

Council Member Sonia Gutierrez
Ward 1 Position 1

Council Member D'Andre Jones
Ward 1 Position 2

Council Member Mark Kinion
Ward 2 Position 1

Council Member Matthew Petty
Ward 2 Position 2



Council Member Sloan Scroggin
Ward 3 Position 1

Council Member Sarah Bunch
Ward 3 Position 2

Council Member Teresa Turk
Ward 4 Position 1

Council Member Holly Hertzberg
Ward 4 Position 2

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Kara Paxton

**City of Fayetteville Arkansas
City Council Meeting
March 2, 2021**

A meeting of the Fayetteville City Council was held on March 2, 2021 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.

In order to create social distancing due to the Coronavirus, COVID-19 pandemic, Council Members Sonia Gutierrez, D'Andre Jones, Mark Kinion, Matthew Petty, Sloan Scroggin, Sarah Bunch, Teresa Turk, and Holly Hertzberg joined the meeting via online using a video conferencing service called Zoom.

Council Member Bunch was absent during Roll Call.

Mayor Lioneld Jordan, City Attorney Kit Williams, City Clerk Treasurer Kara Paxton, Chief of Staff Susan Norton, Chief Financial Officer Paul Becker, Chief of Police Mike Reynolds, Fire Chief Brad Hardin, and staff members from the IT Department were present in City Council Chambers while demonstrating recommended social distancing.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Mayor Jordan: In light of the current health concerns, Fayetteville City Hall is closed to the public. This meeting is being held virtually. I am present in Council Chambers with a limited number of essential support staff. City Council Members, city staff, and the public are participating online or by phone. Other than those of us you see before you, the voices you hear during the course of this meeting are being recorded for public record and piped into the Council Chambers. Participation remains of the upmost importance to the City of Fayetteville. We have provided many ways to participate in the meeting, which includes contacting Council Members, City Clerk office

or city staff prior to the meeting. The meeting can be viewed through Fayetteville's government channel online, YouTube, and joining the Zoom conference by smartphone, tablet or computer. To request to speak during the public comment period, you must raise your virtual hand to be recognized. If you are accessing the meeting through a smartphone, tablet or computer, please click the raised hand option to request to speak during the public comment period. If you are calling into the meeting by phone, please press, *9 to raise your virtual hand for public comment. When it is your turn to speak, please unmute your microphone. For instructions on how to use Zoom, please go to the City of Fayetteville website and type, Zoom Instructions, in the search bar. I will provide a longer than usual period of time for you to raise your virtual hand, so as to ensure time to be recognized. Fayetteville residents will be allowed to speak first. When recognized, please state your name and address for the record. Public comment shall be allowed for all members of the audience who have signed up prior to the beginning of the agenda item they wish to address being opened for public comment. Each speaker has one turn to speak. Each speaker is allowed five minutes to be broken into segments of three and two minutes, which staff will monitor. Amendments may receive public comments only if approved by the City Council by unanimous consent or majority vote. If public comment is allowed for an amendment, speakers will only be allowed to speak for three minutes. The City Council may allow both a speaker additional time and an unsigned-up person to speak by unanimous consent or majority vote.

City Council Meeting Presentations, Reports, and Discussion Items:

Monthly Financial Report

Paul Becker, Chief Financial Officer gave a summary of the Monthly Financial Report. He stated this will be the report on January, which is the first period of 2021. He stated he's very happy to report that sales tax was up roughly 7%. He stated it was up 8% for the amount of sales tax that the city receives from the county. He spoke briefly about the other funds. He stated January was a strong month economically for the City of Fayetteville. He believes sales tax will level off, but the city is at a very good start, at this point in time.

Agenda Additions:

Consent:

Approval of the February 2, 2021 City Council Meeting minutes.

APPROVED

Animal Services Division Donation Revenue: A resolution to approve a budget adjustment in the amount of \$9,680.00 representing donation revenue to the Animal Services Division.

Resolution 69-21 as recorded in the office of the City Clerk

Hazmat Services Revenue: A resolution to approve a budget adjustment in the amount of \$11,303.00 recognizing hazmat services revenue received from Washington County and increasing the related expense budget.

Resolution 70-21 as recorded in the office of the City Clerk

Riggs Tractor Company: A resolution to authorize the purchase of a Caterpillar Generator from Riggs Tractor Company in the amount of \$28,598.00 plus any applicable tax and freight charges, pursuant to a Sourcewell Cooperative Purchasing Contract, for use by the Police Department.

Resolution 71-21 as recorded in the office of the City Clerk

Arkansas Municipal Equipment: A resolution to authorize the purchase of an auger-style side load refuse truck from Arkansas Municipal Equipment, Inc. in the amount of \$294,205.65, pursuant to a Sourcewell Cooperative Purchasing Contract, for use by the Recycling and Trash Collection Division.

Resolution 72-21 as recorded in the office of the City Clerk

Williams Tractor - Hay Cutters: A resolution to approve the purchase of two Rhino flex wing brush cutters from Williams Tractor, Inc. in the total amount of \$41,624.00, plus any applicable sales taxes and freight charges, pursuant to a Sourcewell Cooperative Purchasing Contract.

Resolution 73-21 as recorded in the office of the City Clerk

Williams Tractor - Bobcat Track Loader: A resolution to approve the purchase of a Bobcat Track Loader with a forestry cutter attachment from Williams Tractor, Inc. in the amount of \$94,778.47, plus any applicable sales taxes and freight charges, pursuant to a Sourcewell Cooperative Purchasing Contract.

Resolution 74-21 as recorded in the office of the City Clerk

Williams Tractor - Towmaster Semi-Trailer: A resolution to authorize the purchase of a Towmaster Semi-Trailer from Williams Tractor in the amount of \$80,428.00 plus any applicable tax and freight charges, pursuant to a Sourcewell Cooperative Purchasing Contract, and to approve a budget adjustment.

Resolution 75-21 as recorded in the office of the City Clerk

Stribling Equipment, LLC: A resolution to authorize the purchase of a John Deere loader from Stribling Equipment, LLC of Springdale, Arkansas in the amount of \$150,765.00, plus any applicable taxes and freight charges, pursuant to a Sourcewell Cooperative Purchasing Contract.

Resolution 76-21 as recorded in the office of the City Clerk

Riggs Tractor Company: A resolution to authorize the purchase of a Caterpillar 308 Excavator Generator from Riggs Tractor Company for the total amount of \$96,564.99 plus any applicable tax and freight charges pursuant to a Sourcewell Cooperative Purchasing Contract, and to approve a budget adjustment.

Resolution 77-21 as recorded in the office of the City Clerk

Landscape Structures, Inc.: A resolution to authorize the purchase of playground safety surfacing from Landscape Structures, Inc. for installation at Bryce Davis, Sweetbriar, and David Lashley Parks in the amount of \$87,998.90 pursuant to a Sourcewell Cooperative Purchasing Contract, and to approve a project contingency of \$8,800.00.

Resolution 78-21 as recorded in the office of the City Clerk

Bid #20-74 Milestone Construction Company: A resolution to approve Change Order No. 1 to the contract with Milestone Construction Company, LLC, in the amount of \$42,728.19 for the repair and replacement of a sidewalk, support structure, and storage area adjacent to the Town Center Plaza.

Resolution 79-21 as recorded in the office of the City Clerk

Benchmark Construction of NWA, Inc. Change Order No. 4: A resolution to approve Change Order No. 4 to the contract with Benchmark Construction of NWA, Inc. in the amount of \$6,117.17 for additional gravel needed for the construction of the Fleet Truck Wash Facility.

Resolution 80-21 as recorded in the office of the City Clerk

Council Member Gutierrez moved to accept the Consent Agenda as read. Council Member Scroggin seconded the motion. Upon roll call the motion passed unanimously.

