

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Boudreaux
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

**City of Fayetteville Arkansas
City Council Meeting Minutes
August 7, 2012**

A meeting of the Fayetteville City Council was held on August 7, 2012 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

PRESENT: Alderman Gray, Boudreaux, Kinion, Tennant, Ferrell, Adams, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Alderman Petty

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

2nd Quarter Financial Report 2012

Paul Becker, Finance Director gave the 2nd Quarter Financial Report. He stated that we are running a small surplus. We should be able to cover the employee increases with the surplus. Water usage is high due to the drought.

Alderman Ferrell: You said water usage is running high. Can you give me an idea of about how much above projection it's running?

Paul Becker: About 12%.

Agenda Additions: None

Consent:

Approval of the July 17, 2012 City Council meeting minutes.

Approved

Drake Field Pavement Rehab & Re-Marking Phase II Project: A resolution approving a budget adjustment in the amount of \$7,012.00 to reflect modifications to the Drake Field Pavement Rehab & Re-Marking Phase II Project necessitated by grant program changes.

Resolution 152-12 as recorded in the office of the City Clerk.

Pavement Maintenance Unlimited, LLC Change Order No. 2: A resolution approving Change Order No. 2 to a contract with Pavement Maintenance Unlimited, LLC reducing the contract by \$22,050.00 for the Pavement Rehab & Remarking Phase II Project at Drake Field, and approving a budget adjustment.

Resolution 153-12 as recorded in the office of the City Clerk.

Bid #12-51 Truck Centers of Arkansas: A resolution awarding Bid #12-51 and authorizing the purchase of two (2) Freightliner M2 trucks with Kann Versa Haul recycle bodies in the total amount of \$314,366.00 from Truck Centers of Arkansas for use by the Solid Waste Division.

Resolution 154-12 as recorded in the office of the City Clerk.

Preferred Office Products, Inc.: A resolution authorizing the purchase of five (5) Canon copiers in a total amount of \$63,723.00, pursuant to a state procurement contract, from Preferred Office Products, Inc.

Resolution 155-12 as recorded in the office of the City Clerk.

Federal and State Law Enforcement Forfeiture Revenue: A resolution approving a budget adjustment in the amount of \$28,558.00 representing federal and state law enforcement forfeiture revenue received during 2012 and establishing a corresponding expense budget.

Resolution 156-12 as recorded in the office of the City Clerk.

Arkansas Department of Parks and Tourism's Outdoor Recreation Grant: A resolution authorizing an application for a 50/50 matching grant, through the Arkansas Department of Parks and Tourism's Outdoor Recreation Grant Program, in the amount of \$50,000.00 for improvements at Mount Sequoyah Gardens.

Resolution 157-12 as recorded in the office of the City Clerk.

Arkansas Recreational Trails Program: A resolution expressing the willingness of the City of Fayetteville to utilize Federal-Aid Recreational Trails funds and authorizing application for a 20% local match grant through the Arkansas Recreational Trails Program in an amount up to \$100,000.00 for construction of a section of Lake Fayetteville Trail.

Resolution 158-12 as recorded in the office of the City Clerk.

2012 Arkansas Department of Environmental Quality Recycling Grant: A resolution authorizing application for a 2012 Arkansas Department of Environmental Quality Recycling Grant through the Boston Mountain Solid Waste District in the amount of \$25,000.00 to fund apartment recycling containers.

Resolution 159-12 as recorded in the office of the City Clerk.

McClelland Consulting Engineers: A resolution approving an engineering contract with McClelland Consulting Engineers in the amount of \$131,328.00, plus a \$20,000.00 project contingency, for design services for the State Highway 16 Water and Sewer Relocation Project at the West Fork of the White River.

Resolution 160-12 as recorded in the office of the City Clerk.

Alderman Gray moved to approve the Consent Agenda as read. Alderman Lewis seconded the motion. Upon roll call the motion passed 6-0. Alderman Ferrell was absent during the vote. Alderman Petty was absent.

Unfinished Business:

Amend §154.03 Private Parties/Zoning Amendment: An ordinance to amend §154.03 Private Parties/Zoning Amendment to clarify the powers of the Planning Commission and City Council when a property owner seeks rezoning. *This ordinance was left on the First reading at the July 17, 2012 City Council meeting.*

Alderman Gray 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 Petty was absent.

City Attorney Kit Williams read the ordinance.

Alderman Lewis: I had some citizen's request that we leave this on the second reading. They have also requested an opinion from the Attorney General.

