Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Fayetteville
ARKANSAS

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

City of Fayetteville Arkansas
City Council Meeting Minutes
June 16, 2009

A meeting of the Fayetteville City Council was held on June 16, 2009 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

PRESENT: Alderman Gray, Thiel, Cook, Petty, Rhoads, Ferrell, Lucas, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

FHS Baseball Team Proclamation

Mayor Jordan read a proclamation honoring the Fayetteville High School Baseball Team for winning the State Championship.

Presentations, Reports and Discussion Items:

Nominating Committee Report

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

Alderman Gray moved to approve the Nominating Committee Report. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

Consent:

Approval of the June 2, 2009 City Council meeting minutes.

Approved

Bid # 09-24 Downing Sales and Service: A resolution to award Bid # 09-24 to Downing Sales and Service to approve the purchase of a front load Solid Waste truck in the amount of $220,890.00 and to approve a budget adjustment of $36,000.00.

Resolution 121-09 as Recorded in the office of the City Clerk.

Bid # 09-28 Lewis Ford: A resolution approving the purchase of an additional compact 2x4 extended cab pickup truck under Bid # 09-28 from Lewis Ford in the amount of $15,987.00 for use by the Meter Operations.

Resolution 122-09 as Recorded in the office of the City Clerk.

Bid # 09-36 Henard Utility Products: A resolution awarding Bid # 09-36 and approving the purchase of one (1) trailer mounted sewer cleaner from Henard Utility Products of Searcy in the amount of $52,176.00 plus tax for use by the Water & Sewer Division; and approving a budget adjustment.

Resolution 123-09 as Recorded in the office of the City Clerk.

Bid # 09-37 Landers-McLarty Ford: A resolution awarding Bid # 09-37 and approving the purchase of one (1) cab & chassis with dump body from Landers-McLarty Ford of Bentonville in the amount of $34,783.03 for use by the Parks, Recreation & Community Spaces Division.

Resolution 124-09 as Recorded in the office of the City Clerk.

Fourth Amendment to Articles of the Incorporation of the Walton Arts Center Foundation: A resolution to approve the Fourth Amendment to Articles of Incorporation of the Walton Arts Center Foundation, Inc.

Resolution 125-09 as Recorded in the office of the City Clerk.

Bid # 09-38 MHC Kenworth/Volvo: A resolution awarding Bid # 09-38 and approving the purchase of one (1) diesel powered tandem axle dump truck from MHC Kenworth/Volvo of Springdale in the amount of $110,299.25 for use by the Water & Sewer Division; and approving a budget adjustment.

Resolution 126-09 as Recorded in the office of the City Clerk.

Bid # 09-39 MHC Kenworth/Volvo: A resolution awarding Bid # 09-39 and approving the purchase of one (1) diesel powered tandem axle dump truck with square body from MHC Kenworth/Volvo of Springdale in the amount of $109,190.00 for use by the Transportation Division.

Resolution 127-09 as Recorded in the office of the City Clerk.

Bid # 09-40 Landers Ford Lincoln Mercury: A resolution to award Bid # 09-40 to Landers Ford Lincoln Mercury in the amount of $32,745.00 for a ¾-Ton Pickup Truck.

Resolution 128-09 as Recorded in the office of the City Clerk.

Bid # 09-41 Dean Crowder Construction, Inc.: A resolution awarding Bid # 09-41 and approving a construction contract with Dean Crowder Construction, Inc. in the amount of $1,360,185.43 for improvements to Township Street from Gregg Avenue to North College Avenue; and approving a 15% project contingency in the amount of $204,028.00.

Resolution 129-09 as Recorded in the office of the City Clerk.

Bid # 09-43 Power Curbers, Inc.: A resolution to award Bid # 09-43 to Power Curbers, Inc. in the amount of $25,017.08 plus tax for the purchase of a trimmer for the curber machine and approve the attached budget adjustment.

Resolution 130-09 as Recorded in the office of the City Clerk.

Bid # 09-44 Wheeler Lumber, LLC: A resolution awarding Bid # 09-44 and approving the purchase of one (1) prefabricated steel trail bridge from Wheeler Lumber, LLC in the amount of $105,250.00 plus tax for the Lake Fayetteville Trail.

Resolution 131-09 as Recorded in the office of the City Clerk.

Mobile-Vision, Inc.: A resolution approving the purchase of five (5) additional in-car video systems from Mobile-Vision, Inc. in accordance with the continuing bid waiver granted by Ordinance No. 4551 of 2004, in the amount of $30,500.71 for use by the Fayetteville Police Department.

Resolution 132-09 as Recorded in the office of the City Clerk.

2009 Bulletproof Vest Partnership Program Grant: A resolution to approve the 50% matching grant application for the bulletproof vest partnership with the Department of Justice in the amount of $39,199.82 for 54 body armor vests.

Resolution 133-09 as Recorded in the office of the City Clerk.

Arkansas Department of Environmental Quality Recycling Grant: A resolution authorizing the Fayetteville Solid Waste & Recycling Division to accept an Arkansas Department of Environmental Quality Grant through Boston Mountain Solid Waste District in the amount of $25,000.00 to fund the purchase of recycling containers for collection at Fayetteville Public Schools; and approving a budget adjustment recognizing the grant revenue.