Unfinished Business:

Bank of Fayetteville/Depot Lot Site: An ordinance to approve Real Estate Purchase contracts with the Farmers & Merchants Bank, Fayetteville Depot, LLC, and Dickson & West Investments, LLC to purchase about one half acre in the Depot/Bank Lot for \$350,000.00, to approve a lease-to-own arrangement with Dickson & West Investments, LLC for the .2 acre lot on the north end of the Civic Plaza, to agree to convey to Dickson & West Investments, LLC the ownership of about 14,000 square feet of the bottom floor of the City's Public Parking Deck and other items, and to pass an Emergency Clause. *At the December 1, 2020 City Council meeting this item was left on the First Reading. At the December 15, 2020 City Council meeting this item was left on the second reading. At the January 5, 2021 City Council meeting this item was left on the second reading and tabled until the February 16, 2021 City Council meeting. At the February 18, 2021 City Council meeting this item was tabled until the March 2, 2021 City Council meeting.*

Mayor Jordan: Council, I don't have a completely signed contract, but the Farmers & Merchants Bank is taking the contract to their board for consideration next week, which would be on March 9, 2021. I would like to ask you to table this for two weeks until we hear back from the Farmers & Merchants Bank on the contract. I will bring this back to you on March 16, 2021

Council Member Scroggin moved to table the ordinance until the March 16, 2021 City Council meeting. Council Member Gutierrez seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was tabled to the March 16, 2021 City Council meeting.

RFQ-19-01 Olsson, Inc. Amendment #2: A resolution to approve Amendment No. 2 to the professional engineering services agreement with Olsson, Inc., pursuant to RFQ #19-01, in the amount of \$154,900.00 for the remaining architectural services related to the replacement parking deck for the Cultural Arts Corridor Project, and to approve a budget adjustment – 2019 Cultural Arts Corridor Bond Project. *At the 11/17/20 City Council meeting this item was tabled for two weeks. This agenda item was tabled for two weeks. At the December 1, 2020 City Council meeting this item was tabled for two weeks. Table until the first meeting in January 2021. (January 5, 2021) At the January 5, 2021 City Council meeting this item was tabled until the February 16, 2021 City Council meeting. At the February 18, 2021 City Council meeting this item was tabled until the March 2, 2021 City Council meeting.*

Mayor Jordan: I respectfully ask that you table this for two weeks. This one ties in with the other item.

Council Member Scroggin moved to table the ordinance until the March 16, 2021 City Council meeting. Council Member Gutierrez seconded the motion. Upon roll call the motion passed unanimously.

This resolution was tabled to the March 16, 2021 City Council meeting.

ANX 2020-0001(3435 E. Zion Rd./Burge): An ordinance to approve the annexation petition of Patricia Lynne Severino, as trustee of the Robert Eugene Burge Irrevocable Trust, and annex 59.00 acres of land located at 3435 East Zion Road. *At the January 7, 2021 City Council meeting this item was left on the first reading. At the January 19, 2021 City Council meeting this item was left on the Second Reading. At the February 2, 2021 City Council meeting this item was left on the Second Reading and tabled for two weeks. At the February 18, 2021 City Council meeting this item was left on the Second Reading and tabled until the March 2, 2021 City Council meeting.*

Council Member Gutierrez moved to suspend the rules and go to the third and final reading. Council Member Hertzberg seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Jordan: There was a request by the Council, this past Tuesday to combine number three and number four on this annexation. Council Member Turk, you asked for both the annexation item and what they're going to put, if the land is annexed in one presentation. Is that correct?

Council Member Turk: The cost benefit analysis and the drainage analysis are all tied together with the annexation and the development, which I would like presented at the same time. I don't care if we consider the annexation separate from the development, but the information should be provided up front for everybody to hear, since they are interlinked together.

Mayor Jordan: There will be two separate issues, but you want a presentation on both of these together when we do the first one. Is that correct?

Council Member Turk: That is. Thank you.

Mayor Jordan: The applicant can have 10 minutes on this one and 10 minutes on the next one.

Council Member Scroggin: I'm under the understanding that the applicant wants these tied together. He doesn't want the annexation without the PZD. It makes sense to tie them together because that's what the applicant wants.

City Attorney Kit Williams: You all can discuss them together, but there will be separate votes. The annexation must be voted on first and then the rezoning would be voted second.

Mayor Jordan: I can have the applicant tie both his presentations on the first one, if you would prefer that. I think the applicant may want to weigh in on them separately.

Council Member Scroggin: Can the annexation be contingent on the PZD?

City Attorney Kit Williams: No.

Council Member Turk: I want to confirm that the public will have the opportunity to comment on each item. Correct?

Mayor Jordan: That is correct.

Jonathan Curth, Development Services Director: In crafting the presentation with City Engineer Chris Brown, it was clear to us that the best way we could share our comments if we're going to combine these presentations, was if the Council would suspend the rules now and afford us our additional 10 minutes before we begin. Otherwise, our concern is we will get 10 minutes into the presentation, need to stop and then there'll be a motion to suspend the rules, add the time and then continue.

Council Member Scroggin moved to suspend the rules and allow staff the additional 10 minutes to present. Council Member Bunch seconded the motion. Upon roll call the motion passed unanimously.

Jonathan Curth, Development Services Director gave a brief description of the ordinance. He stated the PZD includes three planning areas. He stated Planning Area 1 is intended to be non-residential, with the potential for multi-family development and includes about 6.2 acres, the preponderance of which is along Crossover with the opportunity to have some non-residential development towards the interior of the site. He stated Planning Area 2, which is the majority of the property totaling almost 40 acres, includes largely alley loaded single two, three and four family residential potential. He stated Planning Area 3 represents the open spaces and extremely low density portions of the development. He spoke about the development of the property following five broad steps. He spoke about the distinction between a property being developed in the county versus the city and the standards associated with that.

Chris Brown, Public Works Director spoke briefly about environmental and drainage issues. He spoke about the differences between city and county related to the annexation. He stated the standard process is if we see that hydric soils are present, a wetlands delineation is required and that's before a grading permit, which is typically two steps beyond where we are now. He stated we do have a wetland delineation that's been provided to us by the proposed developer and have identified a little under six acres of wetlands. He stated you will hear later a recommendation for a determination by the Corp of whether those wetlands are in their jurisdiction. He stated the study says that they likely will not be considered jurisdictional wetlands, in which case there would be no federal requirements related to the protection of the wetlands or mitigation if the wetlands are removed. He stated the wetlands requirements are our federal requirement and the Corps of Engineers has that jurisdiction and would be the one looking at permitting. He stated we do not have city codes related to wetlands protection.

Jonathan Curth spoke about land use considerations that staff took in reviewing the project. He stated many of these came out of City Plan 2040. He spoke about the future land use map. He spoke about the city neighborhood area, residential neighborhood area and natural area. He spoke about infrastructure, flooding, drainage, water quality, and a fiscal impact analysis. He stated any residential development that comes in the city, is either required to pay a fee in lieu for the impacts that development has on our city's park system, to help improve the parks and ensure they provide the adequate services that our residents have come to expect or they're required to dedicate parkland. He stated the applicant has proposed the dedicated parkland, which would represent a value they're giving up, in which case the parks fee in lieu would be zero dollars. He stated if a fee in lieu was required, it can vary from about half a million dollars to just over \$1 million. He stated it's a Planning Commission determination.

Council Member Scroggin moved to allow five more minutes for staff presentation. Council Member Turk seconded the motion. Upon roll call the motion passed unanimously.

Jonathan Curth spoke about annual revenues, calculations based on taxes and the total cost benefit. He stated most of our city services are based on a per capita ratio. He stated it is fairly safe to say that anything that includes more non-residential development, has a more positive impact on the city's coffers. He stated some of the limitations is that tangible costs are very difficult to come up. He stated these are typically applied to environmental impacts. He stated there are always more variables that can be considered and in this instance the city could get additional fees from permitting, but without knowing what the buildings will look like, we don't know what those

numbers are. He stated you have to make assumptions and when you make these kinds of analyses there are challenges in that. He stated staff recommends approval and the Planning Commission recommend approval of the annexation by a vote of 7 to 1. He stated staff recommends approval of the PZD. He stated the Planning Commission recommends approval of the PZD with a vote of 7 to 1. He spoke about the recommended conditions associated with the PZD. He stated he does have a potential additional recommendation of approval that he hope reflects some of the concerns expressed by the Council and indicated by the preliminary wetlands report, which is a condition of approval, could be included that a Corps of Engineers jurisdiction determination be required at the time of development submittal.