Alderman Ferrell: Does this in any way affect the current litigation?

City Attorney Kit Williams: This does not. There was no official petition presented that claimed to be operative for this section. I would have informed you that that petition could not

affect the amount of votes needed to pass that ordinance. I do not object to leaving it on the second reading.

Alderman Ferrell: Could you give an average amount of time it takes to seek an opinion?

City Attorney Kit Williams: It usually takes the Attorney General 2 to 3 months to respond unless it is a critical issue.

This ordinance was left on the Second Reading.

New Business:

United States Tennis Association: A resolution authorizing acceptance of renovation services to tennis courts at Wilson Park by the United States Tennis Association as part of its Two Court Renovation Grant Program at no cost to the City of Fayetteville.

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

Alderman Gray: I am very happy that we are doing this. Anything we can do to encourage our children in sports takes care of lots of problems. The earlier we can start the better.

Alderman Lewis: What is the cost of a brand new court?

Connie Edmonston: It's somewhere around \$40,000 to \$50,000 at least. We did have some concerns from citizens at the Parks Board meeting and we have some of the members here if you have any questions for them.

Alderman Tennant: The comments I received were that there will be fencing around this court that will inhibit the play on the adult court next to it. My concern is are we trying too hard to do the right thing and then we are going to end up taking too much away on the other side?

Chase Gipson, Recreation Superintendent stated we addressed that last week. With the youth courts you do not have to give as much length on the base lines and so that fence will be shifted and will not split right down the middle. It will be offset about four feet to the east side.

Alderman Tennant: So you won't need the space on the side.

Chase Gipson: Right.

Alderman Tennant: Okay, good, thank you very much.

Alderman Ferrell: There have been people coming to the Council over the years asking if we could have more adult tennis courts. In the process of planning, how do you assess where the parks are going to go? How do you weigh the wants of different parts of the community?

Chase Gipson: It just depends on the situation. We do a lot of public input meetings. Every year when we do our outdoor recreation grant we take public input at that meeting. When we talked about the regional park people were overwhelmingly in favor of a group of 6 to 8 courts together rather than having smaller complexes spread out throughout the community. That is why the regional park made the most sense.

Bill Ward, a citizen stated there is a current need for adult tennis courts. He went on to express his concerns.

Alderman Ferrell: Do you know Alan Beauchamp?

Bill Ward: Sure.

Alderman Ferrell: Do you know if he has an opinion on this?

Bill Ward: I talked to him at the park one time in passing and he knows we need courts in this town.

Jennifer Lee, a citizen spoke on the importance of youth courts in Fayetteville.

Kennedy Lee, who is 10 years old, stated why she preferred youth courts.

McKenzie Lee, who is 7 years old, stated she liked the smaller tennis courts better because she can play a full game.

Paul Williams stated if promoting youth tennis is a policy goal then we need to look at all the ways that we can go about doing this. He encouraged everyone to see what our options really are because we do not know what will really be gained here.

Alderman Ferrell: You had inquired about who would provide instruction and have not received a response.

Paul Williams: No one has been able to tell me.

Alderman Ferrell: Can anyone tell us who is going to provide the instruction for the child's tennis?

Chase Gipson: We are not setting the courts up to have instructors come in and charge fees for organized instruction. There will be organized programming there to bring kids in but the point is that you create somewhere that kids can come and play on their own and have an opportunity to play.

Paul Williams: So there is no provision for any instruction.

Chase Gipson: We currently do not have plans but we do have plans to provide programming there.

Phillip Watson, Parks and Recreation Advisory Board member stated I am available for any questions on how the board came to the conclusion that we came to of approving this. This seems to be a good fit because it's in Wilson Park and gives access to most of Fayetteville for the children to come and play.

Alderman Tennant: Did you or anybody get any feed back from any elementary schools and their P.E. teachers on whether this was something good or not? I asked a P.E. teacher and they said anytime you have courts, for kids to play tennis, they will probably play tennis. Does anyone from the schools have any input?

Phillip Watson: Not with me directly. That was brought up. There were some requests for courts for that age bracket.

Chase Gipson: I haven't spoken with any P.E. teachers but we have over 2,000 youth participants in our programs and have heard overwhelmingly from the majority of them that this will be a wonderful thing.

Alderman Lewis: Is there any numbers on the use of our courts?

Phillip Watson: The high school is reserving those courts from 3:00 to 6:00 p.m. most afternoons and once they are gone that will open up a lot of space.

