a little trouble with this because of the density increase even though the houses are set closer. I am trying to find out if there is any more guarantee and there is not in the Bill of Assurance of any more green space preserve. So in essence they are going to develop more on this property than previously planned.

Andrew Garner: That is the intent.

Alderman Boudreaux: There is no additional tree preservation in the Bill of Assurance beyond what is allowed. All we have done is said no multi units and that is really all that was said in there right?

Andrew Garner: That's correct.

Alderman Boudreaux: There are things I support about this but we were really concerned about the density of this project and the Bill of Assurance obviously does not afford us some of the guarantees I would like to see and we can not ask them to do that. I probably can't support it without those assurances.

Alderman Petty: Andrew, if this were to say RSF-4 would they be allowed to re-plat it on even a grid system?

Andrew Garner: That is correct, if they decided to re-plat this they could. As mentioned in the staff report they developed this at half the density that was allowed so they could come back and re-plat it and there would be wider 70 ft. lots. They could put additional lots in here.

Alderman Petty: And they wouldn't be able to re-plat it without Council approval correct?

Andrew Garner: That is correct.

Alderman Petty: That is why I support it Brenda is because by right they have the ability to develop far more of the acreage there than we would like from a tree preservation standpoint.

But, with the new zoning, since they can make a lot smaller, the density on the street may be higher but the density on the property as a whole remains the same. So there is actually less impact than what they can do by simply re-platting it.

Alderman Kinion: I support it. It's going to allow them to have homes that are more affordable. They may not be as large as they had initially planned on building. From an affordability point of view I support this based on the fact that it may be an opportunity to develop this in an affordable fashion and not be so exclusive.

Alderman Ferrell: I completely agree with Mark in the fact that there will be some homes there and it's a downzoning. Planning Commission and staff recommends approval and Mark didn't you say the people above this on Juneway Terrace were in favor of this revised plan?

Alderman Kinion: I think the concern was the tree canopy, velocity of the water flow and the erosion and this handled that concern.

Alderman Boudreaux: I just wanted to say this is not a downzoning, it is an upzoning.

Alderman Ferrell: On the numbers it is.

Alderman Boudreaux: I certainly don't want to stop it but there could have been some assurances offered that would have made this more appealing to me. Now we are just going to support it like it is and that is what bothers me.

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

City Attorney Kit Williams read the ordinance.

Alderman Lewis: Some of our work on the drainage, changes in the ordinances, policy and having staff look at how the drainage works during the development process and how it relates to surrounding properties is really important for a project like this.

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

Ordinance 5418 as Recorded in the office of the City Clerk

ADM 11-3655 Building Code: A resolution to request that Mayor Jordan have city staff examine city building codes and recommend amendments to further promote sustainable practices and energy conservation for City Council consideration.

John Coleman, Director of Sustainability and Strategic Planning gave a brief description of the resolution.

Alderman Ferrell: Do all incorporated cities go along with the State Building Code and is that a requirement?

John Coleman: The requirement is that at a minimum you follow what the State has adopted. In Arkansas they allow cities to be more aggressive should they choose to adopt a different code.

Alderman Ferrell: So all the incorporated cities have to maintain the minimum?

John Coleman: That's right.

Alderman Petty: I don't think this is an opportunity that we should ignore. I think it is an opportunity to help citizens in the future with their cost of living and that is better for our economy in all sorts of ways. This is the right process to go through to assess our options.

Mayor Jordan: This is just a study to look at for the next few months and then bring something back and you all can vote it up or down. I felt that at the time we are in today, to try and save as much energy as we possibly can would be something we needed to look at.

Alderman Lewis: I think it is a really good idea to be paying attention to what is happening in the state as well as globally and energy efficiency. If we don't pay attention to it we will be behind.

Alderman Ferrell: We have to keep our eye on that cost ball as a cost benefit. I think we have the right guy heading that up John.

Aaron Wirth with Cobblestone Homes expressed his concerns about the resolution and spoke on some of the issues he has had while trying to obtain a building permit in the past. He stated hopefully we can find something that is value added for my customers, the city and everyone it affects.

