

**FAYETTEVILLE CITY COUNCIL
REGULAR MEETING MINUTES
CITY HALL COUNCIL CHAMBER
MARCH 26, 2012
7:00 P.M.**

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Wade Fowler (District 8); James W. Arp, Jr. (District 9)

Others Present:

Dale E. Iman, City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Renner Eberlein, Assistant City Attorney
Lisa Smith, Chief Financial Officer
Rusty Thompson, Engineering & Infrastructure Director
Scott Shuford, Development Services Director
Craig Harmon, Planner II
Rebecca Rogers-Carter, Management Services Manager
Jennifer Lowe, Public Information Officer
Pamela Megill, City Clerk
Members of the Press

1.0 CALL TO ORDER

Mayor Chavonne called the meeting to order.

2.0 INVOCATION

The invocation was offered by Council Member Fowler.

3.0 PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was led by Boy Scout Troop 82.

4.0 APPROVAL OF AGENDA

MOTION: Mayor Pro Tem Arp moved to approve the agenda with the addition of a consent item, Budget Ordinance Amendment 2012-8 (General Fund – Appropriation of \$237,500.00).

SECOND: Council Member Bates

VOTE: UNANIMOUS (10-0)

5.0 CONSENT

MOTION: Council Member Hurst moved to approve the consent agenda.

SECOND: Council Member Bates

VOTE: UNANIMOUS (10-0)

5.1 Authorizing a right-of-way deed to NCDOT for the NC 24/210 (Grove Street) and US 301/BUS 95 road improvement project.

5.2 Case No. P12-06F. Rezoning from SF-10 Single Family Residential District to OI Office and Institutional District, or a more restrictive district, on properties located at 3401, 3405, 3409, and 3413 Village Drive; 1802 Conover Drive; and 1803 Fargo Drive.

Containing 2.7 acres more or less and being the property of Kaavu LLC and Catherine and Billy Parker.

5.3 Case No. P12-09F. Rezoning from MR-5 Mixed Residential District to LC Limited Commercial District, or a more restrictive district, on property located on Whitfield Street at the intersection with the railroad tracks. Containing 0.36 acres more or less and being the property of Neil Grant.

5.4 Case No. P12-10F. Rezoning from HI Heavy Industrial District to LC Limited Commercial District, or a more restrictive district, on property located at 202 Eastern Boulevard. Containing 1.03 acres more or less and being the property of DJSMD LLC.

5.5 Response to request to sell City lot on Mann Street.

RESOLUTION TO CONVEY REAL PROPERTY TO THE ST. PAUL FULL GOSPEL BAPTIST CHURCH. RESOLUTION NO. 2012-012.

5.6 Phase 5 Annexation Areas 8 and 9.

RESOLUTION DECLARING COST AND ORDERING PREPARATION OF PRELIMINARY ASSESSMENT ROLL AND SETTING TIME AND PLACE FOR PUBLIC HEARING ON PRELIMINARY ASSESSMENT ROLL. RESOLUTION NO. 2012-013.

5.7 Acceptance and establishment of revised City Council Policy No. 155.1 on disposal of City-owned property.

Council at its March work session requested that Policy No. 155.1 regarding the disposal of the City's surplus property be revised to comply with North Carolina law and to ensure the dispositions were fair, non-discriminatory, served the general public welfare, and increased the ad valorem tax base.

5.8 Budget Ordinance Amendment 2012-8 (General Fund).

The amendment appropriated \$237,500.00 to fund additional anticipated expenditures in the City Manager's office. The source of funding for the amendment was a \$237,500.00 appropriation from the General Fund fund balance.

6.0 PUBLIC HEARINGS

6.1 Case No. P12-07F. Request for a Special Use Permit for medical office use within 100 feet of residential zoning in the Hospital Area Overlay on properties located at 3401, 3405, 3409, and 3413 Village Drive; 1802 Conover Drive; and 1803 Fargo Drive. Containing 2.7 acres more or less and being the property of Kaavu LLC and Catherine and Billy Parker.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and gave overviews of the current land uses, current zoning, surrounding land uses and zonings and 2010 Land Use Plan. He provided background information and stated the owners of the properties were requesting a Special Use Permit in order to build office buildings on the site. He stated the request was in compliance with the City's new Hospital Area Overlay Plan. He further stated the plan called for office use on the properties fronting Village Drive and adjacent parcels.

This is the advertised public hearing set for this date and time. The public hearing was opened. All speakers were sworn in by the City Clerk.

Mr. Peter Paoni, 2078 Ormilla Street, NC 28312, stated Mr. Scott Wilson would be representing the interests of himself and four additional citizens that had signed up to speak on this item. Mayor Chavonne inquired of the four citizens if they agreed to be represented by Mr. Wilson. They all replied in the affirmative.

Mr. Scott Wilson, 6326 Morganton Road, Fayetteville, NC 28305, appeared in favor and stated he was representing Mr. Paoni, Ms. Valli Kodali, Ms. Cathy Parker, Mr. Bill Parker, and Mr. Jimmy Parker. Mr. Wilson communicated to the Council he was the architect for the proposed medical health care facility. He provided a brief power point presentation.