Chase Gipson: We did two separate surveys and those numbers show that it's rare that all six of those courts are full. There is more use late in the evening but it's not that often that you find all six of them full. We are not denying that there is a need for more courts for adults. We think this is a great opportunity and a great time for this to take place.

Alderman Kinion: What were the dates again?

Chase Gipson gave the dates of the surveys.

Alderman Kinion: I think this is a general idea but I do not think that the variables are valid that we are looking at. The need is there for more courts. A lot of towns have modular courts that seem to be more affordable for youth tennis programs. I think there is a valid concern that this might be a sacrifice and that it's not a balance with what we are getting in our current Parks and Recreation program. Using numbers from June to July is probably the most inappropriate time to look at activity in the park because the pool is open at this time and other programs.

Chase Gipson: This grant is just for renovation that includes permanent youth courts. With the modular courts someone has to be there and set them up and oversee everything that is happening.

Alderman Kinion: There is no doubt that we have the need. I can't validate the sacrifice when I am looking at the variables that we are currently using in our parks at this time. I see on a personal level people waiting to get onto the courts.

Chase Gipson: We have in the past rented all six of those to the high school from 3:00 to 6:00 p.m. and then when they had a match it would last sometimes until 7:30 p.m. Obviously the main time where there were wait periods, the majority of it will be alleviated when they move to the new courts.

Alderman Adams: I heard someone say strictly age 10 and under would be permitted on these courts. Will it be appropriate for seniors or others to use those courts?

Chase Gipson: It would be open to anyone at anytime.

Alderman Adams: I understand that we are planning for the regional park but do we have any short term plans to do anything in the tennis court area?

Chase Gipson: We have discussed the possibility. We are aware of it but we do not have any plans for the construction of new ones.

Connie Edmonston: I talked to Barry Gebhart who is the Athletic Director at the high school and he said they will be opening up their eight courts to the public for a small fee. They will also be opening it up to the school staff and members of their family. They are looking at doing some kind of tennis program there to encourage and support our tennis community. That helped us with our decision. We have a lot of needs out there and a lot of people to serve.

Alderman Lewis: What is the deadline for the grant application? Does it have to be a two court area?

Chase Gipson: Yes.

Alderman Lewis: So you can't put resurfacing money towards a new court. It is a very strict grant.

Chase Gipson: Right and the original deadline was July 1st and they contacted the director and got permission to extend it.

Alderman Kinion: On the USTA website they talk about the blended court. It seemed to me that you looked at the grant guidelines, rather than taking a complete court or blended court. The blended court allowed some opportunity to use a court and line it both ways. Is this correct?

Chase Gipson: We have the blended 60 foot courts already at Wilson Park and that was a grant a couple of years ago. This one is specific for a two court facility to take one full size court and convert it to a youth court.

Phillip Watson: Looking in the future it does leave a gap in the north east which is where we are going to be looking at next as far as adding tennis courts. In my vision that is what I see.

Aubrey Shepherd, a citizen pointed out that it would be nice for the kids to be able to use the same courts as the adults.

Alderman Lewis: It doesn't seem like we are gaining enough and we are going to lose something. This is not a win win here and unfortunately I am not going to be able to support this. I would rather spend staff time figuring out how to expand the services in this area as well as the lighting and other types of parks services.

Alderman Kinion: Going to the USTA site, the blended court idea kept catching my attention. I would like to move forward in a compromise situation. It says on the USTA website that there are grants to develop a blended court situation. We need youth programs and need to develop our youth. I have a feeling right now that we are not going to gain as much as we lose if we move forward.

Alderman Boudreaux stated I feel like staff had good reasons to do this and I will support this. I think this is worth a try.

Alderman Adams: I did not receive much public comment on this. The fact that the Parks and Recreation Advisory Board voted 8 for and 0 against this and I respect the employee's expertise therefore I am going to support this.

Alderman Ferrell: I am not opposed to youth courts. I believe if you look at the amount of money that has been spent, in the last 10 years at Wilson Park, you could have built several tennis courts. The Parks Board is just an advisory board. I will not support it.

Alderman Gray: I do not believe what we are losing is comparable to what we are gaining. I will support this for lots of reasons.

Alderman Tennant: I think it's important to trust the people on the advisory board. They put a lot of thought in planning before making recommendations. It's a very difficult decision but I will support it.

