

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



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
September 15, 2009**

A meeting of the Fayetteville City Council will be held on September 15, 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: None

Presentations, Reports and Discussion Items: None

Nominating Committee Report

Alderman Cook presented the Nominating Committee report.

Alderman Adella Gray moved to approve the Nominating Committee report. Alderman Lewis seconded the motion. Upon roll call the motion passed unanimously.

Approved

Consent:

Arts Live Theatre: A resolution approving the lease agreement with Arts Live Theatre d/b/a/ Arts Live for use of the property at 818 north Sang Avenue.

Resolution 194-09 as Recorded in the office of the City Clerk.

2009 Edward Byrne Memorial Local Solicitation Grant: A resolution authorizing the Fayetteville Police Department to accept a 2009 Edward Byrne Memorial Local Solicitation Grant in the amount of \$111,387.00, \$50,506.00 of which will be used by the Fayetteville Police Department with \$39,201.00 to be disbursed to the City of Springdale and \$21,680.00 to Washington County; and approving a budget adjustment.

Resolution 195-09 as Recorded in the office of the City Clerk.

2009-2010 Justice Assistance Grant: A resolution accepting the 2009-2010 Justice Assistance Grant for federal and state funding in the amounts of \$164,306.00 and \$32,861.00 respectively as the primary funding for the 4th Judicial District Drug Task Force; and approving a budget adjustment to recognize the grant revenue.

Resolution 196-09 as Recorded in the office of the City Clerk.

TranSystems Corporation: A resolution approving an agreement with TranSystems Corporation in an amount not to exceed \$58,598 for the inspection, analysis, and a feasibility report providing technical guidance for the rehabilitation of the two historic overpass bridges on Lafayette and Maple Streets.

Resolution 197-09 as Recorded in the office of the City Clerk.

Bid # 09-52 United Engines, LLC: A resolution awarding Bid # 09-52 and approving the purchase of seven (7) emergency standby generators from United Engines, LLC in the total amount of \$104,562.00 plus applicable taxes for use at wastewater lift stations; and approving a budget adjustment in the amount of \$5,000.00.

Resolution 198-09 as Recorded in the office of the City Clerk.

Garver, LLC: A resolution approving a contract with Garver, LLC in an amount not to exceed \$88,340.00 for engineering services associated with the rehabilitation of the Lake Wilson Spillway; and approving a budget adjustment.

Resolution 199-09 as Recorded in the office of the City Clerk.

Economic Development Services: A resolution to approve a two year contract for Economic Development with the Fayetteville Chamber of Commerce in the amount of \$250,000.00 and to approve the attached budget adjustment.

Resolution 200-09 as Recorded in the office of the City Clerk.

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

The following item was added to the agenda at the City Council meeting:

Alderman Thiel moved to add the Energy, Efficiency and Conservation Block Grant to the agenda. Alderman Lewis seconded the motion. Upon roll call the motion passed unanimously.

Energy, Efficiency and Conservation Block Grant: A resolution to accept a \$724,900.00 Energy, Efficiency and Conservation Block Grant and to approve a budget adjustment recognizing the revenue.

John Coleman, Sustainability Coordinator gave a brief description of the item.

Mayor Jordan stated this is a good thing. This is some of the first stimulus money we've had to come in.

John Coleman stated we do have several other grant applications out there for stimulus dollars through the Department of Labor through the State Energy Office. A lot of those decisions have not been made yet so we are still waiting to hear on some of these other grants.

Mayor Jordan commended John for his hard work.

Alderman Ferrell congratulated John and asked if some of the other grants that may be coming were also no match grants?

John Coleman stated there are a lot of opportunities for no match grants and those are the ones that we are pursuing. If there's anything that requires a match certainly we would come to Council first before we apply.

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

Resolution 201-09 as recorded in the office of the City Clerk.

Unfinished Business:

RZN 09-3271 (Sale Barn/Campus Crest LLC): 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. *This ordinance was left on the First Reading at the June 16, 2009 City Council meeting. This ordinance was left on the Second Reading at the July 7, 2009 City Council meeting. This ordinance was left on the Third Reading at the July 21, 2009 City Council meeting and tabled to the August 18, 2009 City Council*

meeting. This ordinance was left on the Third Reading at the August 18, 2009 City Council meeting and tabled to the September 15, 2009 City Council Meeting.

Jeremy Pate, Development Services Director gave a brief description of the item. He stated the applicant submitted a signed Bill of Assurance to the City Clerk's office today. I will let the applicant present that simply because it is their proposal to you. It is not something that the Council or staff has requested or required. It is something to encourage you to support the zoning from the applicant. Staff and Planning Commission supported this application.

Alex Elyssen, Regional Development Partner for Campus Crest Communities gave a brief presentation about the project. He stated we are proposing a luxury student housing community. This is a down zoning to Downtown General. Downtown General is a less intense property use. It includes single family and multi family dwellings. Currently the property is zoned I-1 which is classified as heavy commercial. This zoning is a very intense land use. There are several considerations that are to be relied upon in a rezoning request. The most significant is compatibility with surrounding zoning. An analysis of the zoning and permitted uses of the adjacent area is also appropriate and legal however a subjective or idealistic analysis is not appropriate or legal. There are four major principals that can guide this Council in making a decision tonight. Those four principals are the City's own 2025 Plan, the Planning department's recommendation, the Planning Commissions decision, and the existing zoning in the area. If the Council looks at those four issues a clear determination will reveal that this is an appropriate request before the City Council.

