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 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
September 04, 2012

A meeting of the Fayetteville City Council was held on September 04, 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, Petty, Tennant, Ferrell, Adams, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

City Council Meeting Presentations, Reports and Discussion Items: None

Agenda Additions: None

Consent:

Approval of the August 21, 2012 City Council meeting minutes.

Approved

Lifesource International Lease Agreement: A resolution approving a lease agreement with Lifesource International for premises located at 1932 S. Garland Avenue in exchange for services to the citizens of Fayetteville.

Resolution 174-12 as recorded in the office of the City Clerk.

Fayetteville Police Department Policies: A resolution approving Fayetteville Police Department policies 12.2.1 Policies, Procedures and Rules Development and Review Procedures, 41.1.1 Patrol, 41.2.8 Vehicular Pursuit, 41.3.5 Grooming and Uniform Requirements, 54.1.1 Public Information Policy, and 46.1.1 Critical Incidents.

Resolution 175-12 as recorded in the office of the City Clerk.

Allied Waste Services of Bella Vista: A resolution approving one (1) year extension agreement with Allied Waste Services of Bella Vista to haul and dispose of solid waste and recycling in the City.

Resolution 176-12 as recorded in the office of the City Clerk.

Bid #12-65 Benchmark Construction of NWA, Inc.: A resolution awarding Bid #12-65 and authorizing a contract with Benchmark Construction of NWA, Inc. in the amount of $335,230.42 for installation of a concrete pad and associated work at the City solid waste and recycling facility, approving a project contingency of $33,523.04, and approving a budget adjustment.

Resolution 177-12 as recorded in the office of the City Clerk.

Solid Waste Hauling and Disposal Fees: A resolution approving a budget adjustment in the amount of $303,598.00 to provide funding for solid waste hauling and disposal fees.

Resolution 178-12 as recorded in the office of the City Clerk.

Keep Fayetteville Beautiful Committee: A resolution authorizing the Mayor to appoint up to seven (7) persons to serve at the pleasure of the Mayor as a Keep Fayetteville Beautiful Committee to facilitate creation of a Keep Fayetteville Beautiful affiliate to work in coordination with Keep Arkansas Beautiful and Keep America Beautiful, and sunsetting the authorization for this committee upon incorporation of a private non-profit organization.

Resolution 179-12 as recorded in the office of the City Clerk.

SWEPCO Energy Block Grant Rebate: A resolution approving a budget adjustment in the amount of $14,561.00 recognizing revenue from the SWEPCO Energy Block Grant Rebate and allocating the revenue to the LED Trail Lighting Program.

Resolution 180-12 as recorded in the office of the City Clerk.

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

Unfinished Business:

ADM 12-4144 3078 N. College Ave. Siebert Appeal: A resolution to reverse the Planning Commission's decision to grant and thereby to deny the variance to Eric Siebert to operate his Shave the Planet business longer than 90 days as an outdoor mobile vendor. ***This resolution was Tabled at the July 03, 2012 City Council meeting to the September 04, 2012 City Council meeting.***

Jeremy Pate gave a brief description of the resolution.

Mayor Jordan: We did a 90 day extension. Isn't the 90 days almost up anyway?

Jeremy Pate: It would be as of September 25th.

Alderman Ferrell: My understanding is that Alderman Petty has some amendments to this and also that will go to Ordinance Review. As soon as it's through Ordinance Review we can hear it all at one time. I would assume to do that as soon as we can.

Alderman Petty: That is fine with me but you should know that while I anticipate it getting to Ordinance Review this month, my intentions are also to send it through the Planning Commission. So I do not expect it to make it to the Council by September 25th.

Alderman Ferrell: The 25th is what they asked for and that is when the license will be up. Either way their license will be over, is that right?

Jeremy Pate: That's correct. So if this is tabled again and it goes past that date, their maximum time at that particular location would be up, and so they would move until the next year.

Alderman Boudreaux: As late as it is I cannot see making a decision on this right now.

Alderman Ferrell: After the amendments come to the Council, will it be up to the Council to send it to the Planning Commission or will it automatically go from Ordinance Review to Planning Commission?

Alderman Boudreaux: It will go to Planning, Ordinance Review and then us.

Alderman Petty: It is my intention to send it to Ordinance Review first.

Alderman Boudreaux: Before it goes to Planning?

Alderman Petty: That was the advice I received from staff and I think it's a good idea so we can nail out some of the policy differences and intentions and Planning Commission can comment on procedural issues.

Alderman Ferrell: What is the next sequence of events on this Jeremy?

Jeremy Pate: I think ultimately it is up to the sponsor. There are some pretty major changes of this particular ordinance so those are some items that we would rather have the Council weigh in on at Ordinance Review Committee before we take the technical aspects of the ordinance through the Planning Commission process.

Alderman Boudreaux: Is this coming from an Alderman or is staff supporting this?

Jeremy Pate: This is coming from an Alderman.

City Attorney Kit Williams: If you are going to table it you should probably table it indefinitely because once the time is run, there is no sense in hearing the appeal.

Eric Siebert, owner of Shave the Planet thanked the Council.

Alderman Boudreaux moved to table the appeal indefinitely. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

This item was tabled indefinitely.

Amerlux Exterior, LLC: An ordinance waiving the requirements of formal competitive bidding and approving an agreement with for the purchase of seventeen (17) streetlight poles and fixtures manufactured by Dynamic Lighting, Inc. in the total amount of $28,415.93 for installation on downtown improvement projects along Mountain Street, College Avenue, Center Street, East Avenue and Meadow Street. ***This ordinance was left on the First reading at the August 21, 2012 City Council meeting.***

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

City Attorney Kit Williams read the ordinance.

