

Alderman Adella Gray
Ward 1 Position 1

Alderman Sarah Marsh
Ward 1 Position 2

Alderman Mark Kinion
Ward 2 Position 1

Alderman Matthew Petty
Ward 2 Position 2



Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra E. Smith

Alderman Justin Tennant
Ward 3 Position 1

Alderman Martin W. Schoppmeyer, Jr.
Ward 3 Position 2

Alderman John La Tour
Ward 4 Position 1

Alderman Alan T. Long
Ward 4 Position 2

**City of Fayetteville Arkansas
City Council Meeting
December 1, 2015**

A meeting of the Fayetteville City Council was held on December 1, 2015 at 5:30 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 Adella Gray, Sarah Marsh, Mark Kinion, Matthew Petty, Justin Tennant, Martin Schoppmeyer, John La Tour, Alan Long, Mayor Lioneld Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Alderman Tennant and Alderman Long arrived after roll call

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 November 3, 2015 Special City Council meeting minutes.

Approved

Ball Plaza Holdings, LLC: A resolution to approve a two year sublease agreement with Ball Plaza Holdings, LLC for ten parking spaces located in Off-Street Parking Development District Lot 7 for the purpose of converting the spaces from metered parking to free two hour public parking at a monthly cost of \$35.00 per space.

Resolution 212-15 as recorded in the office of the City Clerk

CH2M Hill Engineers, Inc. Amendment No. 7: A resolution to approve Amendment No. 7 to the agreement for Operations, Maintenance and Management Services between the City of Fayetteville, Arkansas and CH2M Hill Engineers, Inc. in the amount of \$7,872,234.00 for services in 2016.

Resolution 213-15 as recorded in the office of the City Clerk

Internet Crimes Against Children Task Force Program Sub-Grant: A resolution to authorize acceptance of a non-matching continuation sub-grant from the Internet Crimes Against Children Task Force Program in the amount of \$9,374.00, and to approve a budget adjustment.

Resolution 214-15 as recorded in the office of the City Clerk

Garver, LLC Task Order No. 5: A resolution to approve Task Order No. 5 with Garver, LLC in the amount of \$45,500.00 for bid package development, bidding services, construction phase services, and closeout services associated with the Airport Taxiway Lighting Rehabilitation Project, and to approve a budget adjustment.

Resolution 215-15 as recorded in the office of the City Clerk

Bid No. 15-62 Permatrak North America: A resolution to award Bid No. 15-62 and authorize a contract with Permatrak North America, LLC of Charlotte, North Carolina for the purchase of a prefabricated concrete boardwalk system in the amount of \$311,678.00 plus applicable taxes for installation on the Clabber Creek Trail between Ruppel Road and Salem Road, and to approve a project contingency in the amount of \$31,167.00.

Resolution 216-15 as recorded in the office of the City Clerk

Ranger's Pantry Donations: A resolution to approve a budget adjustment in the total amount of \$2,244.00 representing donations to Ranger's Pantry and Community Development Block Grant Program income received from housing lien payoffs.

Resolution 217-15 as recorded in the office of the City Clerk

BSN Sports: A resolution to approve the purchase of thirty-two (32) pairs of soccer goals for the Regional Park from BSN Sports of Dallas, Texas in the amount of \$85,623.00, pursuant to a U.S. Communities National Cooperative Purchasing Program contract, and to approve a budget adjustment.

Resolution 218-15 as recorded in the office of the City Clerk

Walker Park New Disc Golf Course - Waxhaws Disc Golf: A resolution to name the new disc golf course at Walker Park the Waxhaws Disc Golf course in honor of the historic Archibald Yell homestead.

Resolution 219-15 as recorded in the office of the City Clerk

Alderman Marsh moved to accept the Consent Agenda as read. **Alderman Gray** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Long** was absent during the vote.

Unfinished Business:

Amend Chapter 97 Parks and Recreation: An ordinance to amend Chapter 97 **Parks and Recreation** of the Fayetteville City Code to allow twenty four (24) hour access to shared use paved trails; to add leash requirements for animals in certain parks; to prohibit certain activities in parks including unauthorized vehicle operation, use of paddle boards on city lakes, and shooting of model rockets; to provide for certain activities in parks including camping, horseback riding, limited vending at park events, and posting of temporary signs; and to make other technical revisions. *At the November 17, 2015 City Council meeting, this ordinance was left on the first reading.*

City Attorney Kit Williams: We have received notification from the Attorney General's office with an opinion that says, "All exhibits to this kind of ordinance must be published in the newspaper." The exhibit to this particular ordinance was 16 pages long, which would be expensive. It would probably triple the cost for the City Clerk next year if we don't do something. To keep cost down, I have revised the exhibit so that it only includes those sections which are changed. I request that before we get into a reading, that you amend the enacting ordinance change and the exhibit change.