Resolution 134-09 as Recorded in the office of the City Clerk.

American Recovery and Reinvestment Act (ARRA): A resolution authorizing the Fayetteville Fire Department to apply for an American Recovery and Reinvestment Act (ARRA) Assistance to Firefighters Station Construction Grant in the amount $5,000,000.00 for the replacement and relocation of Fire Station # 2.

Resolution 135-09 as Recorded in the office of the City Clerk.

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

<u>The following ordinance was added to the agenda.</u>

Mayor Jordan: We have an addition to the Agenda. Is that correct?

City Attorney Kit Williams: We would ask that the City Council suspend the rules and place on the agenda for consideration, an ordinance that would amend the Unified Development Code by enacting a new Section 164.20 Approval of Vital Municipal Facility.

Alderman Cook moved to suspend the rules and add the item titled Amend Chapter 164: Supplementary Zoning Regulation to the agenda. Alderman Thiel seconded the motion. Upon roll call the motion passed unanimously.

Amend Chapter 164: Supplementary Zoning Regulation: An ordinance to amend Chapter 164: Supplementary Zoning Regulation by enacting a new § 164.20 Approval of Vital Municipal Facility and to approve an emergency clause.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams stated in consultation with Jeremy Pate and the staff we determined that if there was going to be another potential location for the water tower to be located near the Hyland Park addition, the location which was presented to the homeowners would not fit the formal requirements of a normal lot split. He described the current requirements and why the ordinance needed to be approved.

Alderman Lewis: Does this change public notice on something like this?

City Attorney Kit Williams: It does not. There is no public notice required. There has to be a public hearing. The public will be notified as with any ordinance or resolution that comes before the City Council. There is not specifically public notice within this to notify every resident that is around it.

Alderman Lewis: But it has a public hearing?

City Attorney Kit Williams: It must have a public hearing. It has to have a two thirds vote which means it has to have six affirmative votes to pass which provides a little additional protection for the public interest.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third and final reading. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5245 as Recorded in the office of the City Clerk.

City Attorney Kit Williams: We need a separate vote on the emergency clause. This one is clearly to protect the public health and safety so I recommend that you pass the emergency clause.

Alderman Ferrell moved to approve an Emergency Clause. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

Unfinished Business:

Hyland Park Phase II – Water Storage Tank: A resolution to accept and approve the City Council Sewer Committee's decision to begin construction plans for a 500,000 gallon water storage tower on Lot 22 of Hyland Park Phase II. *This resolution was tabled at the June 9, 2009 City Council meeting to the June 16, 2009 City Council meeting.*

Mayor Jordan: Since we last met Mr. Waselues came to the City with a proposal and I would like him to make that proposal to you now.

Jim Waselues presented his proposal to the City Council. He presented what he felt was the least intrusive option. He stated I negotiated with Mr. Combs for his Lot 7 of the John Smith addition to offer him $75,000 for Lot 7. Mr. Combs would in turn donate $125,000 to the City because he considers the lot to be worth over $200,000. I would give the City $75,000 to make this transition happen and to release Lot 22 to myself in the Hyland Park addition. Upon completion of this transaction I would give the interest of Lot 22 to the Hyland Park Homeowner's Association.

City Attorney Kit Williams: The first contract is one that Mr. Waselues was able to obtain Mr. Combs signature on, that was for a two thirds of an acre lot. This is the same area that Mr. Jurgens has identified as an acceptable location for a water tower. It is somewhat more expensive to construct the tower on. The second contract is a contract where Mr. Waselues agrees to pay us $75,000 and we agree to Quit Claim any of our interest in Lot 22 to him.

Mr. Williams explained the Quit Claim process. He stated the $75,000 would be used to pay Mr. Combs and he would make a claim to the IRS that Lot 7 was worth $125,000 more as his contribution to the City. We certify to the IRS that we received the property not the value of it.

Mayor Jordan: You can vote this up or down tonight or wait until the next Council meeting. We wanted to give you both options.

City Attorney Kit Williams: I redrafted a resolution if you want to go in Mr. Waselues's direction but that is probably premature until we hear public comment. There would be an amended resolution with the change in location.

Alderman Petty: Can we hear the opinion of Mr. Jurgens on this before public comment.

David Jurgens, Utilities Director: This is the same location that I recommended last week at the City Council meeting. I concur with this being an excellent choice.

Alderman Lucas: Is it correct that it would cost $200,000 more?

David Jurgens: Yes Ma'am. The estimate was about $230,000 more because the tower will have to be taller, the lot is sloped a little so there will have to be retaining walls. It is further off the paved road so there would have to be a longer driveway with asphalt and there is a little more piping involved.

Alderman Lucas: Where is the money going to come from if we decide to do this?

David Jurgens: The money would come out of the Water and Sewer fund. When we bid the project the intent would be to bid three different types of tank constructions and take the lowest of the three bids. At that time we will see if we have to bring forward a budget adjustment to come out of Water and Sewer funds or if we can do it within the budget. We have three different sources of budgeting. Most of this is out of impact fees, some is out of Water and Sewer funds, and then some is the developer match.