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

Alderman Petty: I would like to thank the Council and staff for honoring my request. I really appreciate taking the extra time to investigate what this company offers. I appreciate the intention to keep everything the same but respectfully I am going to vote no. I feel like we should go as far as seeing how much savings there would be long term to replace the existing poles with new technology rather than buying into this old energy intensive technology.

Alderman Lewis: What is the time on this and at what point do you revisit this?

Terry Gulley explained the area where the new streetlight poles would be placed.

Alderman Lewis: So any new lights beyond that?

Terry Gulley: Anywhere else like on Block Street we went with LED lights and that is our intention from that point on. We do the same thing on our trail lighting. We are pretty much committed to that in the future.

Alderman Tennant moved to suspend the rules and go to the third and final reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-1. Alderman Petty voting no.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 5-3. Alderman Boudreaux, Tennant, Ferrell, Adams and Gray voting yes. Alderman Kinion, Petty and Lewis voting no.

Ordinance 5520 as Recorded in the office of the City Clerk

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. This ordinance was left on the Second reading at the August 7, 2012 City Council meeting. This ordinance was left on the Second reading and Tabled until an Attorney General opinion is received.***

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

City Attorney Kit Williams read the ordinance.

Mayor Jordan: We received the Attorney General's opinion, correct?

City Attorney Kit Williams: That is correct. He agreed with my analysis that this particular code section could not be applied and the state law is pretty clear on what is required, which is a majority decision. I do think we should remove this from the code since it is not a valid code section. I would ask that you replace the previous code section and adopt the new code sections that were in the ordinance.

Alderman Ferrell: What do we have left that requires a super majority?

City Attorney Kit Williams listed all the things that required a two thirds vote.

Alderman Lewis: I appreciate the Council allowing time to get that opinion.

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

Ordinance 5521 as Recorded in the office of the City Clerk

Public Hearing:

Fayetteville Taxi LC, Public Convenience Necessity: A resolution granting a Certificate of Public Convenience and Necessity to Fayetteville Taxi LC for the operation of one (1) to four (4) taxicabs in the City of Fayetteville.

Mayor Jordan opened the public hearing.

Police Chief Greg Tabor gave a brief description of the resolution.

Alderman Ferrell: Do you think we have too many cabs?

Police Chief Greg Tabor stated based on what I see on Dickson Street I would probably say no.

Alderman Gray: What is the population of Fort Smith?

Police Chief Greg Tabor: I think around 90,000.

Alderman Gray: So their ratio is about the same as ours.

Alderman Adams: This column on this report says number of driver permits denied. What does it take to be denied? How do your records tell us something?

Police Chief Greg Tabor explained why an application would be denied.

A discussion followed.

Alderman Tennant: One of the things I am concerned about is we have 35 permitted but that is not necessarily how many are on the street. That would be a fluid changing number all the time.

Police Chief Greg Tabor: That is my understanding.

Alderman Tennant: This would just be raising the ceiling of maximum permitted.

Police Chief Greg Tabor: In the certificate it specifically says a maximum number but their certificate may be a lower number.

Stewart Larrabee, the applicant gave a brief description of his company.

Alderman Tennant: How many cars are you going to start with?

Stewart Larrabee: Just one for now.

Alderman Tennant: Do you have a marketing or advertising plan? I think people would use ride sharing if they knew about it.

Stewart Larrabee: Yes, this is something that the City could implement immediately and have a couple temporary signs that everyone sees. Some of this is long term goals for next year.

Bryce Curry of Dynasty Transportation expressed his concerns and spoke against the resolution.

Alderman Petty: Why haven't you asked to increase the number of vehicles you are permitted to run?

Bryce Curry: That is something I have done on the sidelines. I never realized there was a position that said you are allowed 10 cabs and that is it. We put cabs out there because they were needed.

Alderman Petty: Has your business expanded since you opened it?

Bryce Curry explained how his business has grown and expanded.

Alderman Petty: Why do you think the wait times on the weekends and peak hours are so long?

Bryce Curry: You are never going to solve that problem. The problem is there are 23 bars. He went on to explain how many people there are leaving the bars at the same time.

Mayor Jordan: So Mr. Curry, you are saying there are a lot of people downtown on Dickson Street.

Bryce Curry: I would say it is since the students are back.

Mayor Jordan closed the public hearing.

Alderman Ferrell: The Chief of Police didn't think we had too many cabs and the competition is good regardless of what you might hear tonight. I hope new ideas are implemented but we will see what the market decides.

Alderman Lewis: It's really up to the market and I feel like that is what this is about. You see a need and opportunity and are going for it. That is where my decision sits. I think the market needs to play its roll there.

Alderman Tennant: I agree, but it does worry me a little bit when it comes to taxi cabs that we need to make sure we have a quality product out on the street. My fear is that when the market decides whether that taxi cab stays or goes, I don't want to damage the projection that we have of Fayetteville.

Alderman Petty: I think if you look at performance as a whole it is not meeting the expectations of downtown patrons. The only way to do that is to add more cabs.

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

Resolution 181-12 as recorded in the office of the City Clerk.

New Business:

2012 Arkansas Department of Environmental Quality E-Waste Grant: A resolution approving application for a 2012 Arkansas Department of Environmental Quality E-Waste Grant of $25,000.00 for an E-Waste coupon redemption program.

Brian Pugh, Waste Reduction Coordinator gave a brief description of the resolution.

Don Marr explained their findings from a conference in Dallas that was focused on residential recycling. He thanked Brian Pugh and the staff for all their work on getting this accomplished.