Alderman Petty moved to amend the ordinance and exhibit to the new version handed out by the City Attorney. **Alderman Gray** seconded the motion. Upon roll call the motion to amend passed 7-0. **Alderman Long** was absent during the vote.

City Attorney Kit Williams read the ordinance.

Connie Edmonston, Parks & Recreation Director gave a brief description of the ordinance.

Alderman Kinion: The authorization for police and animal control officers to carry weapons is broad. Has that always been this way?

City Attorney Kit Williams: It has not. Previously, it said no person shall carry a weapon. If our police are going into the park responding to a dangerous situation, they need to have their weapons with them. I want to make it clear that we agree that they should be able to do it. The animal control

officers need to be able to have traps and slings. I felt that we needed to have both of those clearly stated that it is legal and proper in our parks.

Alderman Kinion: The way this reads is that the animal control officer would also be authorized to carry a weapon.

City Attorney Kit Williams: He's not prohibited from doing that. I don't know that any of our animal control officers have weapons or are certified to have weapons. Our animal control officers do not carry weapons at this point and time. I don't think they ever will. They are there to capture animals. If an animal is dangerous, they will call the police. Is that correct, Chief Tabor?

Greg Tabor, Chief of Police: I think that is correct. I'm not aware of any animal control officers carrying firearms, but could pepper-spray be considered a weapon?

City Attorney Kit Williams: Two kinds of enforcement arms of the city can operate as normal in the parks, just as they can all over the city. This is the reason I worded it that way.

Alderman Kinion: I feel that it is real broad and that is my concern. A weapon could be a multitude of things, including a firearm.

Mayor Jordan: We could amend it, if you felt the need.

City Attorney Kit Williams: Before, it said, "No person shall use, carry or possess firearms, or weapons." Now it says, "No person except city police and animal control officers shall." We aren't banning our police and animal control officers from having their normal equipment. We aren't authorizing them to have anything that they don't already have now.

Alderman Long: Would the weapon that they are authorized to carry, not be what's authorized by the city administration?

City Attorney Kit Williams: Certainly.

Alderman Long: That would be in the standard operating procedures. They wouldn't bring their own weapon. They would be carrying a city weapon if they had one.

Mayor Jordan: I don't perceive my animal control officers carrying .45's. They have slings and traps.

City Attorney Kit Williams: This doesn't empower the animal control officer any more than they already are. It says that they aren't prohibited from acting in the parks just as they do all over town.

Alderman Long: Usually they carry their tranquilizer guns if it is a situation where they need that.

Alderman Marsh: Are ordinary citizens prohibited from carrying pepper-spray in our parks?

Greg Tabor, Chief of Police: A normal person can carry pepper-spray.

Alderman La Tour: Is my pocketknife a weapon?

City Attorney Kit Williams: No.

A discussion followed about the wording of the ordinance in relation to weapons.

City Attorney Kit Williams suggested leaving the item on the second reading to allow City Council more time to review the changes proposed.

Alderman La Tour: In Section 97.067 Picnic Facilities; Duty of Picnicker says, "No person in a park shall use any portion of the park or recreational facilities to the exclusion of other persons." If I am grilling my hamburger, I don't expect someone to tell me they get to use the grill too.

City Attorney Kit Williams: It continues to say, "Recreational facilities will generally follow the rule of "first come, first served" unless scheduled by the Parks and Recreation Department."

A discussion followed about the Parks and Recreation Department procedure process in reserving pavilions and using grills.

Alderman Kinion stated he would like more time to review the ordinance.

This ordinance was left on the Second Reading.

Amend §73.04 Riding on Roadways and Bicycle Paths and §73.05 Riding on Sidewalks: An ordinance to amend §73.04 **Riding on Roadways and Bicycle Paths** to provide for the safe operation of bicycles on roadways and bicycle paths, and to amend §73.05 **Riding on Sidewalks** to provide for the safe operation of bicycles on sidewalks. *At the November 17, 2015 City Council meeting, this ordinance was left on the first reading.*

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

City Attorney Kit Williams read the ordinance.