Alderman Ferrell: How long have you been building in Fayetteville?

Aaron Wirth: About five years.

Alderman Ferrell: What has changed with the permit process? Is it harder for you to get a permit now?

Aaron Wirth detailed the permit process.

Alderman Ferrell: Has there been much of a change during the five years? How many homes have you built?

Aaron Wirth: Probably 150.

Alderman Ferrell: Where most of them not too hard to get a building permit for?

Aaron Wirth: Once I learned the process. In most cities I can get a permit within 10 days. Now I do not know. My last one took over three weeks.

Alderman Ferrell: Is that because the implementation of changes?

Aaron Wirth expressed his concern with some of the changes.

Alderman Adams: How much input do you feel you have had in the issues? Are you willing to put some time into sharing your experiences and making some suggestions for the future as it pertains to energy efficiency ideas?

Aaron Wirth: I would be.

Alderman Tennant: Two things that concerned me when I saw this was what the budget impact would be to do a study like this. I will be concerned with what impact it is going to have on people like you. Your business is a key to the success of this cities turn around and growth.

Tracy Hoskins: I know the additional cost this mandate could add to the cost of building houses. The cost has to be passed on to the public because the builder and contractor do not have the margins to support adding expenses to homes and not recouping it on the end. The question is are we serving the public by mandating extra costs. Right now the public has an option. Instead of a mandated code and expense I hope we approach this as a best practice and educate the public.

Rob Sharp: Home buyers are interested in energy efficiency. I think we need to discuss can we create a level playing field so that anyone building a house in the City of Fayetteville is meeting a minimum standard for energy efficiency. We had to get a permit recently and it took weeks. For some reason there is a break down in the system. Someone should be assigned to expedite the process. I hope someone will look at the permitting process.

Alderman Petty: Recently we started an internal audit of our business processes. The permitting process is in that. It will be a multi year effort.

Alderman Ferrell: We can not make it a multi year effort on expediting this.

Rob Sharp: I hope it can happen fairly quickly.

Alderman Boudreaux: I appreciate your comments and am glad you came forward with them. Something needs to be done as soon as possible.

Andrew Garner, Planning: The city has recently implemented new engineering, drainage and grading requirements for single family homes. That has increased the time for applicants and there has been a learning curve. Previously you did not have to do a site inspection before pulling your permit. Now you have to have erosion control measures in place before you can start your building. That is one of the biggest changes. In addition you have to have a grading

plan. It sounds like those are the items that need to be worked out. We are open to improving our process. We do not want to hear that it takes weeks to get a permit.

Alderman Boudreaux: Do the Building Safety people have any thing to do with this process?

Andrew Garner: The average single family permit goes through the Building Safety Division.

Rob Sharp: Certainly with the new regulations there is a learning curve but the issues I am talking about seem to be a technology problem. There is not one person in the City of Fayetteville responsible for getting you your permit. It is not the new rules.

Alderman Lewis: I hope developers and builders will get involved in this process.

Alderman Boudreaux: There are pros and cons to this. I support the staff examining this. I hope it does not take time from the staff that needs to be approving building permits. This is just looking at a study. Hopefully this will help the community and the home buyers. Hopefully the builders that do a lot of work in Fayetteville will comment on what seems to be good and reasonable and benefit the buyers and not harm the builders.

John Coleman: I will be leading the project. The staff that is working on this project is not involved in the permit process so it will not be taking time away from that.

Mayor Jordan: I was trying to be as open and transparent as I can be so that you will be in on this from the beginning. We will be working on the permitting.

Don Marr: We will evaluate it. There are six individuals in building permit. We did not replace our Building Official when he left. The technology improvements have been in place through two administrations so it is not a technology issue. The sign off process and procedures from a technology perspective have been the same every since Hansen was implemented in the city. We have had changes in staff. We are addressing and looking at each of those and our processes. We are doing a lean government review. Obviously this is a process that needs to be improved and we are committed to doing that. When we have these new ordinances and they add additional requirements there is a learning curve and extra time in development. We have reduced staff in the last two years in the development services area along with implementing new ordinances and legislation. It does have an impact. We will look at it.