Alderman Petty: Could you tell us again how much is in the budget for this project.

David Jurgens: At this point we have about $2.2 million in the budget plus the $75,000 from the developer match.

Alderman Ferrell: Mr. Waselues what do you think the attitude of the POA is with this change that is being proposed?

Jim Waselues: I would hate to say. I really don't know.

Alderman Thiel: Since there was no comment from the other neighbors and we have a recommendation from David Jurgens that this is one of the best sites I feel like we should move forward.

William Mills, resident of 2448 Boston Mountain View: This would place it behind my house. There is an easement directly behind our lot and I am curious is that where the City is going to put the street?

David Jurgens: No. There is a 60 foot undedicated pathway or strip of land that was identified as a road right of way and we would intend to put the driveway within that. None of the construction would take place on any lot that is Hyland Park Phase II.

City Attorney Kit Williams: You said undedicated. Was it shown on the plat as an easement?

David Jurgens: There were parts of that 60 foot strip that were shown as an easement but most of it was shown as a void between two separate subdivisions.

City Attorney Kit Williams: Is the part where we would be building our driveway shown as an easement or was it just a blank area?

David Jurgens: It was part of the blank area.

City Attorney Kit Williams: I think it is premature for us to approve anything. I was assuming that the area was in fact a dedicated part of the plat. I think we will have cooperation from the individual that owns that. However I would hate to go forward with something unless we made it contingent upon getting access. I don't want us to get a lot and then not be able to reach it without having to buy a new access. If you wanted to go forward we could do it contingent upon receiving free access across that. As it was shown on the plats that I saw it looked like it was an un-built but not necessarily undedicated roadway so that concerns me a little bit.

David Jurgens: I don't want to swear that it is either of the above having not seen the plats either myself.

Alderman Ferrell: Kit said we could pass it and it would be contingent upon us having access. Although I am not crazy about spending $200,000 more I think it displays the City's willingness to try and be flexible. Mr. Waselues has worked in trying to make this the least offensive.

Alderman Petty: I am amazed at how much energy that Mr. Waselues has put into this to try and find a solution. If we don't know the status of this easement I worry that even if we approve it with a contingency clause, if this comes back to us and we do not have the access the City is going to look like it has egg on its face. We have had so much difficulty with this already. So unless we are sure I am not sure I would want to move forward either.

City Attorney Kit Williams: What I would add is that "upon acquisition of access from Canterbury hereby determines" and go on from there. That would make the final determination contingent upon having obtaining the access from Canterbury that I think we can get. There has been assistance for Mr. Waselues from the individual that owns this. I think he would be in favor of granting access.

Alderman Gray: I just wanted to say that this is the best way to have things end so that maybe everyone is not totally satisfied but I think it is a good deal. I want to commend the staff, our attorney, and the homeowners for working together to find a feasible solution to this huge problem for a great number of citizens of the City of Fayetteville.

Alderman Cook moved to amend the resolution to state "*upon acquisition of access from Canterbury hereby determines*" as recommended by the City Attorney. Alderman Thiel seconded the motion.

Alderman Lewis: If we say yes and then there is not access that does not change our discussion next time either way right?

City Attorney Kit Williams: Yes, it would have to be brought back because the resolution would be ineffective because we could not get access and therefore the resolution would have to be reconsidered because it was not effective.

Alderman Lewis: So putting this in there, we would have the opportunity if it works out between now and then to move on.

City Attorney Kit Williams: At that point it would be effective and it would be finished. The access would be supplied to the City free of charge. That was always the understanding that if we were going to trade Lot 22 it was going to be of no charge to the City of Fayetteville.

Alderman Lucas: Is that in here somewhere?

City Attorney Kit Williams: That is what our agreement with Mr. Waselues says.

Alderman Lucas: In light of the problems over the legality of Lot 22 I think it needs to be spelled out completely on all of this.

City Attorney Kit Williams: It will be spelled out in the deeds that we will get from the parties.

Don Marr, Chief of Staff: I would like to ask that because you changed this resolution completely from what was published in the packet online that the City Attorney at least read what was handed out so the public will have that information.

City Attorney Kit Williams read the changed sections of the ordinance.

Alderman Lucas moved to amend the amendment to state *upon acquisition access from Canterbury* ***at no cost to the City.*** **Alderman Ferrell seconded the motion.**

City Attorney Kit Williams: I accept that as a friendly amendment and you do not have to vote.

Alderman Gray: In the fourth whereas it says that the $125,000 will come from Lover's Lane, LLC and I thought it was coming from Mr. Combs.

City Attorney Kit Williams: He is the owner basically of that LLC.

Upon roll call the motion to amend passed unanimously.

Alderman Lucas: I am not happy about it costing the City more money but I think we need to move along and get this water tower up for fire safety. I appreciate all the efforts that were made by Mr. Waselues and the City. I will support it.

Mayor Jordan: I want to thank Kyle Cook and the Water and Sewer Committee for all their work on this too because they spent months on this last year.

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

Resolution 137-09 as Recorded in the office of the City Clerk.