Brian Pugh: We hope to get this grant by December in time for the Holiday Season.

Alderman Tennant: I think this is a great thing. Thank you very much.

Brian Pugh explained when the next E-waste drop-off would be held at the Arvest Ballpark. He went on to address why E-waste could not be taken at the bulky waste clean-ups.

Alderman Adams stated that what little bit of time I spent volunteering with Brian showed me what can happen and it simply takes some face to face time and education. She thanked Ward 4 for opening their doors to them.

Brian Pugh explained a survey that was conducted.

Don Marr further explained positive effects from the survey.

Alderman Lewis: Does Washington County have certain times that they can take E-Waste?

Brian Pugh explained their operation and times for pick ups.

Alderman Lewis moved to approve the resolution. Alderman Adams seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 182-12 as recorded in the office of the City Clerk.

Enact Article XXIV Audit Committee and Internal Auditor: An ordinance to enact Article XXIV Audit Committee and Internal Auditor into Chapter 33 Departments, Boards, Commission and Authorities of the Code of Fayetteville.

City Attorney Kit Williams read the ordinance.

Vicki Deaton, Internal Auditor gave a brief description of the ordinance.

Alderman Ferrell thanked Vicki Deaton and the staff and stated I think this is a good product.

City Attorney Kit Williams pointed out a typo that needed to be corrected.

Vicki Deaton: The Audit Committee has seen this and gone over both the internal audit charter and this whole packet and they are in agreement.

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

City Attorney Kit Williams read the ordinance.

Alderman Boudreaux moved to suspend the rules and go to the third and final reading. Alderman Kinion 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 5522 as Recorded in the office of the City Clerk

Amend Chapter 166.04 Required Infrastructure Improvements – Development in City limits: An ordinance amending subsection 166.04(l)(ii)(g) of Chapter 166 Development of the Unified Development Code to change the fee-in-lieu formulas related to park land dedications.

City Attorney Kit Williams read the ordinance.

Alison Jumper, Park Planning Superintendent gave a brief description of the ordinance.

Mayor Jordan: Is that basically saying that the park dedication is depending upon the market and what your land is worth?

Alison Jumper: It has two variables; the persons per unit changes that and the cost of land. So the persons per unit when it's changed, it will change the ratio of acres of land deeded per unit and then the persons per unit and the cost per acre affect the fees in lieu.

Mayor Jordan confirmed the variables.

A discussion followed.

Alderman Lewis: So on the acres per unit help me understand why that goes down.

Alison Jumper briefly explained why it goes down.

Don Marr further explained why it goes down.

Alderman Lewis: You were saying that you were going to re-visit this in one year but in the ordinance it says every two years.

City Attorney Kit Williams explained why it would be looked at next year.

Alison Jumper: The Parks Board requested that we do it next year too.

Alderman Ferrell: Isn't it every five years that the County re-assesses property?

City Attorney Kit Williams: I can't guarantee how many years that is.

Alderman Ferrell: We are going to do this every two years to keep up?

City Attorney Kit Williams: We try to keep up with our prices so there is not an inspiration for a developer just to give money in lieu thereof. We couldn't get any park land for that money and we couldn't get as much. So that is why we wanted to have it reappraised so it would be fair and a level playing field.

Alderman Lewis: When is the last time this was changed?

Alison Jumper: The last major change was in 2006.

Alderman Lewis: So this is establishing a regular two year examination.

City Attorney Kit Williams: They are going to look at it and they did in 2008 but there wasn't much change and any reason to bring it to the Council when there wasn't going to be a change.

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

City Attorney Kit Williams read the ordinance.

Alderman Boudreaux moved to suspend the rules and go to the third and final reading. Alderman Kinion 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 5523 as Recorded in the office of the City Clerk

Hughmount Village Development Sewer Extension: A resolution to approve the extension of the City's sewerage system beyond the city limits to the proposed Hughmount Village Development.

City Attorney Kit Williams: Alderman Gray asked me to bring this resolution forward and I brought a bare bones one forward. I thought maybe we should have one that would be more like the ones we have done in the past where we would require the developers to be treated as if they were inside the City and so they would not have some unfair advantage to developers developing inside. The first thing I would ask you to do is to amend the original resolution that went out in the Tentative Agenda to the resolution that was presented to you at the Agenda Session with the other terms and conditions within it.

Alderman Kinion moved to amend the resolution to the resolution that was submitted at Agenda Session. Alderman Ferrell seconded the motion.

Alderman Kinion: I think it's important that when we look at this that we did take the next step to look at the amendment because this does put an adjoining development that will be annexed into the city on a level playing field as if it was already annexed. We can annex this because it is an island outside the city limits due to a few acres between that and the current development but with the amendment this does offer fairness as we move forward in considering this.

Upon roll call the motion passed unanimously.