In reviewing the City Plan 2025 goal one is to make appropriate infill and revitalization our highest priority. This is without a doubt infill and revitalization. We will discourage suburban sprawl. We will make traditional town form the standard. Goal four we will grow a livable transportation network, through our project we hope to connect with the University of Arkansas's transportation system. We will assemble an enduring green network. Our last goal is to create attainable housing. Student housing is attainable housing. The Planning staff found that the adopted policies and objectives of the City Plan 2025 support a Downtown General zoning. The Planning Commission approved this recommendation 6-1. The land that surrounds the applicants land is RMF-24 or Downtown General with the exception of one small area to the north.

A copy of the zoning map was presented to the Council.

The factors that are not permissible in any rezoning are the opinions of local residents unless it reflects logical and reasonable concerns. Spot zoning is also something that can not be considered. Rezoning this property anything but Downtown General or RMR-24 would result in spot zoning. We feel that the request before you tonight satisfies all the goals in the 2025 Plan, the Planning department's recommendations, Planning Commissions decision and the existing surrounding area.

We have presented a Bill of Assurance. In the Bill of Assurance is a three story height restriction of the property closest to the cemetery. There also shall be a density limit. The Bill of Assurance would involve a pedestrian trail and a connection to the trail to Government Avenue for pedestrian traffic. We want to incorporate native vegetation and two full access

points both in and out on various ends of the property. We hope to incorporate a rain garden, detention facility, and a storm water quality basin in two areas of the property. We are proposing on street parking consistent with the urban landscape designs. We will dedicate park land to the City of Fayetteville.

I am here on behalf of Campus Crest, Dave Jorgenson and Jorgenson Associates, and Mr. Bartholomew to request that this Council approve this rezoning because we feel like we have satisfied all the elements that a City Council should look at, wants to look at, and needs to consider.

Alderman Ferrell: How much of a capital investment would you guys be making in Fayetteville?

Alex Elyssen: The studies we have done here and in other markets typically the first year impact, that stays locally to a City and County, is about \$8.6 million to a City. Overall it's a very significant economic impact to a City and the County.

Jim Buckner, a citizen stated that his plea is to resist the rezoning of the sale barn property from industrial to business general. This will give our community, Mayor, and City Council sufficient time to address the more favorable zoning to Community Conservation which is a designation that is appropriate and consistent with this current usage.

Mayor Jordan asked Mr. Buckner where he resides.

Jim Buckner: I live at 5413 West Wheeler Road, Fayetteville, AR.

Mayor Jordan: When you introduce yourself it has been requested by an Alderman that you would also give your address.

Pamela B. Hughes stated that more acreage is desperately needed for the veterans.

Leonard McCandless a lifelong native of Fayetteville: I am speaking on my behalf and as President of the Ozark Military Museum. We believe that rezoning of the sale barn property to Downtown General is not a proper neighbor for a national cemetery. The Fayetteville National Cemetery is a place of honor and should be treated as such.

Cynthia Christie Peven, a resident of Ward 1 spoke on behalf of her parents Arnold and Margaret Christie who live at 920 South Hill Avenue. I am against the rezoning of this property at this time. RMF-24 zoning is not appropriate for this area. The zoning should be Neighborhood Conservation. This location does not support this kind of density and the surrounding infrastructure of streets does not support the level of traffic that the density will generate.

This property backs up against the cemetery. My plea is the City needs to help us preserve the value of those properties, preserve them as residences, and preserve the integrity of the neighborhood with better zoning. Please do not change this zoning.

Robert Williams, 957 South Hill, stated he hopes you will keep the neighborhood zoning.

Bob Daugherty, 2745 Hidden Springs Drive spoke in favor of the rezoning.

Mark Silva, a resident of Fayetteville spoke in favor of the development and rezoning.

James Laubler, retired Special Forces and resident of Ward 4 spoke in opposition of the rezoning.

Leonard Shultee, 1235 Southwest Avenue spoke in opposition of the rezoning. He stated he is concerned with the density and the traffic problems if rezoned.

Dave Jorgenson, Engineer for Campus Crest spoke in favor of the rezoning. He stated there are other properties in the area that the cemetery can purchase.

Rita Miller, representing the Northwest Women's Military Veterans spoke in opposition of the rezoning.

Kathy Kisida 1227 Southwest Avenue asked the Council to please not make a decision that will affect us so drastically without a charrette.

Aubrey Shepherd, a citizen stated please don't allow this rezoning.

Alderman Ferrell: You said you are a member of the Regional National Cemetery Improvement Corporation?

Aubrey Shepherd: Yes sir.

Alderman Ferrell: In visiting with a couple other members it's my understanding that part of their objective is to pursue parcels of land around the cemetery not the sale barn. Would you say that is accurate?