Peter Nierengarten: The Active Transportation Advisory Committee is scheduled to discuss this item at a special meeting tomorrow. We are requesting to leave this item on the second reading to allow their input.

This ordinance was left on the Second Reading.

New Business:

Lib Horn Animal Shelter of Fayetteville: A resolution to rename the Fayetteville Animal Shelter the Lib Horn Animal Shelter of Fayetteville.

City Attorney Kit Williams: Lib Horn was a strong champion of animals. She operated the Fayetteville Animal Shelter for 13 years. Mayor Jordan suggested, if the City Council sees fit, to name the Fayetteville Animal Shelter in her honor. We learned after proposing the resolution that she named the Fayetteville Animal Shelter as one of her beneficiaries with a gift of \$50,000.

Mayor Jordan: This would honor Lib. She was instrumental in our Fayetteville Animal Shelter. She worked with the county to get their animal shelter established. She had a heart for animals and people. Some of the procedures that we have at the animal shelter are used nationwide for spay and neuter programs. When Hurricane Katrina occurred, she set up a shelter for displaced animals. She was able to get the animals back to their owners or made sure they got adopted.

Alderman Long stated his appreciation for Lib Horn.

Alderman Marsh moved to approve the resolution. **Alderman Long** seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 220-15 as recorded in the office of the City Clerk

Youth Center, Inc.: An ordinance to waive the requirements of formal competitive bidding and approve a contract between the City of Fayetteville, Arkansas and Fayetteville Youth Center, Inc. in the amount of \$225,000.00 to provide public recreation services for the youth and citizens of Fayetteville for 2016.

City Attorney Kit Williams read the ordinance.

Connie Edmonston, Parks & Recreation Director gave a brief description of the ordinance.

Eric Schuldt, Executive Director of the Boys & Girls Club stated his gratitude to the City of Fayetteville for their many years of support.

Mayor Jordan: Thank you for all your programs and services you provide for this city.

Alderman La Tour: What are the main sources of your funding?

Eric Schuldt: Our number one revenue generator are the programs we offer.

Alderman La Tour: You charge a fee?

Eric Schuldt: We charge a fee for activities such as football and basketball. We charge rental fees for birthday parties and church gatherings. United Way is a supporter of the Boys & Girls

Club. We raise funds through our annual campaign. Part of the agreement with the city is that we are responsible for going out into the community and raising grants for our own expenses that we have. Since we went into the new facility, this would be the first increase that we have gotten and we appreciate it. We try to be as self-sufficient as possible.

Alderman La Tour: You will be a good steward of all the money entrusted to you?

Eric Schuldt: Yes.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Alderman Tennant thanked the Youth Center for all that they do for the community in helping children.

Mayor Jordan stated his appreciation for all the work they do.

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

Ordinance 5825 as recorded in the office of the City Clerk

Area Agency on Aging of Northwest Arkansas: An ordinance to waive the requirements of formal competitive bidding and approve a contract between the City of Fayetteville, Arkansas and the Area Agency on Aging of Northwest Arkansas in the amount of \$101,205.00 to provide public recreation services for the senior citizens of Fayetteville for 2016.

City Attorney Kit Williams read the ordinance.

Connie Edmonston, Parks & Recreation Director gave a brief description of the ordinance.

Cayla Wilson, Fayetteville Senior Activity and Wellness Center Director: The center is a vital source of socialization and recreation for our senior community. They count on the daily interaction. The Wellness Center provided 12,333 hours of socialization and recreation for Hillcrest Towers from January to October of 2015. The Fayetteville Senior Center offers structured exercise programs designed for ages 60 and older. The Senior Center offered 24,988 hours from January to October 2015. We open the center for activities within the community. We provide a

service for seniors who do not have transportation to their doctor appointments, grocery store, vet appointments, and beauty salon. In 2015 we provided 7,929 rides for seniors.

Alderman La Tour: Tell me the number of people involved.

Cayla Wilson: We count each trip as one trip.

Alderman La Tour: Our country is in debt \$18 trillion because we are funding a lot of good things. This is one of those good things. I'm not sure I can vote against it, but it gives me pause to think about all the money we are spending.