Alderman Lewis: In looking at that process part of the discussion may be incentives, there may be a connection.

Alderman Ferrell: From my involvement recently some of the changes are a big deal, bigger than some people think. I welcome your comments.

Don Marr: In the past we were catching things in a reactionary mode. As a result of development being down it has gotten more scrutiny because there has been time to do it. Some of the things that made it through in the past were because of the volume of building that was taking place.

Alderman Adams: I think it is wonderful we have the media that does their best to get the stories out. I hope we will continue to use the media to get the word out on these things.

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

Resolution 117-11 as recorded in the office of the City Clerk.

Thomas Condemnation and Possession: A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by Zara L. Thomas, trustee of the Zara L. Thomas Revocable Trust U/D/T November 20, 1998, needed for the University of Arkansas Farm Trail Project.

Chris Brown, City Engineer: This property is located between Garland and Leverett. We have been working with the property owner for a few months. Some of the discussions that we have had have been related to the alignment of the trail across the property. One alignment was to follow along the U of A property which is north of this property. The U of A had some research plots that they were not willing to dedicate to the city. We do not have authority to condemn U of A property. We looked at some other routes but they did not link up on either side with some of existing right of way that we have. This is the alignment that we found to be the best alignment. We made an offer of \$17,300 to the property owner and a six foot tall chain link fence along the southern edge of the easement to minimize any security concerns. We also reduced the easement to a minimum of 20 foot wide. The property owner has not agreed to our offer.

A discussion following on the existing easements.

Alderman Ferrell: Even if we could get it to continue along the U of A right of way it would not be easier to do it that way?

Chris Brown: That was our initial route. Our initial route was if you went from Scull Creek Trail it followed the existing right of way north of the apartments and then got on the U of A property and stayed on the U of A property all the way to Garland. That was the section the U of A was not willing to go with. They dedicated the right of way through Agri Park and across their property along the north side of the farm area. They have dedicated a tremendous amount of property for this project.

Lance Cox, Attorney for the Thomas family: This property has been in the Thomas family for approximately 65 years. His children were raised on the property. They bought the property when nothing was out there. Mr. Thomas lives by himself on the property and is concerned about the safety and privacy issues that are presented by the placement of this trail through his back yard. I don't believe the taking of this land is authorized by Arkansas law and not necessary. Under Arkansas law it needs to be authorized and necessary.

He suggested an alternate route or using U of A property.

Mike Thomas, son of the property owner: I plead with you not to condemn this land. We do not think it is a feasible way. We would rather see them go on the U of A farms. It is a straight shot from Scull Creek to Agri Park.

Alderman Ferrell: Did you say on the University side of the fence there is a trail now?

Mike Thomas: There is a road there that they use every day.

Carolyn Thomas Molten daughter of the property owner: He has worked hard for this place. He has had to work hard to keep apartment people from interfering with his land. He has horses there. This seems like it is going to make it worse. Why can't they put it on the U of A farm?

Zara Thomas property owner: I am 88 years old and have been a citizen of Fayetteville since the early 1940's. I would like to invest it like I want to. It should be on the U of A farms.

Lance Cox: The city can't condemn U of A property but they can explore the possibility of acquiring the land that is needed from the U of A. I would submit that might be a reasonable approach at this time to continue to speak to the U of A about the possibility of dedicating that southern end that is needed to complete the U of A Farm Trail.

The city originally offered \$3,000 for the land and then they came back and offered five times that amount. The chain link fence is not aesthetically pleasing and they do not address or resolve the privacy issues involved. A chain link fence is not going to provide any real sense of security.

Chris Brown: We have talked extensively with the U of A for months. This is what I feel like is the best that we could do with the alignment. We offered the chain link fence and stand ready to secure the property with the chain link fence. The \$17,300 is based on an appraisal that was developed by an appraiser that the city hired.