<u>The following resolution was added to the agenda.</u>

City Attorney Kit Williams: There is one final step we need to make. It is a resolution to approve a lot split from Lot 7 of the John Smith addition and to approve the construction thereon of a 500,000 gallon water tower to serve the Mt. Sequoyah pressure plain. This needs to be passed under the ordinance that you just passed in order to authorize the construction of the water tower and authorize the lot split which must be conformed in this area.

Alderman Petty moved to amend the agenda and add John Smith addition Lot 7 lot split. Alderman Lucas seconded the motion.

Alderman Lucas: Is this contingent upon us obtaining access?

City Attorney Kit Williams: If we don't get access I will ask you to revoke this.

Upon roll call the motion passed unanimously.

John Smith Addition Lot 7 Lot Split: A resolution to approve a lot split from Lot 7 of the John Smith addition and to approve the construction thereon of a 500,000 gallon water tower to serve the Mt. Sequoyah Pressure Plane.

John Smith Addition Lot 7 Lot Split Public Hearing

Mayor Jordan opened the Public Hearing.

There was no Public Comment

Mayor Jordan closed the Public Hearing.

Alderman Lewis: If we move forward on the water tower and the lot split, they need to be tandem is that correct?

City Attorney Kit Williams: Yes we certainly cannot move forward with the water tower until there is a place to build it and that requires a lot split. You would be authorizing construction and that is why these two things are necessary in order for this project to move forward.

Alderman Ferrell moved to approve the resolution. Alderman Lucas seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 136-09 as Recorded in the office of the City Clerk.

Hyland Park Phase II – Declaratory Judgment Action: A resolution to authorize the Fayetteville City Attorney to file a declaratory judgment action or other appropriate request for judicial relief concerning the ownership of Lot 22 of Hyland Park Phase II and the City's right to construct a water tower thereon. *This resolution was tabled at the June 9, 2009 City Council meeting to the June 16, 2009 City Council meeting.*

Alderman Petty: Would it be better if we tabled this indefinitely?

City Attorney Kit Williams: Yes, that is the appropriate thing to do.

Alderman Ferrell moved to table the resolution indefinitely. Alderman Lewis seconded the motion. Upon roll call the motion passed unanimously.

This item was tabled indefinitely.

Bid # 09-34 Runway Safety Area Improvement Project: A resolution awarding Bid # 09-34 and approving a contract with Sweetser Construction, Inc. in the amount of $3,017,900.15 for construction of the Runway 16 Runway Safety Area Improvement Project. *This resolution was tabled at the May 5, 2009 City Council meeting to the May 19, 2009 City Council meeting. This resolution was tabled at the May 19, 2009 City Council meeting to the June 2, 2009 City Council meeting. This resolution was tabled at the June 2, 2009 City Council meeting to the June 16, 2009 City Council meeting.*

Ray Boudreaux, Aviation and Economic Development Director: I am happy to say that the grant has been approved and we are ready to award the contract for construction of the runway safety area improvement project.

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

Resolution 138-09 as Recorded in the office of the City Clerk.

McClelland Consulting Engineers, Inc.: A resolution to approve Task Order No. 1 for engineering services by McClelland Consulting Engineers for Runway 16 Safety Improvements in the amount of $231,100.00 and to approve a budget adjustment of $231,096.00. *This resolution was tabled at the May 19, 2009 City Council meeting to the June 2, 2009 City Council meeting. This resolution was tabled at the June 2, 2009 City Council meeting to the June 16, 2009 City Council meeting.*

Ray Boudreaux: We don't think we need the budget adjustment because we put all the grant money into a project budget.

Paul Becker, Finance and Internal Services Director: At the last Council meeting we approved the grant award for this project. When this resolution was originally placed on the agenda we anticipated that we would have to recognize part of that amount within this resolution to continue. However since we already accepted and appropriated the grant funding we no longer need the budget adjustment. I am asking that our reference to the budget adjustment be stricken from this resolution.

Alderman Thiel moved to amend the resolution to remove the budget adjustment. Alderman Lewis seconded the motion. Upon roll call the motion passed unanimously.

Alderman Ferrell moved to approve the resolution. Alderman Cook seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 139-09 as Recorded in the office of the City Clerk.

Utilities Department Positions: A resolution to amend the 2009 Budget to authorize and fund two full time employee positions for project design and management of Utilities Department projects and to approve the attached budget adjustment to reduce the overall Water and Sewer Budget by $250,000.00. *This resolution was tabled at the June 2, 2009 City Council meeting to the June 16, 2009 City Council meeting.*

David Jurgens gave a brief description of the positions and expressed the importance of the positions. He stated this was brought forward with a budget reduction because we have demonstrated through doing work in house we have been able to save consulting fees.

Alderman Cook: David's team has demonstrated their abilities and I have been happy with what they have done and what they are capable of doing. One thing I like about it is we are keeping it in house and reducing our cost on consultants. I think in the long run we are going to be better served to add these positions.

Alderman Ferrell: This says to serve as Operational Division Head for the Wastewater Treatment Division. How many direct report division managers will this make you?

David Jurgens: This would be three direct report division managers.

Alderman Ferrell: I am going to support this but when the economy changes and things pick up I am going to look at your department like you are two ahead so remember that.