Alli Quinlan, Flintlock Limited stated the project boundaries for the annexation are shown on the 2040 Future Land Use map. She stated the area is well within the planned growth area of Fayetteville, as adopted by the City Council last year. She spoke about receiving a recommendation of approval from the Environmental Action Committee with new additional recommendations for conditions of approval, above and beyond the city standard development codes. She spoke about the city versus county requirements. She stated with the support of the Planning Commission, staff and the Environmental Action Committee, the development of this property within the City of Fayetteville is the best path forward for responsible development of the property. She spoke about housing costs and demographics. She stated the development proposal before Council protects the best parts of this soil around Hilton Creek and provides for additional preserved open space and water filtration of the Copper Creek run-off before it enters Hilton Creek. She stated the storm water from this development will be treated in its own pond, in addition to the park area. She stated the proposed park area dedication has been strongly supported by the neighbors and advocates for the water quality of Lake Fayetteville. She stated the Planning Commission, Engineering Department and Environmental Action Committee all express support of the proposed dedication. She stated the existing flooding and water quality issues in this watershed won't be solved by leaving the property unannexed or undeveloped. She stated development under the current PZD proposal allows for improvement of water quality, including treatment of uphill water currently being dumped into the county by an eroding channel by Copper Creek subdivision. She stated by annexing this land and accepting the proposed PZD, Council will ensure the land is developed to follow the best practices and all of Fayetteville's development codes.

Council Member Turk stated she would like for Peter Nierengarten to read what the Environmental Action Committee recommendation was. She stated she thinks the applicant mischaracterized the EAC's statement.

Peter Nierengarten, Environmental Director: I will read the recommendation from the January 25, 2021 Environmental Action Committee meeting. "Fayetteville Environmental Action Committee discussed the Chandler Crossing annexation and PZD at our meeting on January 25, 2021. While neither supporting or advocating against the proposed development itself, the Environmental Action Committee recognizes the positive environmental benefits that the city's development regulations will provide over the development in the county. Therefore, we support the annexation of this property into the City of Fayetteville. Further, we recommend that the development should prioritize stormwater management and quality in a way that provides maximum protection of and benefits to the downstream water quality of Lake Fayetteville.

Additionally, we support the permanent creation of open space in this development, to provide ecosystem services, whether through the dedication of city parkland or through private open space dedications. Finally, the Environmental Action Committee recommends that the developer provide floodplain and wetland delineation during the preliminary plat process, Thank you for your consideration.”

Council Member Bunch: How was this presented at EAC? We've been told it was approved, and then it wasn't. What were they asked to vote on, as far as this development?

Peter Nierengarten: There was a presentation by the developer and the Planning staff. There was an extensive discussion by the Environmental Action Committee members on the proposed development. The Environmental Action Committee members worked together to draft the language at the meeting, and then we worked via email to tailor the language to their specifications and get the final verbiage that was sent out to you all.

Council Member Turk: There was a bit of confusion about whether they should make a recommendation or not, whether they were allowed to make a recommendation or not. How would you characterize their decision? Is it neutral? That is what I got out of the conversation. I wasn't there toward the latter part, but I watched the discussion on video later.

Peter Nierengarten: In developments like this coming to the EAC, are not normal. There's not a standard process or protocol for these types of discussions at the Environmental Action Committee. Our Environmental Action Committee members are not well versed in the city's development process. It's a lot of information coming at them. It was an attempt to try to help them understand the global scale, in terms of our development, where this project sits and the developments impact. I think the recommendation was rather agnostic on the development itself but did recognize the benefit of having the property annexed into the city with the additional environmental protections it would provide for the property. That was part of their recommendation.

The City Council received seven public comments regarding this ordinance.

Michele Lang, 3322 East Zion Road stated she would like to show two short videos of flooding on Zion Road.

Council Member Turk moved to allow a citizen to show a video. Council Member Kinion seconded the motion. Upon roll call the motion passed unanimously.

Michele Lange shared a brief video and spoke about flooding issues.

Mayor Jordan asked Mrs. Kari Griggs if she was in favor of the annexation.

Kari Griggs: I know that property is going to be developed. I want to have someone give me some assurance it's not going to add to the damage to our property, like the pond put in at Copper Creek. We've got to address the flooding before we do any other projects that add to it or could potentially add to it. The videos show the severity of it and why these neighbors are so concerned.

Mike Wiederkehr, 365 North Olive Avenue and Chair of the Environmental Action Committee stated the committee was completely neutral on the development itself. He stated the committee was clearly in favor and supportive of the annexation because of the additional oversight that it would afford the City of Fayetteville for reviewing any development that took place. He stated the only other concerns we shared was the Parks Department staff concern about the acceptance of open space that was too near an existing park versus being able to have the payment in lieu of open space to locate a park where it would be more effective. He stated our committee was neither in support of, or opposition to any development and just recommending in favor of the annexation.

Mayor Jordan: You are saying the committee was neutral as far as the development, but was okay with the annexation?

Mike Wiederkehr: Correct.

Council Member Scroggin: Where is the flooding that we saw on these videos? Is it upstream or downstream from the proposed development?

Jonathan Curth: The videos that were shown were immediately downstream from this property, which does include what comes from the Copper Creek stormwater ponds but does not include what comes from the Stonewood subdivision ponds.

Council Member Scroggin: Does the Botanical Gardens flood?

Jonathan Curth: I have heard from their Director, yes, but I don't have any data on that. Mr Brown, do you have any records on that?

Chris Brown: I don't have any specifics on that particular location.

Council Member Scroggin: If we turn down an annexation or a PZD, solely based on flooding that's coming already, is there any liability to us? Is that arbitrary and capricious?

City Attorney Kit Williams: If you would turn down the annexation because of flooding, certainly, that would be no problem for the city from a litigation point of view. You have very wide discretion when it comes to annexation. If you do approve the annexation, you still have a lot of discretion in zoning. You could look at flooding that seems to be occurring on that property. I think some of that is near the creek. You can look at if whether the land is proper for this kind of density that's being requested by the applicants and if this is something you believe is in the best interest of Fayetteville. You can determine if it fits within our long range plan and is it going to be compatible to the neighborhood. There are many different things you can look at in a zoning. Generally, your decision in zoning is going to be upheld. We have yet to lose a zoning case in the 20 years I've been City Attorney. As long as you have reasonable grounds for making your zoning decision, whether it's yes or no, then the Court will uphold that. The decision would have to be arbitrary and capricious and unreasonable for the courts to reverse the zoning decision by the City Council.

Council Member Scroggin: I absolutely agree this should be in the city. There's clearly issues. Our standards would better suit that than what's happening in the county. We need to have some longer conversations about the detention ponds that are already in place upstream that have nothing to do with this current development. Even when we're having massive flooding, there's basically no water in the detention ponds by Copper Creek. They're not really doing what they're supposed to, and we've got to solve that. I believe in nodes. I don't think that you want to build a city up and out with sprawl, and this is definitely one of our nodes. I think this location makes sense. On Crossover there's a lot of people that would be interested in driving both to Springdale and Fayetteville from here, instead of having the traffic go in one direction. I think some people think we're voting between no development and this development. Something is going to get built here and hopefully we use our design standards to give this PZD a good look. We didn't approve a rezoning on Crossover recently, to save a pond and that pond is gone. So, we said okay neighbors, we are going to agree with you and not do this up-zone. Now, we have way less detention at that site, than if we improved it and actually had maybe redone a detention there. We're unfortunately not looking at the difference between this being a farm or this be 400 units. It's 400 units, or something else that can go there. The applicant is interested in these coming together. If we're going to vote for the annexation, I hope we also vote for the PZD.

Council Member Petty stated he feels more or less the same way that Council Member Scroggin just described. He stated development under city controls will undoubtedly be better across all metrics. He stated it's been a dream of his to take a comprehensive plan to restore Lake Fayetteville to more natural water quality. He spoke about the proportional impact that may be associated with this property in the watershed, how much of the geography was taken up by this property and what some of the sources of the existing pollution are. He stated there's a very small portion of the total watershed that's contributing to our water quality issues with Lake Fayetteville and with some of the flooding that is ongoing. He stated this project as proposed may mitigate some of the water quality issues we are seeing on the lake today. He stated he supports the annexation and is leaning towards that as well with the PZD.

Council Member Bunch stated she has read every email and has tried to respond to a lot of them. She stated she's concerned about Lake Fayetteville as well. She stated the complaints seem to be if we don't annex this or approve this PZD, all the problems go away or they don't all go away, but they don't get any worse. She stated that's not necessarily true. She stated something is going to be built on this property. She stated she'd like to see it stay farmland, have a stream with native plants, but doesn't see how they are going to get that in its current form. She stated she is concerned that if we don't annex this, it will be built in the county and the city won't have control over it.