Alderman Boudreaux: The back of the property is not wooded it is all open fields?

Chris Brown: Right. It is just a pasture.

Alderman Ferrell: I find it inconsistent that there is a sensitive research area and there is a road along it that we can't use. I won't support this.

Alderman Petty: Did staff talk to the University about using the roads?

Chris Brown: We talked about using Garrett. We could not put the trail on the road because there would be conflict with their equipment. We feel we are at a dead end with the U of A at this point.

Alderman Petty: I think I support staffs recommendation. I trust that they have had extensive conversations with the U of A. I wish there was another option. We could do Elm Street with less cost to the city but it would be more intrusive on the family.

Resolution 118-11 as recorded in the office of the City Clerk.

Rogers Group, Inc. v. City of Fayetteville: A resolution to authorize the City Attorney to appeal the award of attorneys fees and costs in the Rogers Group, Inc. v. City of Fayetteville case.

City Attorney Kit Williams: I believe it is the City Council's power to make a determination whether or not to instruct me to file an appeal of the award of attorneys fees that the District made in the Rogers case. The District did not grant \$55,000 of their requested attorneys fees, but he did grant about \$75,000 of attorneys fees and cost to the Rogers Group.

I think we should appeal for a few reasons. When Rogers Group sued us they had four claims. One being a declaratory judgment action that our statute was not enacted properly and was invalid. The court made all of its decisions based upon count one. That is the only one in which I believe the rock quarry could have won, the declaratory judgment claim, that we improperly interpreted the state law when enacting the rock quarry ordinance. Attorneys fees are not allowed for a declaratory judgment action, in State court or Federal court. In the courts order, that was denying all the claims that Rogers has made and motions for summary judgment as moot and dismissing the case, the court stated that Rogers Group would have been entitled to partial summary judgment on count one of its compliant and that Rogers Group's remaining claims are moot. The court's order said even though the court never reached the constitutional claims, because the allegations in the compliant raised a substantial constitution claim, sufficient to conferred jurisdiction it could award attorneys fees. The court said because of allegations in the compliant, it would be allowed to award attorney fees and cited a 1978 Eighth Circuit case for that.

City Attorney Kit Williams read portions of the Supreme Court decision and what their decision was based on. He stated the Federal Court interpreted the state statute differently from the State court judge and the Arkansas Attorney General.

The City Council's decision to enact the ordinance could not be found to be truly irrational and thus there would be no merit in Rogers Group due process claim which is absolutely necessary for the award of attorney fees. The district judge while disagreeing with the City Council and the State judges interpretation of the state statute acknowledged the commendable legislative process that the City Council went through when you carefully crafted the ordinance.

City Attorney Kit Williams read more of the judge's opinion.

Our rock quarry ordinance was not conscience shocking, truly irrational or intended to injure without any justifiable interest. We have already had an ordinance regulating the nuisance as determined by the City Council to be found constitutional by the State circuit judge. It would be very reasonable to conclude that our circuit judge's interpretation of state law was correct. The Arkansas Attorney General said you have the power to enact this ordinance.

Lance Cox: It is my understanding that it would be more costly to go through Elm. Given the choice of having the public walk through your front yard versus walk through your back yard, the back yard is more preferable.

Don Marr: The entity that we are talking to is a part of the agricultural system of the U of A but is not the U of A. Our dialogue is not with the Chancellor it is with the agricultural part of the system.

Alderman Petty: Nobody likes these decisions but based on the answers by the staff I have to support their recommendation.

Alderman Adams: What happens if we don't do this?

Chris Brown: We have worked really hard to come up with this alignment and we feel like it is the best alignment. If we don't receive authority to proceed with requiring this property by condemnation then it is back to the drawing board.

Alderman Lewis: It is a very difficult decision. Scull Creek Trail is lovely. There are fences along it and it goes in the back yard of some people. I have seen them improve areas around the community. We really need east west trail connections.