Mayor Jordan: One thing that we need to do if this is passed is this time next year we look at the amount of savings that we have gotten by putting these two employees on and see if the $250,000 savings is there.

Alderman Lewis: Can you describe what projects are planned?

David Jurgens gave a description of the planned projects.

Alderman Lucas: What is the total cost for these two positions?

David Jurgens: The cost for the six month period of this year was estimated at $50,000 to $60,000 and the other administrative costs were about $7,000. Next year the cost would be about $150,000. We will actually reimburse these positions out of the capital projects they are working on.

Alderman Lucas: I have a struggle hiring two people in this economy at this caliber. If we assess this in a year we are not going to let the people go so whether we save the money or not they are there.

Alderman Lewis: The projects that David mentions here are on going and many of them are required by entities beyond the city. The fact that we have skilled people already that know the City and the community it seems like a good investment.

Alderman Cook moved to approve the resolution. Alderman Petty seconded the motion. Upon roll call the resolution passed 7-1. Alderman Lucas voting no.

Resolution 140-09 as Recorded in the office of the City Clerk.

__New Business:__

Procter & Gamble: A resolution accepting a donation from Procter & Gamble in the amount of $30,000.00 to fund a portion of the development costs for a Dog Park at Bryce Davis Park; and approving a budget adjustment recognizing the revenue.

Connie Edmonston, Parks and Recreation Director gave a brief description of the park.

Neelam Modi, representative of IAMS introduced his team members and expressed the importance of a Dog Park in Fayetteville.

Alderman Lucas thanked Proctor and Gamble for their donation. We are happy to have this nice park in Ward 4.

Alderman Cook asked what the schedule was like for when this will happen.

Neelam Modi: I think the details are still being worked on. We would like to break ground in the early part of next year and would like to have it open by spring time.

Alderman Petty: We were happy when Proctor and Gamble located in Fayetteville and we hope you never leave. Thank you so much.

Mayor Jordan thanked Proctor and Gamble on behalf of the City for their donation to this park. It is important to us.

Alderman Marr: On behalf of the staff we just want to say thank you to all of you.

Alderman Lucas moved to approve the resolution. Alderman Ferrell seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 141-09 as Recorded in the office of the City Clerk.

VAC 09-3269 (Schmitt, 298): An ordinance approving VAC 09-3269 submitted by Jorgensen and Associates for property located at 2614 Timberglen Lane to vacate an 875 square foot portion of a utility easement along the west side of the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director gave a brief description of the ordinance.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Petty seconded the motion. Upon roll call the motion passed 6-0. Alderman Cook and Lucas were absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third and final reading. Alderman Petty seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5246 as Recorded in the office of the City Clerk.

VAC 09-3281 (Means/1661 Cypress Ln., 370): An ordinance approving VAC 09-3281 submitted by David Means for property located at 1661 East Cypress Lane to vacate an 84.4 square foot portion of a utility easement along the north side of the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance.

Alderman Lewis: If it is sold and resold again does the water go through there?

Jeremy Pate: It is a utility easement but I am not sure that there are any utilities located within that area. Most of the utilities within this subdivision are located underneath the street and in the alley behind this development. Other utilities do have access to it but essentially what you would do with this approval would be vacating the rights to utilize the portion of the easement described in this area. We require the applicant to go to each one of the utility providers and get letters of consent. If we do not get consent letters we do not even recommend that the applicant come forward with the application.

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

City Attorney Kit Williams read the ordinance.

Alderman Ferrell 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 Rhoads was absent during the vote.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5247 as Recorded in the office of the City Clerk.

VAC 09-3282 (U of A 20th Street, 601): An ordinance approving VAC 09-3282 submitted by Allen Young for property located at the University of Arkansas Research and Technology Park and South School Avenue to vacate approximately 86,684 square foot of right-of-way for 20th Street, lying within the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. He stated the Planning Commission voted 8-0 in favor of this item.

Alderman Lucas: Did you say the utility easements will stay?

Jeremy Pate: Yes ma'am. That is one of the conditions of approval.

Alderman Ferrell: Deeding this land to the University certainly helps us right now and in the future.

Allen Young with Development Consultants Inc. representing the University: I am happy to entertain any questions that you may have.

Alderman Cook moved to suspend the rules and go to the second reading. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Petty was absent during the vote.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5248 as Recorded in the office of the City Clerk.

Quitclaim Deed for 20th Street and Access Land: A resolution to approve two quitclaim deeds to the University of Arkansas to convey the vacated 20th Street and a second small area which had been retained for access.

City Attorney Kit Williams gave a brief description of the item. He stated this is to ensure that there are no questions about the University's full ownership of this property.

Alderman Lewis: You are saying the utilities are there. What happens if you have to tear it all up and fix the water line?

Jeremy Pate: The City would retain the rights with the utility easement regardless of whose property it is.

Alderman Ferrell moved to approve the resolution. Alderman Lucas seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 142-09 as Recorded in the office of the City Clerk.