Aubrey Shepherd: They have been doing that, they have one parcel already bought next to Hill Avenue. Some of the land west of the National Cemetery is in the critical recharge area.

Alderman Ferrell: How much of the City of Fayetteville is not over or close to karst topography?

Aubrey Shepherd: I cannot guess that because looking at the map you can just pin point the critical spots. You can see that most of the old pastures and fields that were formally prairie area are part of the recharge area.

Alderman Ferrell: I remember when we were working on the hillside ordinance we had maps and they were saying that we had karst topography everywhere around this part of the country.

Aubrey Shepherd: Yes, and it indicates we need special care and special planning on the hillsides as well as in the wetland areas.

Wanda Peterson, 1325 South Ellis stated we feel like we are being pushed into a situation and you are the only ones that can help the situation. I would like to see this zoned Neighborhood Conservation.

Michele Raine, resident on South Dunn stated I believe that Downtown General is not appropriate for our neighborhood. She also voiced her concerns about the traffic this development would cause. She stated we are asking the City Council to deny this zoning request so we can help maintain the quality of our environment so we can all work together to develop an appropriate zoning plan for our neighborhood.

Dustin Bartholomew, Ward 4 resident stated he thinks Downtown General works well as a buffer between a heavy commercial area and the neighborhood. Density is needed in the downtown area to support light rail and regional transit. This property is one mile from the downtown square. It is the definition of our downtown area. These are the areas in Fayetteville that we have to look at infill. This is consistent with the 2025 plan that is helping to guide our City.

Alderman Petty: The neighbors here are fearful and I can't really blame them. We can help them by rezoning the core of the neighborhood to Neighborhood Conservation but we do not have to take an all or nothing approach. This property is not the core of the neighborhood, it is not in the middle of the neighborhood, it is on the edge. There are only one or two single family residences that actually border this property. Except for the cemetery every side is bordered by commercial. To me that means that this property fits the very definition of what Downtown General is suppose to be. We do not have too many apartments in Fayetteville we have too many apartments in wrong places. Everyone knows that light rail needs higher density to be supported. Rezoning this property to Downtown General is probably what we need to do to support that vision. It is not easy for me to vote yes but almost nothing in life that is worth it is easy.

Alderman Cook: I support density but there are a lot of different faces of density, some good, and some bad. In my opinion this is not just about density. With all due respect it is not about the veterans or the Bartholomew's. It is about whether we see this zoning as appropriate for this piece of land. I do not think Downtown General is the right zoning for this piece of land.

Alderman Lewis: In Downtown General there are opportunities for mixed use but you don't have to use mixed use. Is that right?

Jeremy Pate: That's right.

Alderman Lewis: Where is the highest point? Is it sloping towards the stream?

Jeremy Pate: Most of the property slopes to the north northeast generally.

Alderman Lewis: The traffic is a major issue with this zoning. The Police Department stated this zoning could lead to significant impacts on traffic and does not recommend this project. How is the traffic being addressed?

Jeremy Pate: One of our considerations in a zoning application is whether an application will considerably and undesirably create a traffic congestion situation. The Police Department reviews these applications without any improvements in them. Those are issues that we typically would address at the development level. The applicants have already prepared a preliminary traffic study and have made a report. Their report showed no traffic signals are warranted in this area. The Planning Commission would make a recommendation if they felt a traffic study was crucial for this neighborhood. What we look at is would this piece of property, at its full impact, overwhelm the neighborhood and the information that we are receiving right now is that it would not with the improvements that would occur.

Alderman Lewis: There is another type of development in Hill Place that has opened up. Is there any information about the traffic related to that?

Jeremy Pate: I don't believe we have conducted any studies. There were improvements required of that development as well for the impact of that project. I don't know what the traffic numbers are looking like. I don't believe they are fully occupied so it would probably be best to wait until that project is fully occupied.

Alderman Thiel: I think we support more density in the south part of town. I continue to think there needs to be a zoning buffer such as a Neighborhood Conservation between the Downtown General zoning which is directly on South School and the National Cemetery property and the other cemetery that is located there. I am very sympathetic to the Bartholomew family however I believe the City has been very generous with variances for the sale barn over the years. This Council would not be denying them the right to sell their property by not supporting this rezoning. I think having a piece property rezoned to achieve the highest value is not a right. I do not think this project does well in this location.

Alderman Ferrell: The subject at hand is rezoning despite all the arguments that we have heard. The subject at hand is a down sizing zoning request. I can't recall the last time this Council turned down a down sizing in zoning for an I-1 to a Downtown General. I understand that the Regional National Cemetery Improvement Corporation has been and will continue to be in the process of buying lots that surround the National Cemetery and their real issue was not this sale barn issue.

Alderman Lucas: I don't think voting for this or voting against it is politically easy either way. I feel this is not compatible with the adjacent neighborhood. I think Downtown General would not be compatible, if we had a buffer it might be better. The reason I will not support this is it is not compatible. There has been public opposition, safety issues, and noise issues. The 2025 Plan did not mean destroying established neighborhoods in order to increase density. It is not meant to increase traffic safety and issues when we have inadequate safety issues and this clearly does.