Alderman Boudreaux moved to approve the resolution. **Alderman Adams** seconded the motion. Upon roll call the resolution passed 5-3. **Alderman Gray, Boudreaux, Tennant, and Adams** voting yes. **Alderman Lewis, Kinion, and Ferrell** voting no. **Mayor Jordan** voted yes to approve the resolution. **Alderman Petty** was absent.

Resolution 161-12 as recorded in the office of the City Clerk.

RZN 12-4135 (521 N. College Ave./Roddey): An ordinance rezoning that property described in rezoning petition RZN 12-4135, for approximately 0.34 acres, located at 521 North College Avenue from C-2, thoroughfare commercial to DG, Downtown General.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance.

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

City Attorney Kit Williams read the ordinance.

Alderman Tennant moved to suspend the rules and go to the third and final reading. Alderman Ferrell seconded the motion.

Alderman Lewis: Jeremy, can you talk about what Downtown General allows that C-2 doesn't?

Jeremy Pate explained the differences.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5514 as Recorded in the office of the City Clerk

VAC 12-4147 (510 W. 11th St. & 989 S. School Ave./The Grove): An ordinance approving VAC 12-4147 submitted by Morrison Shipley Engineers, Inc. for property located at 510 West 11th Street and 989 South School Avenue to vacate a portion of right-of-way, a total of 0.01 acres.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance.

Aubrey Shepherd asked is this going to narrow the street or just the right-of-way that was not being used.

Jeremy Pate: It will only narrow the right-of-way that is not being utilized and the street will stay the same.

Aubrey Shepherd: So we are going to have at least a five foot sidewalk on that side?

Jeremy Pate: That's correct.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5515 as Recorded in the office of the City Clerk

ADM 12-4136 (2768 E. Shagbark Bend/Zweig): An ordinance amending a Residential Planned Zoning District entitled R-PZD 04-05.00, Hickory Park Subdivision, located north of 2730 East Township Street, containing approximately 4.4 acres, to reflect revised building setbacks for Lot 14.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance.

Alderman Boudreaux: So this house has a 20 foot setback all the way around it?

Jeremy Pate: It has a 15 foot around Shagbark Bend and Mockernet Crossing. The reason it was shown as a 20 foot setback was because there was going to be a shared driveway. That ended up not being the way the homes were constructed, so it's not needed anymore.

Alderman Boudreaux: It's an unusual way of approaching this but I guess its okay.

Jeremy Pate: Normally the Board of Adjustments would see something like this but because it is a planned zoning district the City Council approved the zoning criteria.

Alderman Lewis: It says it's not built out yet, is that still true?

Jeremy Pate: The subdivision?

Alderman Lewis: Yes.

Jeremy Pate: I don't believe so.

Alderman Ferrell: There are still some left.

Alderman Lewis: So there are still some left. Does this affect those?

Jeremy Pate: This is just one lot.

Alderman Lewis: So they won't come back and say we want a different setback?

Jeremy Pate: They could.

City Attorney Kit Williams: This does not do that. They would have to come back.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5516 as Recorded in the office of the City Clerk

ADM 12-4174 (Complete Neighborhood Plan): A resolution to authorize City Staff to prepare a complete Neighborhood Plan for the Wedington Drive Corridor.

Jeremy Pate gave a brief description of the resolution.

Alderman Boudreaux: Why didn't you all consider going on out to 54th Street?

Jeremy Pate: We actually considered going all the way to Double Springs Road as we have been asked to go east of I-540 as well. Part of it becomes a capacity issue. We would rather move farther west to see that rural area coming into more of a commercial nature instead of moving further east.

Alderman Boudreaux: I just wondered why you didn't go to another street. According to this map you are not at 51st, you are on past there.

Jeremy Pate: We are about a section line past 51st.

Alderman Boudreaux: Wouldn't it be easier to define it by street boundaries?

Jeremy Pate: We try to stay a lot or block on the other side of a street to show how both sides of that street would develop.

Alderman Lewis: One thing that came up during the Ward 4 meeting was the discussion about the east side of this. Is there a way to go beyond I-540 a bit capturing the entry way both ways to the city in order to not perpetuate the perception of a divide there? I would like to propose that the commercial area on the southeast side of the intersection be included in the consideration.

Jeremy Pate stated they looked at two different options. The highway department may dictate in the future what changes may occur around I-540.

Alderman Lewis: So we as a community would be communicating ideas for the part that would be on the eastern side of the interchange. The interchange we do not have much say in. I say invite the highway department to the meetings.