Alderman Marsh thanked Ms. Wilson for all that she does in serving our community.

Mayor Jordan: Thank you for Meals on Wheels. For some seniors, those meals get them by when they are on a fixed income.

Cayla Wilson: Thank you.

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

City Attorney Kit Williams read the ordinance.

Alderman Marsh moved to suspend the rules and go to the third and final reading. **Alderman Long** 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 5826 as recorded in the office of the City Clerk

Ambulance Services Interlocal Agreement: A resolution to approve an interlocal agreement for continuation and expansion of ambulance services by and with the City of Fayetteville, the Washington County Regional Ambulance Authority, Washington County, Elkins, Elm Springs, Farmington, Goshen, Greenland, Johnson, Lincoln, Prairie Grove, Tontitown, West Fork, and Winslow, and to authorize the Ambulance Authority to operate Central Emergency Medical Services as the exclusive emergency and non-emergency ambulance service within the cities.

David Dayringer, Fire Chief gave a brief description of the resolution. He stated staff supports the resolution.

City Attorney Kit Williams: This has been a real success story. It has operated very well through the years and served many people. Chief, you are on the board. What is your overview?

David Dayringer, Fire Chief: It has been a successful service. It is expanding and we are taking care of our capital expenditures and replacements of the ambulances. We have a good rating from the customers that we serve. It is an efficient operation. We have expanded the territories without having to lean on the government so much. The government subsidies is 10% of the overall budget.

Mayor Jordan: Chief, you have done a great job. I remember when we first started this. I was on the negotiating team.

David Dayringer, Fire Chief: You were instrumental in getting these improvements done.

Mayor Jordan: Thank you.

David Dayringer, Fire Chief: Alderman Schoppmeyer is on the Ambulance Authority Board and we had a lot of workshops to get this worked out. Thank you Mayor Jordan and Council for your support.

Aubrey Shepherd, Citizen: This is a wonderful agreement. People can contribute and donate personally to the ambulance service. You can become a member for a small fee. That helps cover things for people who don't have the money to make a co-pay if they need ambulance service. If you do have insurance, they can get that extra money that you would be charged from your insurance company.

Alderman Marsh moved to approve the resolution. Alderman Long seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 221-15 as recorded in the office of the City Clerk

RZN 15-5223: (SE Corner of W. MLK Blvd. & S. Stadium Dr./Stadium & Railroad, LLC): An ordinance to rezone that property described in Rezoning Petition RZN 15-5223 for approximately 2.53 acres located at the Southeast corner of West Martin Luther King Boulevard and South Stadium Drive from RMF-24, Residential Multi-Family, 24 units per acre to CS, Community Services.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: I am no longer saying that exhibits are attached to the ordinance because if we did, we have to publish them. The map would be fairly expensive to publish. City Clerk will still file the legal description with the ordinance at the County Clerk office.

Jeremy Pate, Director of Development Services gave a brief description of the ordinance. Staff is recommending approval. The Planning Commission recommended in favor 9-0 of the rezoning.

Alderman Marsh: I have not received any citizen feedback.

Aubrey Shepherd: The power line covers the buildable part of the lot. The stream runs through it. It is primarily a riparian zone. Wetland streams run through it off the university campus and the high school. The property has been used for Razorback game parking. I think it is okay it is being used that way. To think of it as a building site, would be a mistake.

Alderman Kinion: This is a sensitive area due to the velocity of water that is approaching the creek at this area. We have the Streamside Protection ordinance. This is going to be an improvement because we are less likely to have the runoff from rooftops of a multi-family development. This is sensitive because of the runoff from the University of Arkansas and Fayetteville High School.

Mayor Jordan: I have a hard time seeing exactly what they can build.

Alderman Gray: Jeremy, can you address Aubrey's concerns?

Jeremy Pate: I can't address what might be developed there. The size of that power line requires a 100 foot easement. Structures can't be built within that easement. It would impede development upon the property. We have a Streamside Protection ordinance that is in effect. There will be some FEMA regulations that the applicant would have to comply with related to flood plain. Regardless of what zoning this property is, it is going to be somewhat difficult to develop.

Alderman Gray: We have an applicant who is looking at it or did we bring this forward?

Jeremy Pate: An applicant brought this forward.