Council Member Kinion: I agree about the annexation. It is important to go ahead and annex this property, so it will be developed with the City of Fayetteville codes. We have protections that are not offered in the county. We did get a lot of correspondence regarding this. Some people thought that if it was annexed, the PZD would have to go along with it and there was some confusion. I am going to vote for the annexation. I still have some concerns about the PZD.

Council Member Gutierrez stated 56% would be the developed area and 44% would be an open space area. She stated there has been an incredible effort with the developer and everyone working together to try to find what is the smart balance of the use of the land and the responsible use of

storm water management. She stated water flooding are very real concerns. She stated something could be developed there, that could be worse. She spoke about a responsible approach from the city. She stated if there are things in Copper Creek or Stonewood that need to be repaired, then we should go back and visit that, but she doesn't think this is going to fix those issues. She stated she would love to see those neighbors come into the city, so we can address the flooding issues and look at the problem as a whole. She stated the annexation is going to be an overall benefit. She stated it won't solve the water issues, but if we can continue to work on it, we can get to a solution. She stated she will be supporting the annexation for water quality and better stormwater management.

Council Member Bunch: Based on Council Member Gutierrez's calculation about the annexation versus the PZD, what are we talking about as far as open space on both of them?

Jonathan Curth: Planning area three on that proposal isn't going to be necessarily conventional open space. Some of it is intended for detention. Planning area three is intended to be just over 36 acres and the other two planning areas where the preponderance of the development is intended is about 46 acres.

Council Member Bunch: 46 acres of open space?

Jonathan Curth: No, of developed area. 46 acres between Planning area one and two, which is the non-residential piece near Crossover and the residential piece that represents the majority of the area south of Hilton Creek.

Council Member Bunch: Nothing will be built on the detention pond, but what about the rest of it? How is that designated and can that designation change in the future if it's open area now? 10 years down the road, could it be turned into something else?

Jonathan Curth: If other uses were proposed, that would typically require the City Council to amend the PZD. If it's something that's not currently allowed, so that would require going back to Planning Commission and coming back to the City Council.

Council Member Bunch: In Planning area one we start from Crossover Road and we go back. In Planning area three, on the back part of the property, which is the annexation part, there is some open area. Is that where detention ponds are or is that going to be open parkland area?

Jonathan Curth stated it's intended to be a mixture of both. He displayed his screen to illustrate the area and briefly described the area.

Council Member Turk: The Planning Commission will have the decision about whether Planning areas three is parkland or not. Is that correct?

Jonathan Curth: Yes, that is correct. The way our Unified Development Code is established is that if parkland dedication is intended and if it's one of our larger classifications of development, it has to go to the Parks Board for a recommendation. That recommendation is taken to the Planning Commission who has the ultimate determination.

Council Member Turk: I thought, if the developer wanted to dedicate parkland, rather than a fee in lieu, the city had to take that. I thought that was the advice of the City Attorney.

City Attorney Kit Williams: There's one caveat to that. It has to be acceptable parkland. We have turned down parkland before when it was underneath large electrical utility lines. If every year, the land that's being proposed for parkland floods badly, I think the Planning Commission would be justified in saying some of the land that was being proposed for parkland is not acceptable because of frequent flooding.

Council Member Turk stated this is a very complex situation. She stated she is disappointed with the City of Fayetteville for allowing this flooding to residents, not the county residents, although they shouldn't have to endure flooding either. She stated it seems like if the problem is with these two developments that the city approved and had built, even though they were under old standards, we should be good citizens and retrofit and remediate that problem right now, before we do anything. She stated if she were a homeowner in that area, she would be horrified to have to figure out what her budget was to deal with the flooding every spring. She stated the city needs to fix that immediately. She stated our codes are far superior than Washington County, but if the annexation comes along with the development, then there's some serious problems. She stated those 6.2 acres in Planning area one, most of that is already within the city. She stated it's not part of the annexation at all, and only Planning area one gives you a positive above a one, in terms of the cost benefit analysis. She stated the other 40 acres in Planning area two, where you have less than one, you have less benefit to the city, that's part of the annexation. She stated we already have the money generator already within the city property. She stated it was estimated over 880 residents and 150 full time employees. She stated it's hard for her to see 150 full time employees in those areas. She stated the annexed property contains nine wetlands identified by the FTN report. She spoke about filtration and run-off. She stated there are wetlands and the developers are going to have to fill those in with truckloads of dirt and fill. She spoke about Lake Fayetteville being in bad shape. She stated it's so much easier to prevent contamination than to clean it up. She spoke about a serious phosphorus and E.coli problem. She stated she is unsure about whether to annex or not, but she is not unsure about the development. She stated the development is too large, it's outside of the Mayor's box, it's not compatible with the surrounding neighborhoods and there's no inclusion of any anticipated stormwater cost. She stated this is a very complex area that needs a lot of help.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-2. Council Members Kinion, Petty, Scroggin, Bunch, Hertzberg, and Gutierrez voting yes. Council Members Turk and Jones voting no.

Ordinance 6416 as Recorded in the office of the City Clerk

PZD-2020-002 (3435 E. Zion Rd./Chandler Crossing SD): An ordinance to approve a Residential Planned Zoning District entitled R-PZD 2020-0002 for approximately 81.89 acres located at 3435 East Zion Road. *At the January 7, 2021 City Council meeting this item was left on the first reading. At the January 19, 2021 City Council meeting this item was amended and left on the First Reading. At the February 2, 2021 City Council meeting this item was left on the First*

Reading and tabled for two weeks. At the February 18, 2021 City Council meeting this item was left on the First Reading and tabled until the March 2, 2021 City Council meeting.

Council Member Gutierrez moved to suspend the rules and go to the second reading. Council Member Scroggin seconded the motion. Upon roll call the motion passed 7-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, Gutierrez, and Jones voting yes. Council Member Petty was absent during the vote.

City Attorney Kit Williams read the ordinance.

Mayor Jordan: Since staff has already presented the previous item, I'm going to allow the applicant to have 10 minutes. If there are questions for the staff, we will open it up for that.

Alli Quinlan, Flintlock Limited stated while the commercial areas are mostly in the area of the city that are not being annexed, it's important to note those areas are not currently zoned to allow that development. She stated part of the PZD passing is providing for that profitable development area, as a whole. She stated we've had some arguments against the annexation for that reason, but part of the PZD itself we've had broad support from city staff and a number of studies that have been required as part of this review process.

The City Council received 7 public comments regarding this ordinance.

Council Member Scroggin: We are on the second reading. I don't think we will be voting on this tonight. Having a PZD and a plan is better than having no plan and rezoning to something like an RSF-4. I hope a lot of our conversation now and then maybe in two weeks is geared on trying to make this PZD better. I really like PZD's. It's like you're buying a car and you get to look at the engine and start looking at stuff. I hope we have a conversation on improving this, if we have reservations about approving the PZD.

Mayor Jordan: Would you like to hold it on the Second Reading?

Council Member Scroggin: Yes.

Council Member Bunch: A lot of people talk about the property tax of Planning area one, which has the most diversified use. The most commercial possibility in it would be the moneymaker for the city. They talk about the property taxes going to Springdale schools. I'd like to remind people, there are subdivisions and students that live in Fayetteville that do go to Springdale schools. When we have tax dollars that go to another school district, usually we have citizens and students that are going to that school district as well. We want education to be good in the entire area. We talk about the value of the land and the property taxes generated by the land and where they go. It will be a great influence when we have housing in there, and we will get a substantial amount of sales tax revenue from these homes. Some of the programs in our city are funded by sales tax dollars, such as transportation and parks. It's not just the property tax income.

Devin Howland, Director of Economic Vitality spoke about sales tax collections. He stated anywhere in Arkansas, we're going to see sales tax heavy, just with low property tax values. He

stated revenues are going to Springdale School District, but it's in the Springdale and Fayetteville District and Fayetteville does get a portion of property taxes. He stated our tax collections are very strong compared to what many economists and modelist say.

Paul Becker, Chief Financial Officer spoke about specific uses of what the city uses sales tax for. He stated our sales tax is on many programs. He stated it's 60% of the General Fund. He stated it helps to fund the Parks and some of the park programs. He stated 40% of the one penny and sales tax, which is roughly between \$8 and \$9 million dollars, funds ongoing capital programs. He stated sales tax funds many things in the city. He spoke about sales tax helping to pay off our bond issues. He stated sales tax is very important in the funding of the city, both in operations and capital.

Council Member Bunch stated we need to consider the property tax, but it's not only the property tax that's important when we think about development. She stated it's not just that the property tax goes to Springdale schools, because we have many students in Fayetteville, especially in this area where we have a Springdale and Fayetteville overlap, as far as schools.