Kim Hesse, representing Phil Phillips of Hughmount Village LLC.: This was approved in 2005; it did try to go through annexation, which was turned down at the time because of adjacent property owners. There have been a couple of partnerships since this was constructed. This development back in 2005 was in the growth boundary of the City of Fayetteville and so the design for streets and drainage, water and sewer does follow the City requirements that was a standard back then. It was constructed almost to 90% and several of you were on the tour and saw the condition of the subdivision. All streets and drainage are in, the gravity sewer system within the development is constructed and your water is constructed. This did go through your City inspection process and testing process. At this point everything was constructed per standards. As we go forward we understand that everything has to be retested because it has been sitting for a few years. We understand the Council's stance on not connecting outside the City limits. We don't want to encourage sprawl and your taxpayers resources are going to be on the limits. This development is somewhat unique. It was in the ground before this particular developer and partner ever thought of connecting to City sewer. This was designed with a package, sewer treatment system and it was passed through the State Health Department. It has since expired. The preliminary plat approvals have expired, this went through the County and

those expired as well as did the Health Department standards, or the permit for that treatment system. So we are going through the process again. This is not so much a financial stance for the developer, it's a common sense stance in that he realizes that if he puts in his package treatment system that the rules under Washington County is, once this is annexed into the City, the City has the ability to have you disconnect your decentralized system and hook onto the City's system. That would be a waste of resources and you would have a system in the ground that would not be utilized. It just makes business sense to come to you and ask for this connection. We certainly understand the agreement that was brought up with Mr. Kit Williams. We are under full agreement to meet all the City requirements from your impact fees to your development requirements. I think this is a win win. You are going to gain the impact fees. The development was there whether we hung onto the sewer or not. The answer is how is the sanitary sewer to be treated? By hooking onto your system this Council has a lot more control on how the sewage is treated. You have more control over the rest of the development like park land, streamside ordinance and things like that. This is along the tributary to Clabber Creek. You gain some of the impact fees and in the future this development would be assured to be within all of your City requirements as far as your development as well as your treatment. Your resources for water service as far as maintaining the water system will already be dedicated to the City of Fayetteville for about 500 feet from your 48 inch line that we are connected to. The sewer lines are not far beyond your city limits. I think this is going to be a win win for the developer as well as the City. We had to go through the process with the County. We lost our development rights and in the interim they adopted zoning so we had to go through a conditional use permit process. Their zoning is one unit per acre. This subdivision is closer to 3.6 units per acre. To get the rights we had to go through conditional use and that is a very public process where we held a neighborhood meeting and we met many of the neighbors. It was a huge turnout because people living out here really care about what is going on in their neighborhood. They came away from that liking the fact that Mr. Phillips is going to build quality homes that we have incorporated a lot of green space. The design changed to incorporate more green space. One of the few worries they had was that centralized system. It wasn't under their control to change that but that was really the only thing we heard against this development. In the end the neighbors came to the conditional use permit meeting at the County and spoke in favor of this development. So you have a lot of people out there that are looking forward to Mr. Phil Phillips developing this because they trust him as the developer. I hope that we can make this all work for Mr. Phillips as well as the City.

City Attorney Kit Williams: At the Agenda Session you all talked about it and I had a rough draft of the agreement that I was going to propose that they sign for it. I heard some comments about making sure it was in deeds and make it stronger like that. I also said of course I have to talk with the developer. I have now gotten a signed copy of the proposed agreement with a couple of changes and I wanted to call that to your attention. The developer has a lot of green space within his development. You can see that on the plat there. There is a real big land area by the start of the creek but also behind between the houses there is a linear park that has a trail that is going to be built in there with trees planted and things like that. It was the developer's request that they be allowed to dedicate that area for their park land dedication. I told them that the code would allow that, at the developer's request, as long as the land is suitable for park purposes. I mentioned to Ms. Hesse that when I was on the Council once we rejected some park land because it was underneath a utility easement. We thought that isn't park land. If it was

marsh land or some other problems like that, that would not be suitable for park purposes. Even though this contract talks about park land dedication, that is all contingent upon our code which has some recommendations by the Parks Department and Parks and Recreation Advisory Board and even the Planning Commission. That is basically whether or not the land is suitable for park purposes. If it's suitable for park purposes our code says the dedication shall be accepted. That's the only provision I wanted to make sure you understood that you still need to show land to the Parks Department and the Parks and Recreation Advisory Board. It can't be marsh land. It has to be land that would be good for a linear trail. You will see in paragraph five not only are they going to dedicate the trail but they are going to have to build it and plant the trees that they have shown there. Now it's approximately because they have not surveyed out the trail yet. They will have to build it to our standards and they will have to maintain it unless and until their development is annexed into the City. Once it is annexed to the City, since this park land will be dedicated to the City, then we would then maintain it. I don't think it is proper for us to spend money outside the City limits, so until that time their property owner's association will have to have an irrevocable restrictive covenant saying they will maintain the premises. There is also a requirement in this agreement that they be annexed as soon as legally they can. This will also help inspire them to be annexed because they eventually would probably like the City to begin maintaining that trail. The only other part I wanted to call to your attention is that if in fact, that's a tributary to Clabber Creek; which of course we are going to have a trail along and eventually there will be an offshoot going north toward these subdivisions. If they do get near to this subdivision, part of this is that they must grant an easement from the end of where their proposed trail is to wherever we are going to be coming up from Clabber Creek and along their land only. That is all part of this and I just wanted to make sure because when I showed this to Jeremy he was concerned about the fact what if it's not suitable land. So you are going to need to go through the process and show the appropriate people that it is suitable park land.

Kim Hesse: Mr. Phillips is agreeable to that but all of this land is very suitable and on the tour we pointed out the area where the treatment system would be. Someone asked what happens if it's not a treatment system and we said we would leave it as park land. It is very level, very high property. The only thing Mr. Phillips was concerned about is he wants to dedicate the land rather than do the fees because he has already spoken with these neighbors about how much green space could be dedicated, the County has already looked at being able to keep the space green. One thing to be aware of, as this goes through the County, yes we have all your City requirements but the County will make us widen and improve Hughmount Road from the north boundary line all the way down to Mount Comfort Road and improve an intersection. So this development is going to be a costly development but it's going to be a nice development and the neighbors are for it and I think it can be a benefit to the City.