Alderman Lewis: Although the Downtown General allows for mixed use I have a problem with the fact that it does not require mixed use. This is a large piece of property that would have a heavy impact on the surrounding land uses. I do not feel this is the right thing for that space at this time because of the traffic and surrounding neighborhood parcels. I think we can do better.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance failed 3-4. Alderman Gray, Petty, and Ferrell voting yes. Alderman Thiel, Cook, Lucas, and Lewis voting no. Alderman Rhoads was absent during the vote.

This ordinance Failed.

Rock Quarries Facilities: An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating rock quarrying facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting.*

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: I gave the City Council a memo with a copy of amendments to the ordinance that was read at the last meeting. These amendments were basically cleanup measures to some extent.

Alderman Ferrell: I visited with some of the parties involved. There's a reasonable chance that we can come to some common ground on the basic components of the ordinances. I hope we can wait to vote on this until the next council meeting to give both parties time to digest.

Mayor Jordan: You want it to go the full three readings?

Alderman Ferrell: Yes.

Alderman Lucas moved to amend the ordinance as recommend by the City Attorney. Alderman Petty seconded the motion. Upon roll call the motion passed unanimously.

Alderman Petty: I was under the impression that the owners of the Red Dirt Farm and Rock Quarry were going to meet with the City Attorney to try and work out some solutions. Did that happen?

City Attorney Kit Williams: I had a meeting with the owner operators of the Stephens Red Dirt Farm and the Rogers Group which has the rock quarry. We discussed many items which I entailed in my memo to you.

Alderman Ferrell: When the public comment starts you might hear some language that might reinforce that idea.

Alderman Lewis: This has been an intense process for me. I researched the things the neighbors were saying. I definitely want to have every point of view from this. It is my intent to

find common ground and find a solution where the residents are finding some kind of peace of mind in their quality of life and their property value while also maintaining the integrity of the businesses that are surrounding our city.

Alderman Lucas: I agree with Sarah. She has done a lot of work on this. I thought it was important that our constituents contacted us. They felt like this was the only avenue they had.

Stephens Gills, Attorney representing Rogers Group: Some of you have spent a lot of time looking at this and hearing the concerns of the neighbors. We have reviewed the ordinance and have determined that several of the provisions there are unworkable in their current form. Rogers Group has several operating quarries in several states and has been in the quarry business for over 100 years. They are still in business because they comply with Federal, State, and local permits. They do everything they can to get along with their neighbors and operate in a reasonable manner so that it does not offend their neighbors. We respectfully disagreed with the City's position that it has jurisdiction to pass this regulation. Rogers Group would appreciate an opportunity to sit down with the staff and committee to explain what things do not work and see if we can come to some areas of compromise. There are some things we can agree to but other things that we can not agree to because it would force the closing of the quarry. That is not a reasonable outcome of this. We have permits that are all subject to inspection and have been inspected on a regular basis. We require the trucks to be covered.

Harry Phillips, 1683 Little Road, I am a neighbor to the quarry and have not been contacted about this. I make my living with a dump truck and if this passes it will destroy jobs. There is a way to control part of the noise. Why was I not contacted if all the other neighbors were contacted?

Alderman Lucas: The neighbors contacted us. We did not contact the neighbors.

Harry Phillips: I apologize. I understood that you had visited with all the neighbors.

Alderman Lucas: We went to their neighborhood meeting because they asked us to.

Harry Phillips: I was not invited to a neighborhood meeting. I was there before they were. I give them more respect than any car that goes down that road.

Alderman Lewis: This ordinance addresses rock quarry operations and the next ordinance addresses red dirt mining operations and that is it. Any other businesses this ordinance does not address.

Harry Phillips: So the noise that the trucks make when leaving the quarry is not the issue?

Alderman Lewis: If you are a contracted truck with that quarry and that quarry is within one mile of the city limits or in the city limits then that quarry will have certain hours or numbers on your truck that you will need to have.

Harry Phillips: By me using the quarry and buying material from the quarry then I am part of that noise is that right?

City Attorney Kit Williams: The rock quarry operator is being regulated. We will require in this ordinance, if it is passed as currently written, that the rock quarry operator will require that your truck be covered if you have more than half a load of rock. It also requires that they not load a truck unless there is an identifying number on the truck. Right now that is the only thing that could affect you as a driver as well as hours and days of operation.

Harry Phillips: My name is on the truck and it is under all DOT regulations.

City Attorney Kit Williams gave an example of why they are requiring a number on the trucks.

Harry Phillips: I work for myself and sometimes for the Rogers Group. I do not interfere with how you or the Mayor or anyone else feeds their family. It will create more trucks and more traffic if you reduce the hours.

Mayor Jordan: This will not pass tonight. There will be other opportunities for you to weigh in.

Chuck Nestrud, Attorney for Big Red Dirt Farm: We have some consultants that we would like you to listen to. I would like to emphasize that red dirt mining operations and quarries are not nuisances. The Arkansas Supreme Court has declared that quarries and blasting operations are not nuisances. The fact that this ordinance declares that there is a nuisance from these operations, if they are not conducted in a certain manner, is inconsistent with the case law in Arkansas. I think there are some severe jurisdictional problems with this. Your authority to regulate outside the city limits is limited to abatement of a nuisance. If you chose to regulate a nuisance there are diversions of authority between what you can do inside your City and what you can do outside your City. This ordinance makes a lot of assumptions that they are the same and your authority is the same and you regulate them both the same. I think there are some problems with that. Your authority within the city limits to deal with an annoyance is very broad and your authority outside the city limits to deal with a nuisance is very narrow.