Council Member Turk: Could you tell us how much the city annually spins on stormwater repairs and maintenance? How much has the city estimated they need to keep up with the current stormwater issues that we are experiencing today?

Paul Becker: Off the top of my head, I can't answer you. We looked at that during the study we talked about for a potential stormwater utility. I know Chris Brown worked on that.

Susan Norton, Chief of Staff: Chris Brown and Alan Pugh are both here and can speak about that. The Stormwater Utility Study is still underway.

Paul Becker: Council Member Turk, allow me to try to address the difficulty in that. It's scattered through many different funds. Part of it is in transportation. Part of it is in the Capital Improvement Fund. We have a bond issue for drainage. You're talking about the annual maintenance number and it was calculated, but I don't want to come right off the top of my head, in case I'm wrong.

Chris Brown, Public Works Director: I don't have those specific numbers. I think it's obvious we're woefully underfunded. The bond program did allow us to catch up on a few of our very large critical infrastructure needs. From an operational standpoint, we're maybe at 10% of the funding level that we really need to fully fund and do some of the things the study has identified we could be or should be doing.

Alan Pugh, Staff Engineer: Chris, I don't have maintenance in particular broken out of that, but it's about \$1.5 million annually we spend today, depending on the various options that were selected. Those ranged in price up to somewhere in the neighborhood of about \$4 million. Council Member Turk, as we continue that conversation, hopefully here in the next couple of months we can get some more accurate data for you.

Council Member Turk: Thank you. You use the \$4 million dollars as where you think you might land, but there's various scenarios of what would be charged to the residents if this were passed. What is the high end number of what it would take to retrofit the detention ponds, do annual

inspections, maintenance, and all those kinds of things that are rolled into that big dollar number? Council Member Bunch took us down the path of sales tax, but I want to illustrate we're so far behind in our stormwater fees. We might even have to create a utility fee to catch up and with this development, it will add more to the need if that is passed.

Alan Pugh: I hesitate to guess at those or go off of my memory because it may be incorrect. I apologize that I don't have those numbers directly in front of me. As far as the detention and retrofits, it did add quite a bit of capital into the program, if we were going to do that in mass. Option A, early in the program was about \$3.5 million. Option B, which included those detention and retrofits was about \$8 million. As a committee, we settled on a blended option between those two, which landed around the \$4.5 million dollar range. It did include quite a bit of CIP. It wasn't as robust in the detention and retrofits as the full Option B was. You could be approaching \$8 million dollars if we started selecting everything that we wanted to do.

Council Member Turk: Is that \$8 million, annually or is that a total amount?

Alan Pugh: That is annually.

Council Member Turk: If we got to the \$8 million, that would deal with all those detention failures and retrofits to bring it up to the current City Code. Is that correct?

Alan Pugh: Correct. That was spread out in the capital program, which was about a 15 to 20 year program.

Council Member Scroggin: One of the reasons we're having such difficulty paying for stormwater and transportation in a lot of these issues, is the lack of density we've been building in. It doesn't bring in the property taxes that's needed to pay for the infrastructure. There's a lot of cities that end up almost in a race, where they have to approve more low density developments, so they can pay for their previous low density developments. You want to increase your tax base in both sales tax and property taxes in an area so you can pay for that infrastructure. A solution to an issue is the original issue and you end up in this massive circle.

Council Member Gutierrez stated looking at the future for this property on how things are developing and with climate change, she wants to have a very responsible way to have this developed. She believes they are going in the right direction. She stated she isn't convinced it's in the best possible form but knows they will get to that as they compare the studies with what needs to happen. She spoke of being concerned about Mr. Anthony, who is a citizen, living in the elbow. She spoke about density to help prevent sprawl and improve the water quality. She spoke about integrating more of the mounds. She spoke about wetland regulations and jurisdictions. She spoke about protecting people's property as best we can.

Council Member Kinion: As we go forward, I have appreciated the insights on the PZD. We do have low impact development guidelines that were approved by City Council about eight years ago. This is such a sensitive area. I'm a little bit disappointed there is not a utilization of the guidelines we have. This is going to impact one of the impaired lakes we have in the area that should be cherished and that we would do anything to get it healthier. I'm having a lot of struggle

looking at the different information we have received. I've been on the Water Sewer & Solid Waste Committee for 11 years. I've learned a lot about stormwater management, and this is a critical decision. It has to be considered with a very critical eye towards the real science behind the runoff into this watershed, going into Lake Fayetteville. I would like to see this be developed responsibly and it's going to be developed one of these days. I'm glad we got it annexed, so we can use some of the authority of the city. At this point, I don't see the PZD is meeting the criteria I would expect in a high density development in this area.

This ordinance was left on the Second Reading.

Amend §161.22 Community Services: An ordinance to Amend §161.22 **Community Services** to move Use Unit 8, Single-family dwellings and Use Unit 9, Two family dwellings from Permitted Uses to Conditional Uses. *At the February 2, 2021 City Council meeting this item was left on the First Reading. At the February 18, 2021 City Council meeting this item was left on the Second Reading.*

Council Member Gutierrez moved to suspend the rules and go to the third and final reading. Council Member Scroggin seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director: This was former Council Member Smith's item. The only thing I have to add is that I received a couple public comments today from developers in the city that have CS zoned properties. Previously, we heard from a gentleman who develops on the Northwest side of town, who was in favor of the amendment. These two are on the South and Southwest sides of Fayetteville and they had reservations about the amendment. They had concerns they rezoned to CS specifically to have the flexibility to develop single and two family uses by right.

The City Council received one public comment regarding this ordinance.

Council Member Kinion: I agree with whoever said they have Community Services property because they wanted the flexibility. This is not just about the west side of town. It's about developing property throughout the city. The opportunity for development is as much the market, as it is the restriction of the market. I don't like more restrictions when it comes to property management. There has to be some restrictions. Community Services, specifically and Urban Thoroughfare, specifically are two components of our code that do allow a broad range of development. If you don't want a broad range of development, then we shouldn't approve that zoning. We knew what the zoning was whenever we approved that. The people that are living in their home and built out in that area, love their home and we shouldn't vilify it. There's room for everyone, such as new urbanism and traditional. With this further restriction, we don't allow the opportunity for that flexibility. We are trying to make it an opportunity for developers to feel confident they can live and build in Fayetteville and we're not going to change the rules on them in the middle of things. We've had such a tremendous amount of growth. A lot of the property

that's been purchased, has been purchased under the current zoning regulations we have. If you look at the history of Fayetteville, we have the history of changing the rules. I can't support this.

Council Member Scroggin: When we talk about options, it's important we look at the options of the clients. The client doesn't get to choose, when the builder is specifically building one type, which is what's happening on the west side of Fayetteville. I didn't write the ordinance for CS and clearly, we wrote it wrong. We put in a massive amount of infrastructure over on the west side of Fayetteville for higher density. Density that is way higher than single family and we've wasted that money. We don't have the infrastructure for the density, but now over here we've got way more infrastructure than density and that's hurting sales tax and property taxes. When they buy in west Fayetteville, they feel like they don't have the jobs over there. They don't have the things to go too and they have to drive somewhere. I understand developers feel they may be cheated out of this, but the average citizens don't have options over there. It's basically single family or they have to pay \$300,000 to \$500,000 for something in east Fayetteville.

Council Member Turk: The issue with west Fayetteville is that we don't have those commercial nodes. That's not about building single family dwellings. That's about the commercial developers not choosing to build a commercial node over there. If we really wanted to have commercial buildings, we would not have rezoned those properties that were originally zoned for commercial. That is a big shortcoming of west Fayetteville right now. I'm hopeful in the future, there will be some commercial development over there, and we will be able to have that node in the neighborhood where people can walk if they choose. When I was running for City Council, I knocked on all those doors out there. People were happy where they were living. Their issues were just like the rest of the city. They didn't want any more development because the traffic was so bad. That was the number one feedback I received.

Council Member Gutierrez stated while canvassing in Ward 1, she heard the same comments as Council Member Turk. She stated people are concerned about traffic and bringing amenities within the neighborhoods is a great way to solve that. She stated when we have amenities sprinkled through neighborhoods, we don't have to drive so far for a job or to take care of errands. She spoke about not being on the Council when CS and UT were created as zonings. She stated we learned how they came to be used and maybe they weren't used as how we envision, but maybe that was how the original Planning Commission did envision. She stated creating a less chance for people to have to drive, is a great way to reduce traffic. She spoke about incentivizing commercial development in the nodes. She stated she was in support of the ordinance.