Jeremy Pate: That is certainly one of the plans because Wedington is a state highway. Part of that acreage increase was because we took in the hotels that you recommended at the Ward 4 meeting.

Alderman Adams: I have not heard any negative comments and have heard a lot of positive comments. One thing that was brought up at our meeting was the enduring green network and how that works into a plan like this.

Jeremy Pate gave an explanation of the enduring green network and how it will be incorporated into this analysis.

Mike Emery, who lives in the middle of this project, stated there is so much potential for growth out there and this is a viable plan that can hinder out of control suburban sprawl. He spoke in favor of the resolution.

Charlie Sloan, who lives in this area, encouraged the council to go forward with this. He spoke in favor of the resolution.

Alderman Lewis: I would like to hold this.

City Attorney Kit Williams: You will have to do a motion to table.

Alderman Lewis: Jeremy said he had presented two different approaches and that is why I am not clear on what we are voting on. If there is a plan that captured the other side of I-540 I would be supportive of that. Does it require an amendment to the resolution?

City Attorney Kit Williams: It would require an amendment of the exhibit.

Alderman Ferrell: Will this affect the time or manpower involved to do this if we amend it?

Jeremy Pate: I don't believe so. We could be supportive of that and we will get a map with a new exhibit in your packets so you can see it.

Alderman Lewis moved to amend the Neighborhood Plan map to include a small portion of property east of I-540. Alderman Adams seconded the motion.

A discussion followed on the location.

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

Alderman Adams: You have to draw a line somewhere and I look forward to you doing whatever you need to do to present to our ward the very best plan you can.

Jeremy Pate: Thank you, that is what we utilized in all our master plans when you see something that needs to be addressed we don't just ignore it.

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

Resolution 162-12 as recorded in the office of the City Clerk.

Petition for Writ of Certiorari and Appeal to United States Supreme Court: A resolution to authorize the City Attorney to file a petition for Writ of Certiorari to the United States Supreme Court and appeal the awarding of attorneys fees in the Rock Quarry Case.

City Attorney Kit Williams gave a brief description of the resolution.

Alderman Lewis stated there is a precedent here that needs to be considered. She read a portion of the memo submitted by the City Attorney and stated in long term the cities can face increased cost. This has weakened our ability as a community to establish legislation. That is not something to take lightly. She gave a recap of why the rock quarry ordinance was created in the first place. There is a long term risk associated with not moving forward. She went on to express her concerns and stated I am supportive of moving forward.

Alderman Ferrell: Kit, does this go before one federal judge or the Eighth District three judge panel?

City Attorney Kit Williams: This was originally decided by the local district judge and appealed to the Eighth Circuit where a three judge panel did hear that. We felt it was important to go straight to the Supreme Court on this.

Alderman Ferrell: I don't think this diminishes our ability to pass legislation. I do not think this is the wisest choice because there is a 90% chance that we will lose and it will be a bad decision for our taxpayers.

Alderman Boudreaux moved to approve the resolution. Alderman Tennant seconded the motion.

Alderman Lewis: I just don't want people to forget those folks on the west side of town who are still suffering.

Alderman Ferrell: Please don't forget all the taxpayers that are on the other end of this too.

Alderman Gray: I struggle with this decision too but I feel like with a 90% chance that we could lose it is probably not wise for us to make this decision. I believe in our attorney and what he recommends to us and how he feels cities are going to be affected.

City Attorney Kit Williams: If we do not go forward then we now know that we could pay attorney fees if a case is dismissed as moot. In the future, throughout the Eighth Circuit, city attorneys will know you cannot allow a case to be dismissed as moot. You have to demand that you get a judgment and hearing on that particular case.

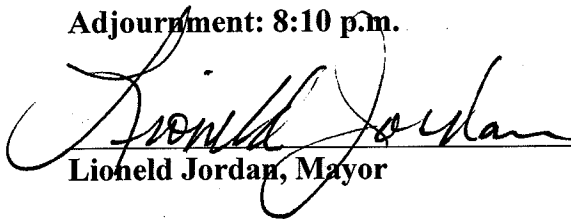
Alderman Adams: I have every confidence in our City Attorney but this probably won't change anything anyway. I am not going to be able to support that risk.

Upon roll call the resolution failed 1-6. Alderman Lewis voting yes. Alderman Petty was absent.

The Resolution failed.

Announcements:

Adjournment: 8:10 p.m.


Lionel Jordan, Mayor


Sondra E. Smith, City Clerk/Treasurer