We welcome the opportunity to meet and try to work through the issues, to try to come up with an ordinance that makes sense and regulates these entities properly. I appreciate your comments and that you are trying to create that balance. The Bid Red Dirt Farm has gone through the process with the County to establish a conditional use permit. These were established not with a nuisance in mind but with compatibility in mind. You are going into the County and regulating activities that the County has already decided what it thinks are appropriate to protect its area.

He explained some of the state regulations they deal with.

City Attorney Kit Williams: We established a City Board of Health in 2002.

William Sweetser, Big Red Dirt Farm, LLC: We are a very regulated industry by Federal, State, and County. We are in the County not the City. We were well outside the city limits and the City annexed out to us. We did not move our quarry to the City. We were not included in the writing of this ordinance. At no time have we been called by Ms. Lucas or Ms. Lewis nor have they visited our operation to listen, watch, learn, or ask questions. There are no public safety

issues. Hamestring Road is better today than ever before. We helped build Hamestring Road. We have a great business. We simply do not agree with the ordinance.

Al Johnson, Engineer with ImTech: We were called on in 2004 to look at the area to see if we felt we could properly permit that facility. He explained the permitting process and the water quality on the property. He also explained what they did to meet the County's conditional use permit.

Alderman Lewis: The changes you have worked with them on, what initiated that? This ordinance does not address a single operation. It is important to realize this includes all future operations.

Al Johnson: There are regulations and they are addressing the same thing your ordinance is looking at. They comply with these things every day. They are the most regulated industry there is.

Alderman Lewis: I appreciate all the things that you are reviewing. I think this ordinance is looking at a lot of those things but it is also geared towards specific activities that pose a nuisance and a danger, in some cases, to residents. Those are not always permitted by the EPA or the State.

Al Johnson: The quarry permit requires safety measures.

David Hershey, Big Red Dirt Farm Blasting Project Manager: I have managed a lot of projects in Fayetteville. He explained the different projects that he has worked on in Fayetteville. He stated the explosive industry is a very highly regulated industry. The regulations in the State of Arkansas are twice as restrictive as the regulations in the surrounding states. We were able to do these jobs in the Fayetteville area safely and without any damage to any of the personal properties or structures around these jobs. The regulations that we have now work. Chemical breakage of rock is much cheaper than mechanical breakage when it is done properly and safely by qualified people it is safer more efficient, faster, and makes the completion of the project quicker. The footprint that the overall project makes is smaller, the existing regulations that we have now works. If you pass regulations that are more restrictive then you will have to resort to mechanical breakage of rock through excavation which is cost prohibited. You will put the quarries out of business.

Alderman Lucas: When you do blasting for the quarries do they schedule it ahead of time?

David Hershey: Yes. We try to respond within about a week.
There was a discussion on the peak particle velocity.

There was also a discussion on chemical breakage versus mechanical breakage and the number of blasts per project.

Terri Davis Bouprrer: I do not live that close to the quarry. She discussed the blasts that she has felt at her home. She asked if it was possible if this was a crummy place for a quarry geologically.

Ricky Bradley: I begin blasting 41 years ago. I have taught blasting. He discussed the Surface Mining Control and Reclamation Act. He gave his credentials and explained his teaching experience. He explained the blasting process.

Alderman Rhoads: What would you do differently in regards to the ordinance that we have before us?

Ricky Bradley: I understand the ordinance is curtailing the blasting to one time per month. You have to have so much rock or that quarry will not be effective. Instead of shooting once or twice a week they are now going to have to shoot all the rock at one time and this produces a much longer shoot which creates a lower frequency. When you have small shots these high frequency waves dissipate very rapidly.

Mayor Jordan: Can you narrow your discussion down?

Ricky Bradley: If we blast within the regulatory limits you are not going to do damage to structures, water wells, gas wells, or any infrastructure.

Alderman Ferrell: The larger blasts are going to be felt more than smaller lower powered blasts?

Ricky Bradley: Yes sir.

Dave Bolin: I live to the south of the Red Dirt Farm. The Red Dirt Farm came in 2004 after I had lived there for five years and no one notified me that they could come in and start digging red dirt and make a red dirt farm. These ordinances are all about safety. Before the Red Dirt pit was there it was peace and quite. I agree with the City ordinance and would like to see it passed.

Debbie Johnson: I support this ordinance. We just need a little relief. We have tried to be good neighbors. I have nothing against these dump truck drivers. I think the tagging of the dump trucks would help protect some of them. This is a safety issue. I would like to see not only dump trucks but every truck in the State that is hauling something needs to be tagged. This is a safety and a nuisance issue. The blasting noise has not bothered me as much as the constant noise of a rock crusher or the banging of a dump truck beds. We are just looking for a little bit of relief to be able to enjoy our homes and our properties.