Alderman Marsh: I'm not sure what the intended use of the property is. I imagine this could open us up to mobile vending or some other temporary use. It might minimize the impact and not necessarily require constructing a structure. This is a great opportunity for trail side businesses. It could help serve the high school population across the street. This is a step in the right direction.

Alderman La Tour: I applaud the Council's ability to see beyond ourselves and to recognize that the owner of the property may have a good idea. If they are complying with our codes, FEMA laws, floodplains, and riparian zones, let them serve the people of Fayetteville.

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

City Attorney Kit Williams read the ordinance.

Alderman Marsh moved to suspend the rules and go to the third and final reading. Alderman La Tour 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 5827 as recorded in the office of the City Clerk

RZN 15-5214: (West of N. Gregg Ave. & W. Van Asche Dr./WG Land Company) Appeal:

An ordinance to rezone that property described in Rezoning Petition RZN 15-5214 for approximately 186.65 acres located west of the intersection of North Gregg Avenue and West Van Asche Drive from R-A, Residential Agricultural to C-2, Thoroughfare Commercial and C-3, Central Commercial.

City Attorney Kit Williams: Due to the importance of this ordinance and potential litigation, I ask that we formally amend Section One to say, "As shown on exhibits "A" and "B" attached to the agenda item", as opposed to attached hereto and made a part hereof.

Alderman La Tour: Why do we need this?

City Attorney Kit Williams: This is to save publication cost for the City Clerk.

City Clerk Sondra Smith: In the past, we put at the bottom when we publish an ordinance that the exhibits may be viewed in the City Clerk office. The Attorney General's opinion is that those exhibits now have to be published in the newspaper. This will increase the publication cost tremendously if we classify something as an exhibit. By putting it as an attachment to the ordinance, and not as an exhibit, it saves publication cost and it's still in the packet. It is a big cost saver for the city.

Alderman La Tour: Thank you. I am for saving city dollars.

Aubrey Shepherd: The public at home is not seeing the things that are in the packet. That is one way to publicize without spending extra money.

City Clerk Sondra Smith: Mayor, the entire ordinance and exhibits are on the city website. They are on the city's website before the City Council meeting.

Alderman Petty moved to amend Section One of the ordinance. Alderman Long seconded the motion. Upon roll call the motion to amend passed 7-1. Alderman La Tour voting no.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Development Services stated that the Planning Commission and staff recommended denial of this ordinance to rezone the property to C-2, Thoroughfare Commercial from the R-A zoning district. Staff indicated to the applicant and Planning Commission that they were supportive of a portion of the property being rezoned to C-2 and C-3 along the boundaries that are adjacent to the interstate and railroad, with the balance of the interior of the property being rezoned for commercial uses through one of the city's form based zones. The applicant has properly appealed the decision. He stated there were two unusual circumstances within this rezoning application. He stated the City of Johnson, pursuant to state law, that a portion of this rezoning must approve the rezoning request within 1000 feet of their city limit boundary. He gave

a brief description of the preexisting agreement from 2008 between the city and WG Land Company.

City Attorney Kit Williams: This is not your garden variety rezoning. Most rezonings that you do, you are entitled to great discretion by the courts. In my 15 years as City Attorney, you have never lost a zoning case. The standard for reversing a decision by the City Council in a zoning case, is that you had to have acted arbitrarily, capriciously, and unreasonably. This is not a normal zoning case. This is now a contract case. Assume in a zoning case that you did act arbitrarily and refused to zone some property in a certain way. The remedy for that would be that the property would have to get zoned properly. There would be a difficult case for damages to ever be accessed against the city in a case like that. We have a Memorandum of Understanding, which is a contract. When there is a written agreement, the written agreement controls what people might say about the agreement or how their memory is of the past. We have a Memorandum of Understanding that was entered into after being approved by the City Council by resolution, signed by Mayor Coody, and attested by the City Clerk. All evidence implies that it was written by the city. If there is any uncertainty as to the meaning of what this contract states, then that uncertainty would be construed against the city and in favor of the landowner. If we try to argue that a Commercial Zoning District means something besides one of the three commercial districts, C-1, C-2, or C-3, that all have commercial in their names and none of the form based mix use districts have commercial in their names, it is going to be construed against us and help in favor of the landowner. This is a difficult case for us not to agree to fulfill what appears to be a mandate for the land that is south of the new Van Asche.