Council Member Petty stated one of the things that's frustrating is when we talk about changing the rules. He stated if we're talking about single family, there are a fair amount of people who think we're trying to end single family or we think you're a bad person, if you live in a single family house. He stated he lives in one in the middle of Downtown, right where we need the most houses of anywhere in the city. He spoke about developers who specialize in single family structures, who are going to find a way of meeting the Planning Commission's conditions. He stated this is gently nudging the wheel towards different outcomes. He stated it's not his intention to characterize single family structures as wrong, but they require more energy, more space, more pavement, and more rooftop. He stated it is resource consumption and it is City Council's job to plan for what that means for the future. He spoke about the city needing more of a mix. He stated maybe we were

taking the wrong approach from the beginning and we shouldn't be restricting how many households can be in a building, like we do now. He stated maybe it should be about single structure zoning and we should end single family definitions, as we know it.

Council Member Bunch: My mind can be changed, but on this particular issue, I'm still leaning toward my original assumption that I don't want to take out single family. I can think of all sorts of different types of single family that are much denser than what we have out there now. I'm not willing to add another layer of regulation on this. I don't feel like you've made the argument to me that this has to be done at this time. It was brought up that it took three years to get to this. Why wasn't it brought forward three years ago, instead of now? I am not sold that we need to make this change.

Council Member Petty: I don't want to try and change your mind anymore. It's important to acknowledge that we kind of learn as we go. This might be one of the examples of that. I have the mindset that as long as we got the rules right, the market would respond and do what's right. I had more of an assumption then, than I do now, that the market is a little bit less imperfect than I think today.

Council Member Bunch: When we talk about what can be allowed in CS zoning, without going to the Planning Commission, there's a lot of opportunity there that maybe it's not being utilized because developers aren't familiar with it enough or they haven't been encouraged enough to use that. I'm not in favor of adding a different level of regulation. With the CS zoning, it gives a lot of opportunity there.

Council Member Scroggin: One of the reasons this wasn't looked at, is a lot of the land that was developed, was the RSF-4 and NC. It was getting closer to the CS. Now, CS is going to start getting developed in the same pattern that the RSF-4 and NC was developed. Then, those services people out there could use, aren't getting built. That's one of the reasons it wasn't probably looked at three years ago.

There was a brief clarification about a yes vote or no vote on the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance failed 4-4. Council Members Petty, Scroggin, Gutierrez, and Jones voting yes. Council Members Kinion, Bunch, Turk, and Hertzberg voting no. Mayor Jordan did not vote.

This ordinance failed.

RZN-2020-027 (1673 & 1675 N. Florene St./Hermez-Hernandez): An ordinance to rezone that property described in rezoning petition RZN 20-027 located at 1673 and 1675 North Florene Street for approximately 0.30 acres from R-A, Residential Agricultural to RI-12, Residential Intermediate, 12 units per acre. *At the February 18, 2021 City Council meeting this item was left on the First Reading.*

Council Member Gutierrez moved to suspend the rules and go to the second reading. Council Member Scroggin seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director: I don't have any new information on this request from two weeks ago.

Council Member Turk: I understand the applicant wants to put another apartment behind there. Has there been discussion about access and that sort of thing?

Jonathan Curth: There has not, at this point. It's been purely a rezoning request. Staff has not seen any detailed site plans or anything of that nature.

Council Member Turk: Do you have a slide that shows the overlays with the current zoning in that area? I think that's the only proposed zoning designation in the neighborhood or in the immediate neighborhood.

Jonathan Curth showed a map and stated if you head north on Florene Street, the light green properties on the map are all zoned RA and most of them are developed with duplexes, including the applicant's property.

Council Member Turk: There's an RI-U, just to the south of there, but all the other ones around there are RI-12. Is that correct?

Jonathan Curth: That is correct.

Council Member Kinion spoke about a street currently being connected in that area. He stated it may allow a better access to the back of this property.

Jonathan Curth: I think the connection being made, is to the south, between Steamboat and Dorothy Jeanne.

Council Member Kinion: I was thinking it might impact this development.

Council Member Turk: Some of my concerns are although the zoning looks similar, the size of that and in compatibility with the other properties that are directly around it. We heard from at least one citizen at the last meeting, talking about the drainage problems. I definitely have concerns about rezoning that property.

Council Member Gutierrez: Three stories are, Conditional Use and two stories are, Permitted?

Jonathan Curth: That is correct.

Council Member Gutierrez: The setbacks will potentially not match the other houses. Correct?

Jonathan Curth: That's difficult to assert in this area, given the widely varying zoning districts. The houses that are zoned agriculturally still, yes, it'll be a very different setback. Those agricultural setbacks and our agricultural zoning are very large. They are 35 feet from the front property line and from the rear and 20 on the sides, whereas the requesting RI-U zoning district has a build to zone, which you see on many of our residential districts from pulling any new building or additions to buildings towards the street and five feet on the sides and 20 on the rear.

Council Member Turk: I don't know how many of my colleagues are familiar with this area. It might be helpful if we took a tour of the neighborhood.

Council Member Kinion and **Council Member Gutierrez** stated they would be interested in a tour.

Mayor Jordan: I assume we are going to hold it on the second reading and take a tour. Is the applicant available to get online to speak? I would like to hear from them.

Susan Norton, Chief of Staff: She is trying, but not able.

The City Council received one public comment regarding this ordinance.

This ordinance was left on the Second Reading.

Amend §157.03 Annexation and Zoning Map Amendments: An ordinance to amend §157.03 **Annexation and Zoning Map Amendments** in Chapter 157 **Notification and Public Hearings** to clarify that hearings before the Planning Commission are only required for private party petitions for annexations and amendments to the zoning map. *At the February 18, 2021 City Council meeting this item was left on the First Reading.*

Council Member Turk moved to suspend the rules and go to the second reading. Council Member Hertzberg seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: I brought this to the City Council because it's always been my desire to maintain as much power and discretion for the City Council, as the state law allows. The state law does allow the City Council to amend a zoning request or zoning map, just by a majority vote without having hearings or other notifications. It's not done very often, but sometimes you'll have a zoning request brought up here and the City Council and sometimes the applicant will decide they'd rather have it not exactly the way it was presented before. They would like to add an amendment to it and the City Council should be able to do that and pass it right then, and not have to send it back to the Planning Commission for a public hearing. That's what our procedure has been, but I found this provision within the Unified Development Code, which was not clear. I thought it could in some ways conflict with that power of the City Council. This is why I've drafted this ordinance to clarify Section 157.03. It only applies to a normal, private rezoning request and

not to a zoning request that City Council is doing. I recommend you pass it to maintain your statutory power.

Council Member Gutierrez moved to suspend the rules and go to the third and final reading. Council Member Jones seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Jordan: Kit, thank you for bringing this forward.

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

Ordinance 6417 as Recorded in the office of the City Clerk

Public Hearing:

Public Convenience and Necessity to the Eclectic Bee, LLC d/b/a Pedal Pub Fayetteville: A resolution to grant a Certificate of Public Convenience and Necessity to the Eclectic Bee, LLC d/b/a Pedal Pub Fayetteville for the operation of up to ten (10) pedal carriages in the City of Fayetteville.

Mike Reynolds, Chief of Police gave a brief description of the resolution.

Amber Sinclair, Applicant: I started on this adventure probably two years ago. I've been working with city staff Devin Howland, Blake Pennington and a couple other people within the city to try and get this started. It started with changing the ordinances and adding pedal carriages to that. It's a very robust company and resources that I have.

Council Member Turk: I applaud your entrepreneurial quest. It's a great innovative idea. Why up to 10 pedal carriages? It seems like quite a bit and I'm guessing you haven't had one operational during the pandemic. Is that accurate?

Amber Sinclair: Correct. We haven't had anything operational during the pandemic. I definitely wanted to wait until more people were vaccinated. The plan was going on the right path. I'm asking for 10 at this moment, so there is room for growth. I will be starting with two because that's part of the plan I have with Pedal Pub. When you start booking tours, the public drives my demand. Once we start growing, I want to be able to act fast in order to compensate what the public wants.

Council Member Turk: Would there be any lesser number you would be amenable to? I'm a proof of concept person. If your growth turned out the way you anticipate it, the Council would be open to expanding that. Starting off with 10 is quite high.