Arthur McCandless: I have nothing against quarries but I do not want a quarry in my back yard. If we have to have it can we regulate it? I can go on and on as far as the safety part and the nuisance part.

John David Lindsey, owner of Stephens Red Dirt Farm: We became aware of this ordinance about two weeks ago. We have 63 employees that are dump truck drivers or that operate equipment for us. The hours of operation will not work for us. We would be forced to raise our price double or close our business. You can not operate on a 32 hour week with rain days. We are open to establishing bus shelters for the kids. We helped pave that road. The road is much better than it was before.

David Hobel: I am self employed. What are the things that are a nuisance?

Alderman Lewis: The ordinance discusses dust, hours of operation, noise, and safety issues. She explained the ordinance and how the issues will be addressed.

David Hobel: I don't think you can tell me when I can work and when I can't.

Sandra Ward, 1048 North Hamestring spoke of the problem with gravel in her driveway. She voiced her concern about her children's safety.

William Henson: We have not had an accident in the five years I have been hauling out of the Red Dirt Farm to my knowledge. He voiced his concern about out of town trucks that might come into Fayetteville and not have numbers on them. The trucks are numbered and have a license tag on them. They are regulated by DOT. If this ordinance passes you are going to put a lot of small businesses out of business.

Alderman Ferrell: I sure hope that does not happen. I do not think there is any way we can treat trucks that come from another town or company outside of Fayetteville any differently.

William Henson: As far as the 8:30 am time to start if you are doing a job in Elkins Arkansas and you need red dirt and you can't load that truck until 8:30 in the morning those construction companies are not going to be able to start until 9:00 or 10:00.

Alderman Ferrell: I would hope that there is not anyone involved in this deal that wants to see anyone lose their livelihood. I remain optimistic and hopeful that at the end of the day we are going to be able to come out with something where people can still work and we can do it in a safe manner.

J.T Baker, Stephens Red Dirt Farm and Northwest Arkansas Truck Service: I think my biggest issue with the ordinance would be the hours of operation. For a week of work we try to set up 60 hours that week, which is what the DOT allows for us to have. We hope to get out of those 60 hours 40. If we get cut to 32.5 hours operating time we will be very fortunate if we can get 20 hours. The quarry is going to shut down and the dump truck drivers are not going to be able to afford to work for us. It is going to put companies out of business. Around 275 people will be affected. The cost of development in the City of Fayetteville is going to go through the roof. As you price material and equipment it is all relative to the hours that equipment can work and the production it can make. I called the ADEQ to see what we have in complaints. We have had five complaints in the last six years and 11 in the last month. What I think we can learn from that is that in preparation for these meetings people start calling and complaining even if they do not have something to complain about.

If safety for school kids is an issue why would be close on Saturday? Kids are not in school on Saturdays. What traffic study has been done? One of the things in the ordinance is the noise made by the equipment. If you are standing next to an excavator it is very loud. If it is inside the dirt pit and you are standing in Hamestring Road I doubt that you can tell when it is turned on. I would invite you to come to the dirt pit and see what is going on. We keep the road clean. I

think the hours of operation are going to inhibit the pits and the quarries and they are going to put us out of business. I would ask you to not pass the ordinance.

Alderman Lucas: Did you say 100 to 200 truck loads come out of your quarry a day?

J.T Baker: That is a fair average.

Alderman Lucas: I never dreamed that there were that many trucks.

J.T Baker: 200 to 300 trucks can come out of the quarry a day and you will not even know anything is going on.

Dana Gallagher: I live on Martin Road in Fayetteville: I came not as a paid expert. She talked about the research she had done on how limestone affects human beings and animals. She stated this is a safety and health concern.

Carolyn Hollingsworth, truck owner and driver: I am a mother and my number one safety is kids. We are safe drivers or we will not keep our jobs, licenses, or trucks. We pay an average of \$1,200 per year for tags. You want to cut our hours back and we will be losing \$300 a day. We pay any where from \$1,000 to \$6,000 a year to run the trucks. How are we going to pay for this if we can't make a living? You need to ride with us one day. Our lives are the quarries they make our living for us. I believe in the tarps on the trucks. We are a lot safer than the cars and pickups on the roads. I think the hours need to be left from 7:00 to 4:00.

Mary Jane Silva, Wedington Drive: It only takes one child to get hurt for it to be too many for me. We built our house before The Big Red Dirt Pit and the Rogers Group. They started trying to expand and it is complaint driven that is why there have been more calls recently. I appreciate this ordinance that you have put together.

Steve Walker, Double Springs: Cutting the hours will cause everyone to be on unemployment to make up the hours. This ordinance will take money out of everyone's pocket.

Anthony, a driver for Lindsey: It is frustrating for me to sit here and listen to this because I have yet to see kids on that road. He voiced his concern about the cut in hours.

Lanny Samples, Wedington Drive: I have been in the same location since 1975. Until the last year I have not had any problems with my house. I now have a crack in the ceiling in my garage. My front porch is cracked and has dropped down. The ground may not move but you can feel vibrations in your feet and our windows rattle. We have foundation and drywall damage. It has occurred within the last year since the blasting started.