Don Marr: I would like the clerk to reflect in the minutes the dialogue that the City Attorney just said because we think it's important that development processes go through this process as consistently between developer to developer. Park land dedication is done through our Parks Advisory Board and if it is acceptable appropriate land, as Ms. Hesse describes, I don't think there will be an issue with that. What we want to avoid is having developers negotiating outside of the typical system to get items done that don't go through the normal advisory process. We just wanted to make that point as a result of this contract.

Alderman Boudreaux: How is this going to work then? How is this going to work as far as the owner's concern about giving park land fees? Have I missed something here? Do you go ahead and dedicate the park at this point rather than fees but it's just being held?

City Attorney Kit Williams: It will be dedicated once they have satisfied the ordinance requirements. The ordinance requirements say it must be suitable land in order for it to be dedicated.

Alderman Boudreaux: It still goes through the Park Board even though it's outside the City and all of that?

City Attorney Kit Williams: That is correct.

Alderman Ferrell: Kit and Don both referred to this that it's got to go through the Parks and Recreation Board. Since they are not a policy making but an advisory capacity, ultimately this Council will make the decision with a recommendation from them isn't that correct?

City Attorney Kit Williams: Well the final decision could be appealed to you from that but as long as the land is suitable for park purposes the proposed dedication shall be accepted. This is language, that I guaranteed to the drafters of the impact fees statute in Arkansas, would remain because that is how our park land dedication ordinance was grandfathered into that statute.

Alderman Ferrell: So the advisory committee is setting policy?

City Attorney Kit Williams: No, they do not set policy but they do recommend whether or not that's a good park and then they look at the land and if there is some concern it could go to the Planning Commission and they will also look at it, but the key test is that if it's suitable land, in other words if it's not waste land or some other big problem with it then it must be acceptable.

Alderman Boudreaux: I would like to address Bobby's concerns. I don't think the City Council wants to see every park land dedication that goes through the Parks Board. That is the way it was done when I was on the Parks Board and I certainly don't think this Council wants to start taking on every park land dedication if that is what you are going at because we don't review those unless there is a concern or an appeal or something. Otherwise it goes to the Parks Board and they are the ones that make those decisions and generally make good ones.

Alderman Ferrell: What I was talking about was when we get something that comes into us for approval, the dedication; in our packets it tells us whether its lieu money paid or whether it's property for park land dedication if we are asked to approve something. Am I wrong in understanding that we are ultimately approving what their recommendation was?

Alderman Boudreaux: It would be unless it reaches a certain level of density or so forth and then it's a requirement by the ordinance that it be park land right?

City Attorney Kit Williams: Sometimes you get development decision too like in a planned zoning district and we get not only the zoning decision but also the development decision which

often is only at the Planning Commission level. The preliminary plat rarely comes to you, it can appeal and usually the park land dedication is decided at the preliminary plat stage. Is that right?

Jeremy Pate: Correct, at the Planning Commission.

City Attorney Kit Williams: So you wouldn't see that unless somebody wants to appeal it to you.

Alderman Ferrell: I have no problem with this deal.

Phil Phillips, the developer: I appreciate you all listening to this. I just wanted to assure you and the Park Commission that we are going to do everything we can to make them happy. The better our place is, the better the lots will sell and houses will be built. We are not trying to low ball this in anyway or give them a bad name. I am here to make this happen and it's been a long, hard, expensive process up to this point and I am really going to work hard to make everybody that is a decision maker as happy as I can. I just wanted to say that. Thank you all and thank you Kim for doing a good job of presenting this to you.

Alderman Lewis: I have a question for Jeremy. In looking at the map, I am not seeing how the stormwater is being dealt with. Right now it looks like it goes into the creek.

Kim Hesse replied yes and pointed out the areas on the maps. She stated in meeting with your City Engineers they have brought up the fact that we need to reduce the impact of that water and the velocity of water hitting the creek. Those ordinances were probably not in place at the time that it was designed and it was constructed. So yes, there is a lot of water hitting that creek. So what we have discussed is utilizing ways to slow the water down, do some improvements to inside the creek bed itself to slow that water down. That is going to be a process through the redesign of the subdivision.

Alderman Lewis: We have spent $400,000 on Red Oak Park out west of town on a similar situation so you have the exact same type of design that all the water from all the roofs and driveways went to the same little creek.

City Attorney Kit Williams: Subsection 3 says "comply with all grading, stormwater, tree preservation and other development requirements as if this development was occurring within the City of Fayetteville" means you comply with our current requirements. We need probably some detention instead of dumping everything into the creek because that is what has caused us great problems in the past. So you are going to have to comply with the current grading and drainage and stormwater requirements that we have.

Kim Hesse: They mentioned the very same measures that were done at Red Oak, implementing some of those same measures with this development as far as the rock dams that were created to slow the water down and to get it to step down, creating pools so the water slows down, and then goes down another set of falls, pools again. That is what we are looking at.

Alderman Kinion: So Kim you guys talked with the City Engineers about this to meet the standards.

Kim Hesse: Yes, before we considered tying on the sewer we still had to get this back through your approval process and that was a part of it. We met with most of your Engineering staff and we were looking at options on how to work with this.

Alderman Kinion: Because it does seem like when we went on the tour out there that there would be the capacity to have dams in that very north part as you are going down.

Kim Hesse pointed out the area on the map.

Alderman Lewis: What's the County thing about stormwater at this point in the design?

Kim Hesse: Normally they refer anything within Fayetteville's growth boundary to Fayetteville. They say that but they still want to review what Fayetteville's solutions would be. So first we get Fayetteville's approval and can currently get the County's approval.