This Memorandum of Understanding was not artfully drafted. The letter from the WG Land Company when they asked for an agreement, said they wanted the top most part of the hill, which is over the warehousing and cold storage to be zoned industrial for warehousing. When we finally agreed with the City of Johnson on the amount of land that was going to be de-annexed from Johnson and annexed into the city, it was 99 acres. It was 1,250 feet into Johnson and included more than the WG Land Company, it also included the McClinton Company and the cement plant. We didn't get the top of the hillside. We didn't get the land that was needed for warehouses. The agreement says that everything north of the new Van Asche, rather than the old Van Asche, should be for warehousing and that probably was not really what the WG Land Company people intended, but that is what the agreement says. Everything south of Van Asche is clearly stated that it be zoned to a Commercially Zoned District.

I did not make an argument to the Planning Commission about money. They are not the guardians of the city's treasury, you all are. You are the ones that pass the budget every year, and decide where the money goes. It is your duty as Aldermen to protect city resources and allot them where they should go. I told the Planning Commission that I felt like it was proper for them to comply with this agreement. If the agreement seemed to be enforceable to me and that the agreement was such that a standard commercial zoning that was in existence in 2008 rather than one that was not in existence for two years later, should be the one that is applied. I wrote to you all and quoted the Taylor versus Hinkle case from the Supreme Court talking about how you interpret contracts. April 1, 2008 all of the form based zones were made for the Downtown District only. It was 3 months before the Walker Park District was zoned. It was 3 months after this agreement was done that there was any substantial use of any of these Downtown Form Based Districts anywhere but in the

Downtown Master Plan area. Jeremy has found one other small parcel on North College that was zoned with them, but it was not at our northern border. I don't think that the other side of this agreement would have known about that when they said a Commercial Zoned District. The other problem we have with that is that the Downtown District and the new other districts are not Commercially Zoned Districts, they are mixed use, where all of them have the right to build either commercial or to put housing in. A court looking at this would probably come down hard on the side of the landowner. Andrew Garner suggested a good way to plan it with some C-2 along the edges and some form based in the middle. I don't think that is something we can force the landowners to accept, even though that might be the best zoning for this.

The danger to the city if we decide what is the best zoning for them is that if a court finds a breach of this contract in trying to force them to accept something they aren't requesting. If they potentially got a tentative sale on some of their acreage and then the sale goes away because the zoning is not what the buyer wanted, then in a contract action you are normally entitled to what is called, lost profits. If the property is worth many millions, the taxpayers could be paying that. This could be the biggest financial problem the city has seen in over a quarter of a century. It would be a terrible gamble to try and zone their property to something they don't want, when they have a contract that seems to say they get to have C-2 or C-3. You should look very carefully at this and consider the potential downside of not agreeing to rezone this property as requested by the owners and reflected in the agreement that was entered into of April, 2008.

Tom Overbey, Attorney for WG Land Company stated he didn't want to speak about if WG Land would sue. He hopes it wouldn't get to that point. He briefly presented an event timeline. On March 4, 2008, following negotiations with Fayetteville officials, WG Land Company offers to seek de-annexation from the City of Johnson in exchange for the Van Asche Extension being built and commercial zoning. On April 1, 2008, Fayetteville City Council approves the Memorandum of Understanding regarding WG Land pursuing de-annexation in exchange for the Van Asche Extension being built and commercial zoning. On August 21, 2009, WG Land files lawsuit for de-annexation. In April 2010, a lawsuit was settled with acreage swap between City of Johnson and City of Fayetteville, extension of water and sewer services to City of Johnson. All industrial land in City of Johnson, all commercial land in City of Fayetteville. In October 2013, WG Land enters into a sales and development agreement with a buyer. Development activities included engineering, core drilling, site evaluations, and street planning. This contract terminated due to the buyer not being able to obtain equity and lending money to complete the transaction. On August 10, 2015 WG Land enters into a brokerage agreement. The WG Land Company's point of view is that they have been trying to work with the City of Fayetteville and City of Johnson to go forward with the expected use of the property when the deal was made in 2008. They feel that they have done their part. He stated they spent hundreds of thousands of dollars and took risk with filing the lawsuit that show their intent to fulfill their end. He asked that the City Council follow through and approve the zoning.

Alderman Marsh: We have a number of form based zones that accommodate commercial zoning. Is that correct?

Jeremy Pate: We have a number of form based zones that accommodate commercial uses.

A discussion followed about form based zoning and the Van Asche street standards.