RZN 09-3271 (Sale Barn/Campus Crest LLC, 562): An ordinance rezoning that property described in rezoning petition RZN 09-3271, for approximately 8.87 acres, located at the old Washington County Sale Barn, north and east of 11th Avenue and Government Avenue from I-1, Heavy Commercial/Light Industrial, to DG Downtown General.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the item. He stated the Planning Commission voted 6-1 on this particular site.

Alderman Lucas: What is the purple area that goes along School Street?

Jeremy Pate: That is Downtown General.

Alderman Thiel: What is the lighter green that is to the east on the Neighborhood Plan?

Jeremy Pate: That is P-1 Institutional which is where the park is located. The dark green north of Spout Spring Branch is Neighborhood Conservation.

Alderman Thiel: So it is adjacent to what we are looking at.

Jeremy Pate: Neighborhood Conservation in the downtown the uses are primarily single family and two family but it does include some nonresidential uses by virtue of the fact that they were already there.

Alderman Lewis: Are there lights being proposed at 11th Street, School Street, Government and Martin Luther King Jr.? I was thinking about the traffic. If you deny RMF-24 Downtown General would allow the same amount of density is that right?

Jeremy Pate: Yes, both allow residential uses. The Downtown General does not have a density limitation. It has height and lot use limitations.

Jeremy explained the Downtown General zoning and the density allowed in the zoning.

The City does not have any plans on signalizing those intersections. If a development comes through that is something that we always look at to see if signalization is warranted. We would expect a traffic study related to that specific development.

Bob Estes, representing Campus Crest stated the request is to downzone from I-1 to Downtown General. The applicant held a pre-submittal meeting with members of the Ward and held a neighborhood meeting as well. Upon a rezoning request the appropriate consideration and topic for discussion is land use. A discussion of permitted uses is not permissible at a rezoning only land use considerations are permissible. The requested Downtown General zoning is compatible with the surrounding properties and is consistent with the neighborhood area land use designation that you have established. The requested zoning is consistent with the City's adopted land use plan and with the City Plan 2025. The staff supports this request and the Planning Commission recommends that you pass this ordinance.

Mr. Estes explained the details of why the applicant is requesting the rezoning. He stated traffic is a consideration.

Randy Tobin with Peters and Associates stated we were hired to do a comprehensive traffic impact study related to the development as proposed. He gave the results of that study. He stated that traffic signals were not warranted for Martin Luther King Jr., Government, School Avenue and 11th Street.

Alderman Thiel: That was based on 500 students?

Randy Tobin: Yes ma'am.

Alderman Petty: With the current zoning being Industrial what is the potential for increasing traffic if we saw a maximum impact project built there?

Jeremy Pate: Generally we don't see a great volume of traffic associated with warehousing and industrial type uses. It is usually the type of traffic. Truck related is usually what you see. We have a lot of uses in I-1. A larger tract of I-1 would be utilized more for a smaller warehousing type use especially when it is not located at the corner of a very busy intersection. My anticipation is that it would be lower than a general mixed use or retail or residential type of use.

Mayor Jordan: We are discussing the rezoning, can we talk about a development or the density of a rezoning.

City Attorney Kit Williams: It is a fair zoning consideration to look at what could be built here if you rezoned. You should not discuss a particular project even if the project has been disclosed by the applicant to the neighborhood. You can look at what kind of projects could be built including a project that would have substantial density.

Mayor Jordan: When we do public comment I want you to focus on the rezoning. You can discuss density but a particular project being singled out would not be permissible. Traffic concerns can be discussed.

City Attorney Kit Williams: They can talk about what possible projects could be built but not a particular project.

Ron Butler, representative of the Regional National Cemetery Improvement Corporation spoke in opposition to the rezoning. We are opposed to any type of commercial development in that area. He stated we would like that piece of real estate to be added to the National Cemetery.

Alderman Petty: Ron, I understand this property has been offered to your group on several occasions for sale. Do you see that you would ever have the funding necessary to expand there?

Ron Butler: You can't rule us out. It has not been offered to us, there have been discussions with the property owner but I do not know the results of that discussion were. We have been successful in the past.

Otto Keller, a member of the NWA Honor Guard spoke in opposition to the rezoning. He asked the Council to not pass the rezoning and keep the ground holy and sacrificed.

Jim Buckner, a retired Lieutenant Colonel with the U.S Army spoke in opposition to the rezoning. He stated this is sacred and holy ground to us that plan on being buried there. He expressed his reasons of opposition and asked the Council to deny the rezoning. He stated anything that would be a disturbance to that holy ground would not be permissible therefore I urge you to deny this zoning.

Alderman Lucas: Are there any Korean veterans buried there?

Jim Buckner: Yes ma'am.

Alderman Lewis: Have you all been in contact with Boozman's office. I am trying to get an idea of the efforts to expand in that area.

Jim Buckner: I talked to Steve Gray today and he has been in conversation with Congressman Boozman today. They have urged that we try our best to stave off this rezoning to give us a chance to purchase this land. There are federal resources that can be brought to bear in this and it will take a little time but I believe we can raise the money that would purchase that land.

Kathy Kisida, resident of 1227 South West Avenue confirmed the Campus Crest were the ones requesting that it be rezoned.

Jeremy Pate confirmed that was correct.