Alderman Lewis: So if this were being laid out today would this be the outcome? Right now there are subterranean pipes that end up in that ditch. So I am asking if it were a blank slate would those pipes be routed in the same place based on County regulations.

Kim Hesse: Possibly in the County but not on City. City does override County when it's in the growth boundary; however they still have that option to review it and final approval.

Alderman Lewis: My question stems from precedence setting. That is what I am wondering about. One thing that has concerned me about this is what stops other folks from developing right outside the City limits and then saying we already have it in so why can't we just connect now. My question is if it's past your land being sold for development now and it's platted, what would happen? Water and Sewer would be something like what is being designed now but would stormwater be similar, would they require any sort of detention in that area?

Kim Hesse: They probably wouldn't require detention at this point because there is no single discharge to the creek anymore allowed, which this was designed as a signal point discharge and two points. It's still the same design where you let it shoot out.

Alderman Lewis: So the County no longer allows for single point discharge to a stream?

Kim Hesse: They have implanted more detention than they have in the past.

Alderman Kinion: It is this southern part that is most concerning because we have quite a bit of the development down there.

Kim Hesse: I would say it is one third to two thirds. She showed the area on the map.

Alderman Kinion: It's the southern part where we have. There's an outlet coming from the west that is collecting all the streets from the west over to the southern part of that.

Kim Hesse and Phil Phillips continued to point out the area on the map.

Alderman Kinion: What is the velocity that we are looking at at the discharge point?

Kim Hesse: I don't know. It was hard to even get drainage calculations. This was done in 2005 and there is not a drainage report. So what we are doing as Mr. Phillips engineer, we have to get an as built survey of what's out there; all the curb inlets, size of the pipe and recalculate that velocity. Based on that velocity, that will help determine the engineers viewpoint, the City Engineer and what they will require.

Alderman Kinion: I do believe that in this amendment that they have got to comply so that is what we are going to be counting.

City Attorney Kit Williams: That's correct.

Kim Hesse: That encompasses the streamside ordinance which wouldn't have been encompassed if we didn't have this agreement.

City Attorney Kit Williams: Yes, they have to comply with all current development regulations including stormwater and streamside protection and everything else. It sounds to me like they are going to maybe have to pull up some of that pipe and put detention in, because it's not only the velocity but the amount of flow at a certain level, and that flow is not allowed to increase pre and post development. Of course the engineers know a lot better than that.

Alderman Lewis: I just want to celebrate the progress that has been made and the knowledge and the learning that has happened since this type of design has been put in. It's a major thing and it's an expensive learning curve.

Terry Coberly, a citizen asked if the sewer rates for outside the City will be higher than those that is in the City and is it City water?

David Jurgens, Utilities Director: The rates for a City sewer service outside the City are in fact higher than inside the City. It's not exactly an apples and apples comparison but for everything after the first 2,000 gallons used, the outside City rate is currently $6.10 per thousand and the inside City rate is approximately $4.30 per thousand. Also it is on City water already so as far as the impact on billing or water consumption or any of that has no impact whatsoever.

Connie Edmonston, Parks and Recreation Director: Our normal process is to actually go out and view the property. I think it is very important for us to look at it and analyze it and make certain that we are getting a park that we will be proud of and not have problems caused by drainage. So if there is any way that we can write in here to satisfy the park land dedication requirements, the park land will be viewed by Parks staff and Parks Board prior to taking the 3.86 acres that is on this.

City Attorney Kit Williams: The ordinance certainly controls everything and even the City Council has to obey their own ordinances so that doesn't have to actually be a part of this agreement. They still have to comply with the ordinance because if it's not land suitable for park purposes then the dedication can be denied. If the land is suitable for park purposes, according to our ordinance, it says the dedication shall be accepted. Certainly you have a right to go out there and take a look at that and if they are in violation of the ordinance then that would take precedence and they would have to understand that at that point we could not accept the proposed dedication.

Connie Edmonston: Land suitable for park purposes, not only you look at the land, you also look at where it lies in conjunction with other parks within the area, where it lies, where the trial corridor is planned, where our master plan is, where we are planning for parks. We look at if it's in the flood plain, floodway, the roads and how they go through it. Is that park land serving the residents in that development the best that we can? We try to make the best development possible for the parks system because we are going to have that park forever. We want to make certain that up front we review, walk the land, analyze it and give the recommendation for it.

Alderman Kinion: On our tour we went in the south entrance and if you have a map its 4, 5, 6, 7, and 8. I am not a park person, I mean I am not a professional, but it's going to make a lovely entry way that would be very attractive for recreation as well as offering property. I would encourage you to go out and look at it. It is the property immediately north of the southern entrance. Am I correct Kim? It's above the creek so it's not in the lower level where there is a lot of run off or flooding. They do have to comply with number 5 on this contract that would put it in compliance with our procedure is that right?

City Attorney Kit Williams: They have to build a trail to our standards and also plant trees that they have shown within their plat which is on page 16 of 24. You can still see it there but even that is kind of hard to see. They have shown us various trees and they have also shown the trail through that. We have other lateral parks I think and linear parks for trails. It certainly seems to be serving the residents there which is the whole reason that we can charge impact fees for the people that are actually paying them, who are the property owners that are going to be buying that property.

Alderman Boudreaux: I do kind of appreciate her concern because this has actually specified particular lots and that is not the normal procedure to go out and survey a development. I'm sure they probably will think that this is the perfect place but can we not change this? Of course this has all been agreed to by the owner of the property, the developer, but I do kind of regret that it wasn't put a little bit more openly that the Parks Department and staff would have some ability to actually choose the property. This does read and it would be lots 4,5,6,7, and 8; 3.86 acres and that is what the owner has agreed to in this.