Amber Sinclair: There wouldn't be 10 physically here right away, but that number is always negotiable. I'm more than willing to work with the city, Police Department and Transportation

Department to find the best needs that suit our area. If you're not comfortable with having 10 right away, I am flexible on that. I like to keep in mind the idea of growth, in order to be able to transition quickly, in order to compensate for the changes in the future.

Council Member Turk: I would like to amend the resolution to read, providing up to 6 Pedal Pub carriages, rather than the 10.

Mayor Jordan: The amendment is 6 pedal carriages instead of 10?

Council Member Turk: Correct.

Council Member Petty: It may not seem like a major amendment, but I'm not going to support it. I don't think we need to review this, if her business is successful. Our agendas are long enough.

Council Member Turk moved to amend the resolution by decreasing the carriages from 10 to 6. Council Member Scroggin seconded the motion. Upon roll call the motion failed 3-5. Council Members Kinion, Turk, and Gutierrez voting yes. Council Members Petty, Scroggin, Bunch, Hertzberg, and Jones voting no.

Council Member Petty moved to approve the resolution. Council Member Jones seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 81-21 as recorded in the office of the City Clerk

New Business:

Support Lake Fayetteville Improvements: A resolution to support improvements to Lake Fayetteville's water quality and to create a healthy lake ecosystem.

Council Member Turk gave a brief description of the resolution. She spoke about cleaning up Lake Fayetteville due to the many problems. She stated to allow the lake to degrade, to the point that it is right now, is remiss of us. She spoke about the harmful algal blooms. She spoke about scientific information to help improve the process. She stated this resolution is asking for funds to hire a competent outside contractor to start the planning and strategic design.

Council Member Scroggin: Thank you, Council Member Turk for bringing this forward. I started asking people six months ago if we were going to be able to swim in Lake Fayetteville. After hearing Council Members Petty's statistics, I don't know that I'm ready to swim, just yet. We definitely need to make some changes. I think I heard you say there's money involved in this.

Council Member Turk: It's asking for a competent contractor to be hired and probably put out as an RFP. There will be some money that has to be allocated in order for this to fully take effect. We had discussion last time about what the cost estimate was. I threw out \$200,000. I don't know if there's another number out there, but somewhere in that ballpark. It can't be done for free. This is just to get the ball rolling.

Council Member Scroggin: I guess an ordinance would come back to us later.

Council Member Turk: Whatever the proper vehicle is.

Council Member Scroggin: I support this Thank you.

Council Member Petty thanked Council Member Turk. He stated restoring the quality of Lake Fayetteville has been on his mind for a while. He spoke about applying for a grant years ago, but the city wasn't awarded the grant. He stated looking at the watershed maps, a majority of the runoff that's entering the lake is not under our jurisdiction. He stated if we were to hire somebody on our own, we'd get a report with a bunch of action items and at the top would be find a way to coordinate with Springdale, because we won't accomplish what we need to do without them. He stated he is going to vote for this tonight but would like to see the study jointly funded with Springdale, so we have the partners involved to implement the action steps. He stated if Springdale came back with a hard no and wouldn't work with us, that would change his opinion on the budgeting up front. He stated he wants to partner with Springdale from the very beginning to ensure measured success at the end.

Susan Norton, Chief of Staff: Staff and I met this morning. We were talking in general about the different work that's gone on over the years. There were lots of different folks who had data and reports. One of the reports we were talking about was the Clear Creek study. There are a lot of findings already. We were thinking about making recommendations to you all, based on some of those findings and helping to prioritize. We will have to cost it out but get some help for analysis of some data that's already been acquired. Alan Pugh is on the line. He has some information about our partnership with Springdale in the past. We both spent some funds on the Clear Creek assessment.

Alan Pugh, Staff Engineer stated his venture into water quality at Lake Fayetteville started about 10 years ago with the City of Springdale. He stated Springdale is concerned about water quality and Clear Creek because that's the stem that impacts them the most. He spoke about Springdale being concerned about water quality in Lake Fayetteville. He stated there have been a lot of studies done. He spoke about the problems in Lake Fayetteville coming from sediments and the phosphorus balance of those sediments. He spoke about construction site run-off and streambank erosion. He spoke about splitting 50/50 the match for grant dollars to the USDA with the City of Springdale to look at Clear Creek as a whole. He stated we do need support, and some buy in from other entities, such as City of Springdale and Washington County. He stated the Illinois River Watershed Partnership has already reached out to both of us and are attempting to set up some initial meetings for that discussion. He stated it is important to consolidate the information we have today. He stated he could see the focus of this study being more on implementation.

Council Member Petty stated he would be thrilled to get some implementation guidance, especially if we were receiving it jointly with another party, such as the City of Springdale. He spoke about infiltration areas at the at the top of the lake and some kind of program that repairs and controls the stream banks. He spoke about the city owning and controlling important environmental assets.

Alan Pugh stated the studies that have been done, especially the Beaver Watershed District and their Watershed Management Plan, does include some facets of controlling pieces of property that are unique and critical to their water quality.

Council Member Turk: The gist of that was to get the ball rolling, and to build off of those studies and develop an implementation plan. It's critical that Springdale and Washington County are partners in this. I would hope if there's reluctance on their part, Fayetteville would still continue to pursue cleaning up Lake Fayetteville.

The City Council received 5 public comments regarding this ordinance.

Council Member Gutierrez moved to approve the resolution. Council Member Scroggin seconded the motion. Upon roll call the resolution passed 7-0. Council Members Kinion, Petty, Scroggin, Bunch, Turk, Gutierrez, and Jones voting yes. Council Member Hertzberg was absent during the vote.

Council Member Turk thanked her colleagues for supporting the resolution.

Resolution 82-21 as recorded in the office of the City Clerk

TLG Peterbilt: A resolution to authorize the purchase of three Peterbilt refuse trucks from TLG Peterbilt of Fort Smith, Arkansas for the total amount of \$1,027,766.00, pursuant to a Sourcewell Cooperative Purchasing Contract, and to approve a budget adjustment.

Sara Glenn, Fleet Operations Superintendent gave a brief description of the resolution. She stated these items have passed at the Equipment Committee. She stated Council Member Turk had requested photos of these types of trucks and are now included in the packet.

Council Member Turk: Thank you for including those. It helped me understand why they cost so much.

Sara Glenn: I spoke with my Director, Terry Gulley and Chris Brown. We talked about possibly presenting to an agenda sometime on how we developed our point system and how we go over that for all of our vehicles for all the new Council Members.

Council Member Turk: That would be very interesting. Thank you.

Council Member Scroggin moved to approve the resolution. Council Member Turk seconded the motion. Upon roll call the resolution passed 6-0. Council Members Kinion, Petty, Scroggin, Turk, Gutierrez, and Jones voting yes. Council Member Bunch and Hertzberg were absent during the vote.

Resolution 83-21 as recorded in the office of the City Clerk

Hugg & Hall: An ordinance to waive competitive bidding and approve the purchase of a Toyota Forklift from Hugg & Hall Equipment Company for the Fleet rental pool in the total amount of \$37,734.00 plus applicable taxes and freight charges.

City Attorney Kit Williams read the ordinance.

Sara Glenn, Fleet Operations Superintendent gave a brief description of the ordinance. She stated this is the only item they could find in this size of forklift that has a certain safety feature. She stated anytime this item gets unstable, either backwards and forwards or side to side, it automatically stabilizes so it cannot be tipped over. She spoke about the importance of this safety feature.

Council Member Gutierrez moved to suspend the rules and go to the second reading. Council Member Kinion seconded the motion. Upon roll call the motion passed 7-0. Council Members Kinion, Petty, Scroggin, Bunch, Turk, Gutierrez, and Jones voting yes. Council Member Hertzberg was absent during the vote.

City Attorney Kit Williams read the ordinance.

Council Member Gutierrez moved to suspend the rules and go to the third and final reading. Council Member Kinion seconded the motion. Upon roll call the motion passed 7-0. Council Members Kinion, Petty, Scroggin, Bunch, Turk, Gutierrez, and Jones voting yes. Council Member Hertzberg was absent during the vote.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Council Members Kinion, Petty, Scroggin, Bunch, Turk, Gutierrez, and Jones voting yes. Council Member Hertzberg was absent during the vote.