Kathy Kisida spoke in opposition of the rezoning and stated that she wanted the neighborhood to remain a single family neighborhood. She stated she did not feel the neighborhood was compatible with the proposed project. She expressed her concerns with the current zoning, with a commercial zoning and RMF-24 zoning in this neighborhood. She requested that the Council consider zoning her neighborhood and the sale barn property to Neighborhood Conservation. She stated she would like to preserve the integrity of the neighborhood.

Alderman Petty: Is Campus Crest acting on behalf of Mr. Bartholomew in this case?

City Attorney Kit Williams: Sometimes there can be an offer to purchase that is contingent upon rezoning. They are either acting as an agent for them or else they have an offer to purchase that is contingent upon the rezoning.

Robert Reed, a member of American Legion Post #100 spoke in opposition of the rezoning. He expressed his concerns with the proposed zoning.

Leonard Schulte, resident of 1235 South West Avenue spoke in opposition of the rezoning. He stated he would like to see the whole neighborhood changed to Neighborhood Conservation.

Steve Bartholomew, representative of the sale barn stated I hope the rezoning is approved. I understand the veterans have an interest in our property but there has been no contact with us on a dollar amount of this property with those people. I am here to support rezoning it.

Alderman Ferrell: I have been told that your dad offered this property knowing the cemetery might want it some day. Do you have any knowledge of that?

Steve Bartholomew: I do know that they have talked but there has not been a dollar amount. We have been there a long time.

Robert Williams, resident of 957 South Hill spoke in opposition of this rezoning. He expressed his concerns with the proposed project.

Harold Harris, a veteran spoke in opposition of the rezoning and stated we need that as a cemetery.

A representative of the American Legion Foundation spoke in opposition of the rezoning and asked for more time to get donations to buy this lot.

Wanda Peterson: I live within two blocks of the sale barn. I would like to see the rezoning put off. I would like to see the cemetery expand to this property.

Bradley Warford: I think the current City zoning is inappropriate it does not match what is in the neighborhood. I hope the City does not try to cram too much stuff in that small area.

Dustin Bartholomew: My family is selling the property. The rezoning tonight is a down zoning from Industrial to Downtown General. The things that could be built there at this time would be a lot more damaging than what is being proposed. The sale barn has been the livelihood of my family for the last 70 years and now a lot depends on this sale going through.

Scott Test, Elks lodge representative. The economic impact that this can have on this area can hurt what is already there. Think about the impact this will have on people that have been here for years.

John Compton: My dad worked long and hard to help keep the National Cemetery open. I would urge the Council to think long and hard about what they do tonight and consider the interest of the people that live there and the interest of the people who no longer live but are there and consider the interest of the people who may need that place. I sympathize with the people that own the sale barn.

A person from the audience: I would appreciate you delaying this.

Aubrey Shepherd: This is on the National Registry of Historic places, it is an amazing place and it draws people here. It is incompatible with many different possible uses. We would like to see this zoned Neighborhood Conservation. There is also another cemetery by the National Cemetery. It is called the Oak Cemetery. I hope we can save this property for the National Cemetery.

Sarah Lewis: Do you know how many people visit the National Cemetery?

Aubrey Shepherd: On Memorial Day there were over 1,000 people. They have a count at the cemetery if they stop at the headquarters.

Rob Sharp: This is certainly a very difficult issue. I would hate to have to try to make a decision on whether to rezone this property. I would hope the developer and our Planning Department would come up with some kind of standard to where a development that we could be proud of could be part of our cemetery that could celebrate the cemetery rather that turn its back on it. Maybe there could be some comprised solution that could be offered by the purchaser of the property that would make us happy with what could be built there and could also protect the neighborhood and honor the cemetery.

Alderman Thiel: I would like to leave this on the first reading. We can only consider certain things but having an over 100 year National Cemetery it is hard to not consider that in a rezoning around it. I would like to think about this and hear more from the public.

Adella Gray: I agree. It is a very serious decision and we do not want to rush it.

Sarah Lewis: I want to say thank you to folks for coming out and sharing your point of view. This is a historic area and that needs to be considered. We have a neighborhood with single family around this property. This is a down zoning but yet it would be a zoning to match a really wrong zoning all around it. It would hardly be considered a down zoning. The whole place needs to be down zoned again.

Matthew Petty: Those that would like to see the cemetery expand there I would urge you to do everything possible over the next few weeks to contact people. To the applicant I think you realize that Fayetteville insists that projects be more unique than what you have built around the country. I would urge you to be far more creative to help this go more smoothly.

This ordinance was left on the First Reading.

Box Avenue Appeal: An ordinance rezoning that property described in rezoning petition RZN 09-3280, for approximately 1.20 acres, located at the northwest corner of Mission Boulevard and Box Avenue from R-O, Residential Office, to C-1, Neighborhood Commercial.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: The applicant has requested this be left on this reading tonight.

This ordinance was left on the First Reading.

Oakbrooke Community Appeal: Appeal the City Engineers decision to deny a request to construct a retaining wall along the public right of way on all lots within the Oakbrooke Subdivision.

Chris Brown, City Engineer gave a brief summary of the appeal. The appeal is for the location of the retaining wall.