City Attorney Kit Williams: Right and I still have to point out that in the Unified Development Code that has been adopted by the city and that we were able to use in order to keep that from being invalidated by the State impact fee statute. The word says that if the land that is being

offered to be dedicated by the developer is suitable for park purposes then the proposed dedication shall be accepted.

Alderman Boudreaux: Where does it say that now?

City Attorney Kit Williams: If you look on my memo I am reading it right out of there.

Alderman Boudreaux: I am reading the actual contract instead. The developer has signed Exhibit "A".

City Attorney Kit Williams: Right, that is correct.

Alderman Boudreaux: That Exhibit "A" does not say that.

City Attorney Kit Williams: It doesn't have to because we cannot agree to anything that would be contrary to code. So they have heard that tonight and they have agreed to that. They realize it must be suitable for park purposes or the dedication will not be allowed.

Don Marr: I think obviously our key thing is we got this literally at this meeting and the Parks Department hasn't had a chance to see lots 4,5,6,7 and 8 but with what is in the record tonight it is clear that it has to go through our process so we will do so and hopefully that will give us protection. If it doesn't meet that requirement then we will be back here by probably them appealing that request to you.

Alderman Boudreaux: Sounds good. I do want to say that I have a lot of reservations about this whole project and accepting something into our sewer system that is not part of the City. I still don't like it. It bothers me that developers go out and buy cheap land right outside the City limits and develop with this idea that they can use these centralized sewer systems. I do feel like this developer is trying to do the right thing with this and it is very close to the city limits. We do have a contract which requires the developer to do everything required as if it were in the city limits. It does certainly generate revenue and I wanted to point that out. It does not cost us to add this sewer and it actually generates revenue to the City. So bearing all that in mind and of course the obvious that we don't want sewer systems of any kind close to our water sources and our waterways I will support this based on this. It really does bother me to accept anything outside the city as far as running our sewer outside the city limits. It does concern me but everything has been done to make this acceptable.

Aubrey Shepherd, a citizen expressed his concerns with the existing dedication ordinance and he listed ways it affects this development.

Connie Edmonston: The Parks and Recreation Advisory Board has adopted criteria for accepting park land. It's land that we believe is suitable and that is how we work with each one of our developers and it seems to work out well.

Alderman Petty: I can certainly appreciate the good faith that the applicants have proposed this to us with. I feel like I have become a pretty good judge of character and I think you guys have

acted in good faith and I appreciate that. I am not going to be able to support it for a couple of reasons. I feel like we aren't calling this what it actually is. Even in the contract this says "in full compliance with all requirements of the UDC as if the development was inside the city limits and zoned RSF-4." For all practical purposes there are a few semantic differences but for all practical purposes this is a back way to do a rezoning and annexation in one. We are not calling it that. I like the contract, like Alderwoman Boudreaux said; the developer has done everything to make this acceptable except for the most important thing which is to be annexed. I am against a development in this location for some other reasons. I think it's a bad idea to convert agriculturally productive land that makes this area more resilient and notable for something like this but that's not the argument I am going to make. This isn't a good idea because of the precedent it sets. If this developer is willing to make these promises and we sign this contract, what happens when the property to the west, a same proposal comes forward? The property to the north and west of that one, what grounds do we have to deny that. We set the precedent. Is it just going to be emotional grounds, are we just going to say I feel like we have reached the point where these commitments aren't enough to justify the extension of City services. I don't think that is proper. I think there is a line that is drawn. We are responsible for drawing that line and we drew it in concert with the citizens who requested annexation in the past. We drew that line where the city limits are now. We have drawn a growth boundary that is about two miles out from the city limits that says we are going to plan for growth there and in that regard I can appreciate knowing of these plans. If nothing else the timing is simply wrong because the citizens of Fayetteville don't want that piece to be annexed or that would be the proposal. We even heard on the tour that this property was not capable of being annexed because of the political and cultural will of the surrounding properties. For me that is the test. What happens with the next proposal to the adjacent property?

Alderman Kinion: When I look at this I don't think it is setting a precedent to people going north and going west and east of the city. What is happening here is we have a development that is going to occur regardless of what we do this evening. The infrastructure is in place and the momentum is moving forward and so against my wishes also I had to think about this as what is realistically going to happen. I feel like it is the best thing that we can do in the long run to protect the integrity of the affluent coming from the development that is going into a stream that is directly going into Clabber Creek that will then impact the quality of the water downstream as we have our affluent from our sewer plant. I would also have to look at the potential growth. It will be annexed one of these days. So you can say that this is viable agricultural land but it is not being used as an agricultural property at this moment in time. What we have is in place infrastructure for development. So I think the responsible thing when I looked at us to do since we are only 500 feet away from our main sewer line here is to go ahead and connect it against our principles in a certain way but realistically looking at a responsible way to manage a development that is going to impact our city regardless in the long run. So for us to have the capacity to responsibly manage the activity of the stream, the sewer, and the impact of the development as a whole to get dedication of park land, even though it is not delightful to do this, it seems to me the right thing to do in this case. By saying no I am not setting a precedent, I am being responsible for what is inevitable. I think in the long run it is the responsible thing to do in managing this development that is going to occur regardless. I will support this.

Alderman Gray: I will support it also. I think a lot of good things have already been said and I am not going to resay them. I just appreciate that Mr. Phillips and Ms. Hesse have brought this forward and I personally am happy to see that one of the developments that didn't make it, that something is going to be happening there. I think it is going to be a lot more expensive and they have spent a lot of time and money on making it happen and making it happen right and I agree with Alderman Kinion. It's not a matter of if it's going to happen. It's going to happen and so what we need to do the responsible thing for the City of Fayetteville. I will be supporting it. Thank you all.