Ordinance 6418 as Recorded in the office of the City Clerk

Amend Ordinance No. 2740: An ordinance to amend Ordinance No. 2740 to ensure that transportation customers are treated equally to customers of natural gas for the fees they pay to Black Hills Energy.

City Attorney Kit Williams read the ordinance.

Paul Becker, Chief Financial Officer gave a brief description of the ordinance.

Council Member Gutierrez moved to suspend the rules and go to the second reading. Council Member Scroggin seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: I would like to thank Black Hills Energy for bringing this to our attention. I had no idea customers got gas from a third party and then use the Black Hills Energy lines. This makes it much fairer. Now, they're going to pay for the transportation costs, which are inherent in the money I pay to the natural gas company. I think it's only fair to do this.

Council Member Gutierrez moved to suspend the rules and go to the third and final reading. Council Member Turk 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 7-0. Council Members Kinion, Petty, Scroggin, Turk, Hertzberg, Gutierrez, and Jones voting yes. Council Member Bunch was absent during the vote.

Ordinance 6419 as Recorded in the office of the City Clerk

RZN 2020-028 (East of W. Michael Cole Dr & W. Wedington Dr./Kidder): An ordinance to rezone that property described in rezoning petition RZN 20-028 located east of West Michael Cole Drive and South of West Wedington Drive for approximately 5.00 acres from R-A, Residential Agricultural to RMF-18, Residential Multi family, 18 units per acre.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director gave a brief description of the ordinance. He stated staff was not able to find in favor of the applicant's recommendation and we recommend denial. He stated while there was no public comment at the Planning Commission meeting, there was a petition received by staff and submitted to the Planning Commission and on to the Council. He stated it was signed by several dozen residents who are opposed to the request. He stated their concerns included the potential for additional traffic, negative drainage impacts, the capacity of the water and sewer system to handle any more development, damages to property values, and adverse impacts on those agricultural uses that remain in the area. He stated there were frustrations with the significant amount of the construction that has been occurring. He stated the Planning Commission denied the request by a vote of 7 to 1. He stated the applicant indicated they would entertain the possibility of amending their rezoning request to something that staff and the Planning Commission would be more amenable, but a vote to table the item to afford the applicant that opportunity failed and the Planning Commission vote to deny carried forward.

Justin Jorgensen, Applicant: Our original request was the RMF-18 and through further conversation with the Planning staff and the developers, we would like to change the request to an RI-U with some NS-L at the corner. It sounds like that's what they could support in our conversations with them. We're open to many ideas. The developers have numerous different patterns they can develop this. We went to the Planning Commission and all we want is a conversation on a lot of these things. We didn't get much of that at Planning Commission and requested to table the item and got denied that request. We are looking for more conversation of what people think could go there and change the request as necessary.

Council Member Scroggin: Since they've changed what they are asking for since their appeal, this could be denied, and they could bring it back to the Planning Commission. Is that correct?

Jonathan Curth: That is correct. The Unified Development Code does prohibit bringing an exact same request back before the Commission within a year, unless there's a reason to justify it being heard again. Procedurally, this could be brought back before the Planning Commission as a completely revised request within a year.

Council Member Scroggin: Since our average meeting time is starting to approach 5 to 7 hours, we're seeing too many of these appeals. Hopefully, we can take care of this, deny it, and they can come back to the Planning Commission and have the conversation. We've got a City Plan 2040 and staff does a good job of following it. They should have something that staff is okay with and go through that route.

Council Member Petty: Another option would be the applicant's request and vote on that right here at Council. Either way, we're going to be dealing with this in meetings. Potentially fewer if we deal with it directly, other than sending it back to Commission for it to come back to us again.

City Attorney Kit Williams: There are two major options the City Council has. It could be referred back to the Planning Commission. The other option would be to amend it pursuant to what the applicant now requests. However, we've got to have exhibits to do that. We've got to have a map and legal descriptions. If we're going to go in that direction, the applicant will need to bring us that so we can have a proper ordinance.

Jonathan Curth: Council Member Petty, we have not received that exhibit.

Council Member Petty: We can either deny this or wait two weeks for all that to be pulled together. It doesn't seem like there's much to talk about, other than those two things.

Council Member Kinion: Can we hold it, rather than deny it? Is that what we can do, while they get their stuff together?

City Attorney Kit Williams: You would either send it back to the Planning Commission, refer it back, not deny it, or you would leave it on this reading and let them get the proper exhibits together. Then we can draft the proper ordinance for you all to consider, if you want to amend to that.

Council Member Kinion: It sounds like they didn't have much conversation on this at the Planning Commission. I would like to hold it and see what they can pull together in two weeks.

Council Member Turk: I feel we should send it back and go through the proper channels. I'd like to have the Planning Commission review the entire packet, as well as staff, before it comes back to City Council. I prefer we make them go back through the whole process, so there's plenty of information and we're not circumventing some of the usual steps we take.

City Attorney Kit Williams: If you want to refer it back to the Planning Commission, there needs to be a motion to refer it back to the Planning Commission for further study. Then, we'll see it

when the Planning Commission acts on it, one way or the other. If you don't want to do that, you'd vote against that motion and leave it here and try to resolve it at the next meeting when we have proper exhibits.

Council Member Turk moved to send the ordinance back to the Planning Commission. Council Member Bunch seconded the motion. Upon roll call the motion failed 3-5. Council Members Scroggin, Bunch, and Turk voting yes. Council Members Kinion, Petty, Hertzberg, Gutierrez, and Jones voting no.

There was a brief discussion about leaving it on the First Reading.

Council Member Scroggin: If we go to RI-U, is that the same issue we have on Ruppel? They want housing and they're going to get housing in something that allows multiple things. It's the same request, other than it is form based. Correct?

Jonathan Curth: That's certainly a possibility. Both the RI-U and NS-L zoning districts allow similar residential uses. The big difference being that Neighborhood Services allows nonresidential uses. There are tools to address that. I don't know if those are ones the Council could ask for from an applicant, as far as restricting or limiting residential uses in certain parts of the request.

City Attorney Kit Williams: We cannot ask.

Jonathan Curth: Correct. To the applicant's point, I think their hope was they would receive some degree of direction on something the Council could support on this matter before they went back and drew an exhibit and legal descriptions.

Council Member Scroggin: I think it is the same thing with a new name, but we'll talk about that in two weeks.

Council Member Petty: Legal descriptions in a simple map are not hard to pull together. We could have taken an action tonight. Next time this happens, maybe we could anticipate a little bit more, starting the discussion with a proposal that's actionable and not just a request for an informal talk.

This ordinance was left on the First Reading.

Bid #21-21 & Bid #21-22 Flintco, LLC: A resolution to award Bid #21-21 and authorize a contract with Flintco, LLC in the amount of \$2,374,520.00 for the construction of Fire Station No. 8, to award Bid #21-22 and authorize a contract with Flintco, LLC in the amount of \$2,510,225.00 for the construction of Fire Station No. 9, to approve a project contingency in the amount of \$150,000.00 for each project, and to approve a budget adjustment - 2019 Firefighting Facilities Improvements Bond Projects.

Wade Abernathy, Bond Projects and Construction Manager gave a brief description of the resolution.

Brad Hardin, Fire Chief: Thank you Mayor and Council for supporting us in the bond and the citizens for passing it.

Council Member Gutierrez: It's awesome they are going for LEED silver. Thank you to everyone who is working toward that.

Mayor Jordan: Very awesome projects.

Council Member Gutierrez moved to approve the resolution. Council Member Kinion seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 84-21 as recorded in the office of the City Clerk

Announcements:

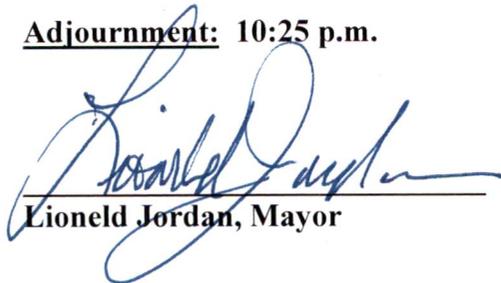
Susan Norton, Chief of Staff spoke about the Spring Bulky Waste Cleanup and the Boston Mountain Solid Waste household hazardous waste mobile trailer. She stated all the details are on the city website.

City Council Agenda Session Presentations:

Sales Tax Report by Paul Becker

Energy Report by Peter Nierengarten

Adjournment: 10:25 p.m.


Lioneld Jordan, Mayor


Kara Paxton, City Clerk Treasurer