Alderman La Tour: We have business people who have made an investment. They entered into an agreement drafted by an official of our city. It would be a bad reflection on who we are as a people if we don't stand by that agreement. We need to be people of our word. Let's continue to build Fayetteville. The area just east of this property is heavily commercial. This is very logical.

Alderman Marsh: How much was the public investment in the Van Asche extension?

Mayor Jordan: \$4.5 million.

Alderman Marsh: What was the condition of that road before we built it?

Mayor Jordan: There was no road.

Alderman Marsh: The public has invested \$4.5 million in this area.

Mayor Jordan: They gave us right-of-way through there to build the road.

City Attorney Kit Williams: Even before this agreement was made with WG Land Company, City Council had passed a resolution saying Van Asche would not be built until the land north of Van Asche that was currently in the City of Johnson would be transferred to the City of Fayetteville. It is only through the help of WG Land Company in putting pressure on the City of Johnson and causing them litigation cost that they finally came to the table so we could get 99 acres, including the WG Land, as well as McClinton and the cement plant brought into the City of Fayetteville. Without their help, the City of Johnson was not interested.

Alderman Marsh: Is it fair to say that had the City of Fayetteville not annexed this land, that the City of Johnson would not have made the investment that is making this potential development possible?

City Attorney Ki Williams: The City of Johnson at one point said that they would do a cost share, but they didn't have any money. The City Council said we are not building the road until that land comes in. The only way to pry it out of the City of Johnson's hand was because WG Land Company helped us. I think the agreement was fair to the City of Johnson. We agreed to supply sewer for the rest of their city so that they would not have to build an expensive lift station. We agreed to provide fire flow water, where feasible. For our citizens, we assured that when we made this \$4 million investment for the road that we would own both sides of it and maybe we would make some of that money back through sales tax. It was always a consideration to what we needed when designing.

Alderman Marsh: We annexed this because we needed to annex that in order to get the citizens support to make their investment. That investment is what is creating the value and developability in this land. Is that correct?

City Attorney Kit Williams: That is correct. That road added great value to that land. WG Land Company voluntarily dedicated a tremendous amount of acreage for Van Asche. We did not have to condemn any of the right-of-way from them. They donated it to the city, which is not true with the next land owner coming forward. We had to begin a condemnation. We settled it, but we paid for the right-of-way from that landowner. WG Land Company has been a good partner for a long time and we need to be a good partner too.

Alderman La Tour: We put in streets to accommodate traffic flow. We should be doing that without concern of who it is benefiting and who it is not. We should be benefitting the public in Fayetteville. Development, initiative, and entrepreneurship are the hallmarks of our American culture. Let's not stand in the way of progress. Let's give these developers what they need, expect, and what we agreed to give them.

Alderman Long: When looking at the map, is there a reason for more of the C-2 zoning than the C-3 on the outer areas?

Tom Terminella: In keeping in the spirit of the contract between WG Land and the City of Fayetteville, the zoning that the landowner has requested is C-2 and C-3. As far as the percentage of C-2 versus C-3, there is different use units within those zones. It was a conscious decision to delineate the property for these zoning classifications.

Alderman Long: The Memorandum of Understanding says that the portion of the property north of Van Asche shall be zoned to an Industrial Zoning District consistent with its use for warehousing and cold storage.

Tom Terminella: That was at a time when they were contemplating bringing in all of the 267 acres into the City of Fayetteville. There was 83 acres north of the substation that remained in the City of Johnson. The east west line city boundary got moved from the new Van Asche to 1,250 feet north of there. Industrial is where it is supposed to be and the request for the C-2 and C-3 would fall south and north of the new Van Asche, which is the 187 acres in Fayetteville.

Alderman Long: Is there an attachment to the Memorandum of Understanding that would say that?

City Attorney Kit Williams: There is no attachment to it.

Tom Terminella: The boundary line moved through the negotiations.

A discussion followed about what be allowed in the C-2 and C-3 zonings.

Alderman Kinion: This is referring to the proposed Van Asche, but the current Van Asche is not the proposed Van Asche.