Alderman Ferrell: I am going to support it also; I think something is going to happen there. Cant you imagine what it was like when people were thinking about annexing Mt. Sequoyah and having to run pipes up hill; saying we can't run those pipes up that hill. I totally understand the notion that if you take the utilities out that it should go to the inner city but my God if we adopted that mentality years ago and if the other idea was you can't take agricultural land, then we would all be humped up on this square. With that I would move that we pass the resolution.

Alderman Ferrell moved to approve the resolution. Alderman Gray seconded the motion.

Alderman Lewis: I appreciate you originally coming to the Water and Sewer Committee and being a part of the tour for the committee and that was very helpful. As you know I have been very hesitant. I think Matthew made some very good points and they really are the reason I have been so hesitant on this. It makes me very nervous about precedent here. I don't like the idea that this would become a trend. The thing that has helped me come around is the contract that you drafted. The reason that it helps me support this is because water flows down hill and it happens to be flowing into the city. I visit so many houses on the west part of town in Ward 4 where there right by their house or down stream from them it's blown out so wide that it's going up into their porch. It's because upstream we have allowed pipes to be drained directly into the little stream that just can't handle it so they adjust. It costs a lot of money to Fayetteville tax payers to fix that and so I really appreciate and I agree that this can't be the trend or general approach. I don't know if we can work with the County or what but where water is flowing into our community we need to pay attention to that because it ends up costing us money as a community. It costs everyone. I really appreciate the open mindedness of the developer and the team in looking at ways to address the water issue on this property because it does affect everyone. I just really hope for the record if the County is watching, please make sure that you amend your water codes to let it soak in and not flow down stream.

Alderman Petty: Sometimes I like being the only one to vote a certain way because it gives me some lee way to really speak my mind. I think there is an assumption that the development is going to happen and I am going to challenge that. I hadn't planned on challenging it tonight but I want to now. I attended the quarterly business luncheon run by the Center for Business and Economic Research two quarters ago with a presentation by Kathy Deck on Northwest Arkansas Growth, from the City it was just me and Paul Becker there. What we saw was even though sales tax had recovered and jobs numbers had recovered in Northwest Arkansas which is unique among the nation, single family house starts had not, single family sales had not. Now single family homes within town with close proximity to amenities never dipped and they still maintained their sales. Anything on the edge of town has not recovered. Multi-family has

recovered; it's even increased and is doing more than what it did before the recession. Being the youngest person on the Council sometimes I think I have a little bit of a unique perspective from a generational standpoint. When you look at any recession historically there are two kinds of fixes that happen. There is an economic fix where people in a certain job sector start earning more money or they switch jobs or that sort of thing like manufacturing around World War II after the great depression. We just went through something similar and we are going to have an economic fix. The other kind of fix is a spacious fix where you see new cities grow in a new way that they didn't before. After the great depression it was the suburbs. All the evidence now points to a retraction of the suburbs, even the evidence that we can see today that is coming out of our own University. People want to live downtown, especially when you start looking at younger and younger people. The cities future customers aren't going to want a house out where this development is for a couple of reasons. A $200,000 home or a $150,000 home or even a $120,000 home in this kind of location isn't affordable. There are four factors of affordability, the housing cost is the biggest one and then there is transportation, food and energy. A study commissioned by the Northwest Arkansas Council, which was released last year, showed that the average Northwest Arkansas home household paid as much in transportation as they did in housing. That is how it's going to be if you choose to live at this development. People are choosing to live in locations like this less and less. I wish Mr. Phillips the best if this gets approved. I don't want to see a proposal fail with so much invested in it. But like so many other phased developments we have seen, I predict that this isn't going to get built out. We are going to see a strong start and then we are going to see it falter. That is a hard prediction to make in the Council seat. That is why I am not supporting it because I don't think it's inevitable. Otherwise this would be worth it to me. All the evidence points to a change in the way people want to live and the way the cities grow and this is very conventional.

Alderman Kinion: I would like to point out that Kathy Deck also in the skyline report said that we would have more residential growth in Northwest Arkansas. If you look in the Northwest Arkansas Business Journal it says this means three things. More people are actively looking for work again, more people are finding work and population growth and people are starting to move back into the region. She goes on to say that regarding the housing market that the average sale prices are up and the population growth means that there is a demand for single family homes. So you can look at statistics either way. I just want to offer that because that is the most recent statistics that I saw when I looked at the development of affordable housing in Northwest Arkansas.

Alderman Adams: I had a personally difficult vote for me right after I got on the Council when a neighborhood outside our city limits didn't like our plans for streets. We have a plan for streets and our streets are going to do things that impact neighborhoods. I feel like on the same thing what we can do to benefit our city for something outside the city limits is also important. I think we have to think about things going both ways. I appreciate the expertise on our Council teaching us how this is good for our city. I appreciate Dr. Lewis's comments on how we do have to protect our city in ways that impact us when we know that otherwise it may be bad for us. We do good things and bad things that impact people outside of our city all the time or often. Thank you for your help in teaching us a little bit about this issue.

Upon roll call the resolution passed 7-1. Alderman Boudreaux, Kinion, Tennant, Ferrell, Adams, Lewis and Gray voting yes. Alderman Petty voting no.

Resolution 183-12 as recorded in the office of the City Clerk.

Announcements:

Adjournment: 8:25 p.m.

Lioneld Jordan, Mayor | **Sondra E. Smith, City Clerk/Treasurer**