Alderman Adams: Have you condemned other land along the trails.

Chris Brown: We have had one other condemnation which eventually was resolved.

Alderman Adams: Is this about the use of the land and not about the money?

City Attorney Kit Williams: The money is determined by an appraisal. If the land owner disagrees with that amount it is a jury decision on how much we adversely affect the property. We will continue to work with the property owner to resolve this.

Alderman Kinion: It is disappointing to me that we could not work out something with the agricultural extension. There was a concern from the family about the traffic there. People run there on the other side of the fence. The privacy has already been violated. It is a tough issue because we are taking personal property from an individual to use it as a public service.

Lance Cox: The university road is not open to the public. It is a whole other ballgame once you put in the trail. The traffic you have now is on the university side and it is farther away from the house. It is not on the Thomas property.

A discussion continued on the current traffic and possible locations for the trail.

Alderman Boudreaux moved to approve the resolution. Alderman Petty seconded the motion. Upon roll call the resolution passed 5-2. Alderman Ferrell and Tennant voting no. Alderman Gray was absent.

With no judgment on the merits obtained by the rock quarry and none possible on its meritless due process claim, we believe the district court erred in awarding attorney fees to the rock quarry. I do not look forward to the many hours to draft briefs and argue this issue in St. Louis. However, I believe this decision regarding awarding attorney's fees for a declaratory judgment action by merely alleging a due process claim is dangerous and could inspire a lot more litigation against Arkansas cities. I believe it is certainly worth my effort to attempt to overturn this decision, and I would ask your permission to do that.

Alderman Lewis: I think it is important to know who the judge is because he has been a part of the process.

City Attorney Kit Williams: Federal District Judge Jimm Larry Hendren

Alderman Ferrell: Do you have any idea what the cost would be in appealing this. What budget will that money come out of?

City Attorney Kit Williams: The cost to appeal this to the taxpayers is pretty close to zero. If we do not appeal, we have about \$20,000 left on our \$50,000 deductible that we would have to pay, and our insurance company, for the first time in more than a decade, would have to pay some money to resolve this case. If we appeal, the cost would continue to go up. There would be a small cost out of my budget.

Alderman Ferrell: You are not intending to have any outside counsel regardless of where it goes?

City Attorney Kit Williams: That is not necessarily true, if we go to the Supreme Court you almost always have outside counsel.

Alderman Boudreaux: What would the cost be if you lose?

City Attorney Kit Williams: It would be no more to our citizens. Once we hit our deductible the insurance company pays everything up to \$1,000,000. I spoke to the insurance company and they were very gracious and said we are going to leave it up to the Fayetteville City Council to decide what to do.

Don Marr: The \$20,000 will require a Council budget adjustment for use of funds.

City Attorney Kit Williams: It is possible that we would not spend the full \$20,000 on our side of the appeal if I do most of the work.

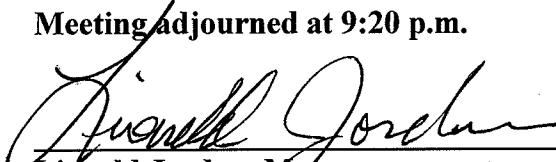
Alderman Ferrell: I think we have chased enough money on this. I think it was a bad policy in the first place.

Alderman Lewis: I respectfully disagree. I would like to thank Kit because this affects all cities and thank you for working to protect citizens and being willing to take it to the legal side of things.

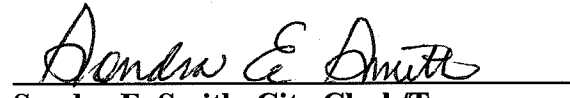
Alderman Boudreaux moved to approve the resolution. Alderman Adams seconded the motion. Upon roll call the resolution passed 7-0. Alderman Gray was absent.

Resolution 119-11 as recorded in the office of the City Clerk.

Meeting adjourned at 9:20 p.m.



Lioneld Jordan, Mayor



Sondra E. Smith, City Clerk/Treasurer