City Attorney Kit Williams: Actually, it is. The proposed Van Asche, is now the Van Asche. Mr. Terminella, the second paragraph doesn't seem to be artfully drafted and isn't crystal clear what your rights would be north of Van Asche. You are asking for C-2 and C-3 north of Van

Asche. Your clients made a proposal that wasn't all C-2 and C-3, but unfortunately you presented to the wrong party, not the party that could actually make the decision, and they couldn't give you an answer. I ask that you talk to your clients and see if it would be possible that they could make a similar presentation to the City Council. This might go a long way to making sure that this is something that can be resolved at the City Council level and prevent any possibility of problems and delay.

Alderman La Tour: What is on this property right now?

Tom Terminella stated it is mostly a hay meadow.

Alderman Marsh: Is our industrial warehousing and cold storage permissible in C-2 or C-3?

Jeremy Pate: I don't believe so. Our warehousing use unit 21 would be either I-1 or I-2 zones. It would be the same for the cold storage.

Alderman Marsh: To rezone this C-2 or C-3 would be inconsistent with the Memorandum of Understanding requesting that anything north of Van Asche would be zoned for industrial warehousing and cold storage. Is that a fair assumption?

Jeremy Pate: I won't speak to the agreement. The uses on the property currently is a farm. There is that use to the north of this property, north of the old Van Asche. Those uses do exist within the City of Johnson. They do not exist on the property within the City of Fayetteville.

Alderman Marsh: Kit, under strict interpretation of the Memorandum of Understanding, would we be fulfilling that agreement if we rezoned that to a zoning district that would not allow for industrial warehousing and cold storage?

City Attorney Kit Williams stated certainly, we would. He referenced the landowner's letter from March 4, 2008.

Aubrey Shepherd stated he would like for the public to have more time to view the item. He spoke about flooding issues.

Jerrell Jones, Representing WG Land: Back in the 50's and 60's they used cold storage. Since that time, above ground storage is much cheaper than to go underground. It can't be used for cold storage anymore.

Lorraine O'Neal, 3001 West Wedington spoke in favor of the rezoning.

Pam Jones, spoke in favor of the rezoning.

This ordinance was left on the First Reading.

RZN 15-5209: (NE Corner of McGuire St. & Van Asche Dr./McClinton) Appeal: An ordinance to rezone that property described in Rezoning Petition RZN 15-5209 for approximately 18.34 acres located at the Northeast corner of McGuire Street and Van Asche Drive from R-A, Residential Agricultural to C-2, Thoroughfare Commercial and C-3, Central Commercial.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Development Services gave a brief description of the ordinance. Staff does not recommend approval of the rezoning. The Planning Commission voted 9-0 against the rezoning.

Tom Terminella gave a brief description of the property.

Alderman La Tour: What is the current zoning?

Jeremy Pate: Residential Agricultural.

Alderman La Tour: Is there a lot of agriculture in this area?

Jeremy Pate: There is.

Alderman La Tour: A hay pasture could be an investment property.

A discussion followed about commercial zoning in the area.

Alderman Marsh stated she couldn't support the request. She believes the Planning Commission and staff were correct in their recommendations in denying the request. She spoke about the 2030 City Plan goals.

City Attorney Kit Williams: I ask that the City Council run these two rezonings together.

Alderman La Tour stated he doesn't think the rezoning request is inconsistent with city goals.

This ordinance was left on the First Reading.

Announcements:

Susan Norton, Communication Director: The Lights of the Ozarks will run until the end of the year.

We have an excess supply of mulch. Fayetteville residents can receive free mulch for the month of December.

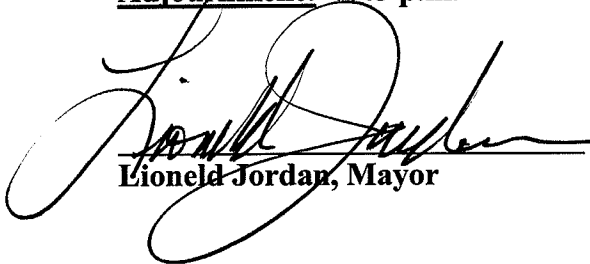
The 9th Annual Senior Giving Tree will be December 9, 2015 at the Senior Activity & Wellness Center.

City Council Agenda Session Presentations:

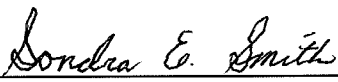
Agenda Session Presentation - Economic Development Quarterly Report.

City Council Tour: None

Adjournment: 7:45 p.m.



Lioneld Jordan, Mayor



Sondra E. Smith, City Clerk Treasurer