He passed out picture that were taken while following a dump truck. He explained the pictures to the Council. He voiced his concern about the traffic the dirt mines are producing. I support the ordinance. The issue is safety and property values. I urge you to pass this.

Roma Gray: I am a neighbor of the quarry and it really is a nuisance. It is creating a hardship on those of us that live around there. I hope you will consider passing this ordinance.

Don Johnson: I live on West 16 south of the dirt farm. I am for this ordinance. One thing that bothers me is responsibility. We do not want to have anyone unemployed. If you can't get material from one place you are going to find material some place else. We are not asking them to go out of business we are just asking them not to do it in our back yard. We are not making this stuff up our houses are actually cracking. We were under the impression that when they played the red dirt out, there were going to be apartments there. I hope that you pass this ordinance.

Jeff Silva: I live south of the gravel pits. I appreciate the efforts for this ordinance. It is a very bold move. The noise is a big problem and I see that as a nuisance and the blasting. I appreciate your efforts.

Michael Luna: I live in that area. I want to thank you for bringing this up and considering it. I voice my support for the ordinance.

Hugh Jarrett, attorney for Stephens Red Dirt Farm: The hours of operation are going to bankrupt the companies. You are talking about hundreds of people whose livelihood is going to go away. You are going to bankrupt my boss and a couple of other big companies but you are also affecting an extreme amount of normal working people. The ordinance you are proposing to pass needs to be related to abating the nuisance. We can get our trucks to stay at a slow speed. I think there is some common sense solutions that are not going to force us into a corner by taking the complete value out of that piece of property.

Alderman Thiel: I hope the representatives from the businesses can get with the City Attorney and determine a way that this can be presented to the Council as a way of mediating this prior to the next meeting.

Hugh Jarrett: We are available any time. On the hours of operation I do not think there is much room to negotiate there. We will work with reasonable safety accommodations but the hours of operation are basically putting us out of business.

Alderman Thiel: How long have both of these businesses been in business?

Hugh Jarrett: I think since the mid 1990's

Brad Johnson, co-owner Big Red Dirt Farm: We have been in business since 2004. Larry Stephens told me he started his business in 1993 and started blasting in 1997. Luttrell told me he started his business 25 years ago.

Alderman Thiel: Luttrell was the original red dirt business?

Brad Johnson: Yes.

Alderman Gray: Do we know when they operate or does it depend a lot on the rain.

City Attorney Kit Williams: There was a conditional use for the Big Red Dirt Farm and their hours were from 7:00 to 6:00 five days a week. That covers mainly the blasting and not the red

dirt farming. When the Rogers Group was attempting to enlarge their quarry they had a large scale development and had the same sort of hours plus they were open 7:00 to 12:00 on Saturday but that was sales only. But the large scale development was turned down by the County so that did not go into effect. That was what was being proposed. The conditional use has actually been approved by the County for the red dirt farm that is now being appealed by the neighbors.

Alderman Petty: It seems to me everyone needs to get together and have a good brain storming session. To the owners of the businesses if you need to make an amendment there are multiple ways for you to present your case in an official way so that we can change some of these things.

Alderman Ferrell: I think it is a good idea but I would like to hear a little clarity on this. What is the best vehicle for getting together with the principals?

City Attorney Kit Williams: I would suggest that they get with me early and then have an Ordinance Review Committee meeting after that. We have to keep in mind when it comes to explosions and explosive power that is already fully regulated by the State and Federal government. So even though it might be distressing to the neighbors I don't think there is anything the City can do in relation to the explosive blast. I think we can limit the number but not the size or anything like that.

This ordinance was left on the Second Reading.

Red Dirt Mining Facilities: An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating red dirt mining facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting.*

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Alderman Petty moved to amend the ordinance as recommend by the City Attorney. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was left on the Second Reading.

New Business:

ECO Vista Waste Management Landfill: An ordinance waiving the requirements of formal competitive bidding and accepting an interim rate quote from Waste Management for the disposal of solid waste; approving a budget adjustment; and declaring an emergency.

City Attorney Kit Williams read the ordinance.

David Jurgens, Utilities Director: The Cherokee Nation has stated that they will no longer provide services for solid waste effective September 30, 2009. This is a temporary solution that the staff has put together for how to take care of our solid waste business for October and November. The long term solution will involve a bid opening for transport and disposal of our solid waste.

Alderman Ferrell: We are still going to pursue our legal purgatives.

Mayor Jordan: Absolutely.

Alderman Lucas: The way I understand it they just quit accepting it and they had been paying us to have it shipped to Russellville and now they are going to quit all together?

David Jurgens: That had to do with the biosolids about a year ago. This is actually where they have given us 30 days notice. Cherokee Nation operates our transfer station, scale, and haul and dispose of our trash.

Alderman Rhoads: Does this ordinance have anything to do with any legal action we might take in regard to the Cherokee Nation?

City Attorney Kit Williams: It would be relevant for damages possibly.

Alderman Rhoads: I will recuse myself.

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 Rhoads recused.

City Attorney Kit Williams read the ordinance.

Alderman Cook moved to suspend the rules and go to the third and final reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads recused.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance 7-0. Alderman Rhoads recused.