Alderman Ferrell: Did the other utilities sign off on this?

Chris Brown: Yes. All the other utilities are located elsewhere and not in the utility easement so they had no reason to deny this.

David Jurgens, Utility Department Director: With the 18 inch to two foot high wall I can't get behind the wall to do maintenance without taking the wall down in order to do maintenance on the pipe line.

Sarah Lewis: If there is damage and the City has to fix it who pays for the wall?

David Jurgens: We can make it a condition that the property owner who owns the wall is responsible to repair the wall. The challenge that we face when dealing with property owners is if we a fixing a line that services a lot across the street but we damage another owners wall the owner whose wall was damaged is not going to be happy.

David further explained the repair process.

Alderman Thiel: I have properties in the old part of town that have retaining walls and having utilities that run behind them is an issue.

Alderman Cook: How did it get designed like this?

David Jurgens: It is not uncommon to have the utilities behind the sidewalk. This has a very small yard area and it has a steeper slope.

Jeremy Pate: The location of the water lines and sewer lines are dedicated by the design engineers. It is the private developer and their design engineer that designed the location of that. In this development the utility easement was reduced because this was a planned zoning district.

Alderman Petty: The retaining wall looks better. Will moving the building set back farther allow a retaining wall to be built on the correct side of the utility?

Jeremy Pate: No I do not believe so. There are two separate issues. What you are considering tonight is an appeal of the City Engineers decision not to grant a wall within two feet of the right of way. David Jurgens was speaking of a separate issue that the City Council is not deciding.

Tracy Hoskins, developer: We hired an engineer to bring the project through and it was approved by Planning staff and Engineering. Typically the utilities are in the right of way. The fact that we have shorter front lots has nothing to do with this. The utilities could have been located within that right of way but for some reason they were not.

Tracy explained his reason for the walls. He stated there are ways to access these utilities without tearing the walls down.

Alderman Ferrell: What is the selling price of the houses?

Tracy Hoskins: The ones that we are building now range from $190,000 to $290,000. They are 1,700 square feet to 2,500 square feet.

Alderman Lucas: Tracy you are building a house with the garage sticking out in the front? I thought you were opposed to that type of house.

Tracy Hoskins: We are not building any house with the garage on the front.

Alderman Lucas: So the picture you gave us is not of the development.

Tracy Hoskins: I am not trying to represent the house I am trying to represent the terrain.

A discussion followed on the height of the walls, the possible placement of the walls, and the approval process.

Alderman Lewis moved to deny the appeal. Alderman Thiel seconded the motion. Upon roll call the motion passed 6-2. Alderman Ferrell and Gray voting no.

This appeal was denied.

Willoughby Road Rezoning: An ordinance rezoning that property identified as Parcels 765-15560-000 and 765-15560-001, for approximately 15.2 acres, located south of Willoughby Road and 0.8 miles east of Highway 71B from I-2, General Industrial to R-A, Residential Agricultural.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief summary of the rezoning.

Alderman Thiel moved to suspend the rules and go to the second reading. Alderman Cook seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5249 as Recorded in the office of the City Clerk.

The meeting adjourned at 9:55 PM

Lioneld Jordan

Lioneld Jordan, Mayor

Sondra E. Smith

Sondra E. Smith, City Clerk/Treasurer

Nominating Committee Report
Meeting: Monday, June 8, 2009
Room 326, City Hall 5:00 p.m.
Members Present – Kyle Cook, Robert Ferrell, Adella Gray, and Shirley Lucas

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The Nominating Committee submits the following recommendations to the entire City Council for consideration:

Animal Services Advisory Board

- ***Charlie Blomberg*** - One veterinarian term
- ***Emily Williams*** - One business term
- ***Carol Gerle*** - One Washington County representative term
- ***Richard Clehouse*** - One finance term
- ***Marcia Donley*** - One nonprofit animal interest group term
- ***Eva Madison*** - One nonprofit animal interest group term
- ***Lib Horn*** - One citizen-at-large term
- ***Lori Johnson*** - One citizen-at-large term
- ***Christina Mere*** - One citizen-at-large term.

Board of Adjustment

- ***Kristen Knight*** - One unexpired term ending 03/31/11.

Environmental Concerns Committee

- ***Angela Albright*** - One citizen-at-large term ending 6/30/12
- ***Nicole Hardiman*** - One unexpired citizen-at-large term ending 12/31/10.

Fayetteville Arts Council

- ***Jessica Minton*** – One citizen-at-large term ending 6/30/12.

Historic District Commission

- ***Ethel Goodstien-Murphee*** – One term ending 6/30/12.

Parks and Recreation Advisory Board

- ***Phillip Watson*** – One unexpired term ending 12/31/09.

Telecommunications Board

- ***Aubrey Shepherd*** – One term ending 6/30/13
- ***Justin Tennant*** – One term ending 6/30/13
- ***Don Bosseau*** - One term ending 6/30/13
- ***Mike Russell*** – One unexpired term ending 6/30/10.

Walton Arts Center Council

- *Bill Waite* – One term ending 6/30/12.

Walton Arts Center Foundation

- *Eric Sales*– One Term ending 06/30/12.