Alderman Cook moved to approve an Emergency Clause. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads recused.

Ordinance 5272 as Recorded in the office of the City Clerk.

Solid Waste Transfer Station Employee: A resolution authorizing the addition of one (1) full-time employee in the Solid Waste & Recycling Division to move operations in-house for the Solid Waste Transfer Station and scale house; and approving a budget adjustment in the amount of \$50,000.00.

David Jurgens: This is part of the long term solution where we would bring the operation of the transfer station and scale house in house and do it ourselves from now on.

Alderman Cook moved to approve the resolution. Alderman Gray seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads recused.

Resolution 202-09 as recorded in the office of the City Clerk.

RZN 09-3398 (Schaffer): An ordinance rezoning that property described in rezoning petition RZN 09-3398, for approximately 0.17 acres, located at 528 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. This is a down zoning to Downtown General. Staff is supportive and the Planning Commission voted 9-0 in favor of this request.

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

City Attorney Kit Williams read the ordinance.

Mayor Jordan: Are you all from Ward 2 okay with this?

Alderman Cook: It's all good.

Alderman Cook 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 unanimously.

Ordinance 5273 as Recorded in the office of the City Clerk.

RZN 09-3394 (Box): An ordinance rezoning that property described in rezoning petition RZN 09-3394, for approximately 1 acre, located at 2013, 2025, 2037 and 2049 Box Avenue from RSF-4, residential single-family, 4 units per acre, to RMF-6, residential multi-family, 6 units per acre.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of this ordinance. He stated Planning Commission voted 9-0 in favor and staff recommended approval as well.

Alderman Lucas: When you build something like that and you are going to build it to have two separate homes don't you have to have different building material in between?

Jeremy Pate: There can be. A fire wall for instance is required in instances when you have a property line and that is something our building officials would look at. We always advise the applicant to contact our Building Safety office before they go through that process.

Alderman Lucas: It was built that way?

Jeremy Pate: It was either built that way or there can be amendments made to the structure to accommodate that.

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 Lewis** seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Lucas: This is splitting lots are there anymore improvements on the streets that are going to have to be done?

Jeremy Pate: I believe the improvements were required when the conditional use permits came through to include curb, gutter, and sidewalk.

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

Ordinance 5274 as Recorded in the office of the City Clerk.

VAC 09-3397 (University of Arkansas): An ordinance approving VAC 09-3397 submitted by University of Arkansas for property located at 10 North Garland to vacate approximately 5,663 square feet of existing utility easement on the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of this item.

Jay Young, Development Consulting Inc., representative for the University stated he would be happy to address any comments.

Alderman Cook 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.

City Attorney Kit Williams: How much is that in acreage approximately?

Jeremy Pate: Point 13 acres.

Alderman Cook moved to suspend the rules and go to the third and final reading. **Alderman Lewis** 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 unanimously.

Ordinance 5275 as Recorded in the office of the City Clerk.

VAC 09-3399 (Harris): An ordinance approving VAC 09-3399 submitted by Bates and Associates for property located at 303 South West Avenue to vacate a portion of the West Avenue right-of-way and an unconstructed 30' street right-of-way on the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief summary of the ordinance. Staff and Planning Commission are recommending in favor of this application.

Alderman Thiel: This also went through the Street Committee and we recommended it.

Alderman Lucas: The 30 foot right of way for a street where was it going to go?

Jeremy Pate: It was part of access for the railroad. They had right of way on both sides of the railroad right of way. We have found that all throughout the City along this section. I'm assuming it was for a frontage or access to work on the railroad but it was never utilized.

Alderman Thiel moved to suspend the rules and go to the second reading. **Alderman Gray** seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Lewis 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 unanimously.

Ordinance 5276 as Recorded in the office of the City Clerk.

ADM 09-3423 (S. West Avenue Master Street Plan Amendment): A resolution amending the Master Street Plan, reclassifying S. West Avenue, between W. South Street and W. Prairie Street, from a 45 foot right-of-way to a 40 foot right-of-way, as described and depicted in the attached map.

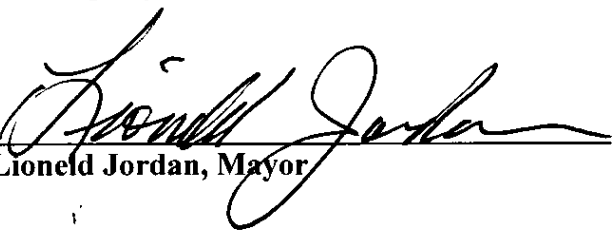
Jeremy Pate gave a brief description of this resolution.

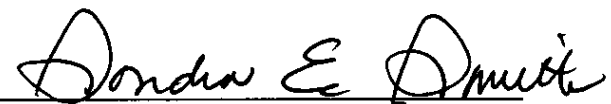
Alderman Cook moved to approve the resolution. **Alderman Thiel** seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 203-09 as recorded in the office of the City Clerk.

Agenda Additions: Added before Unfinished Business

Meeting adjourned at 11:00 p.m.


Lioneld Jordan, Mayor


Sondra E. Smith, City Clerk/Treasurer