There being no one further to speak, the public hearing was closed.

A brief discussion period ensued between Council members, Mr. Harmon, and Mr. Wilson.

MOTION: Council Member Hurst moved to approve the Special Use Permit on the properties located at 3401, 3405, 3409, and 3414 Village Drive; 1802 Conover Drive; and 1803 Fargo Drive.

SECOND: Council Member Bates

VOTE: UNANIMOUS (10-0)

6.2 The proposed street name change from Sherrerd Avenue to Myrtle Hill Lane.

Mr. Scott Shuford, Development Services Director, presented this item. Mr. Shuford explained that Gregory and Patsy Politowicz purchased the property at 309 Kirkland Drive. He stated the property was on the National Registry and was a Local Landmark known as Myrtle Hill. He stated this was the original home place of Mr. Robert Strange, a noted judge, author, militia officer, and U.S. Senator. He stated the Politowiczes submitted a petition requesting to rename Sherrerd Avenue to Myrtle Hill Lane. He stated there were only seven properties affected by the proposed name change. He stated the County Addressing Department followed the required

procedures by notifying the property owners of the request and received 100 percent approval by those owners of the name change. He stated the Historic Properties Manager, Mr. Bruce Daws, supported the proposed name change and indicated that Myrtle Hill Lane was the most appropriate name for the area.

This is the advertised public hearing set for this date and time. The public hearing was opened. Mrs. Patricia Politowicz, 309 Kirkland Drive, Fayetteville, NC 28301, appeared in favor and stated she would be the only resident affected by the change.

There being no one further to speak, the public hearing was closed.

MOTION: Council Member Davy moved to approve the street name change.

SECOND: Mayor Pro Tem Arp

VOTE: UNANIMOUS (10-0)

6.3 Quasi-Judicial Public Hearing - Subdivision waiver to allow a building permit to be issued on a parcel that does not abut a public or private street but is accessed via a recorded easement.

Mr. Scott Shuford, Development Services Director, presented this item and explained the City Code requirement that lots must abut a public or private street. He stated the lot in question was accessed via a recorded easement and was not abutting a street. He stated the owners of the property were requesting a waiver from the City Code in order to obtain a building permit to construct a single-family residence. He continued that the owners proceeded with preparing the property for construction and obtaining services from PWC believing that the easement provided sufficient access to the parcel. He stated if the City were to not accept the easement, the parcel would be unbuildable unless the owners created a flag lot or configured the property so that it abutted a street. He stated the owners had indicated they had been unsuccessful in acquiring the adjacent property. He stated even if additional land was acquired, the easement could still be used for accessing the property. He stated subdivision waivers require City Council to hold a quasi-judicial public hearing and that Council's decision should be based on sworn testimony and evidence presented at the public hearing. He explained in the past the City had not accepted easements as a means of accessing property as easements were agreements between property owners, not as permanent as fee simple ownership. He detailed the options and stated after reviewing the evidence presented, Council would have to make the following findings of fact:

- 1.Does the strict application of the ordinance's subdivision requirements result in practical difficulties and unnecessary hardships.
 - 2.Do the practical difficulties or unnecessary hardships result from topographical or other conditions peculiar to the land, and are not the result of the actions of the landowner.
 - 3.Granted the subdivision waiver will not destroy the intent of the requirements being waived.
- This is the advertised public hearing set for this date and time. The public hearing was opened. All speakers were sworn in by the City Clerk.

Mr. David Lee Zuravel, 138 Dick Street, Fayetteville, NC 28301, stated he was an attorney representing and speaking on behalf of the property owners, Mr. Anthony Mendez and Mrs. Emily Mendez, and also speaking on behalf of Mrs. Dee Hill, the mother to Mrs. Emily Mendez. He spoke as a proponent for the issuance of the waiver request. He requested Council approve Option 2 as recommended by the Planning Commission.

There being no one further to speak, the public hearing was closed.

A question and answer period ensued.

MOTION: Council Member Applewhite moved to approve Option 2 recommended by the Planning Commission as follows: Make all of the three findings in the affirmative as mitigated by the conditions required and approve the waiver with conditions allowing a permit to be issued for a parcel that does not abut a public or private street and that is accessed via an easement.

Conditions:

- 1.That the legal easement, which is recorded by deed, shall be platted and that the plat indicates that the City shall not be involved in any property owner issues relating to the

easement.

2. That the plat shall indicate that the easement allows for government access as needed.

3. That the garbage rollouts used by the residents of the parcels shall be rolled to Raeford Road for waste pickup by the City's Environmental Services.

SECOND: Council Member Fowler

VOTE: UNANIMOUS (10-0)

6.4 Amendments to certain requirements for educational facilities and child care centers in the Downtown (DT) zoning district, including separation requirements from certain uses.

Mr. Scott Shuford, Development Services Director, presented this item with a power point presentation. Mr. Shuford stated this was a staff-initiated code amendment to facilitate the establishment of educational facilities and child care centers in the downtown zoning district. He explained that current separation requirements eliminated consideration of these uses in much of the Downtown due to the proximity of an existing bar. He further explained the amendment would also establish traffic and access standards for these uses in the Downtown District. He stated educational facilities and child care centers were desirable uses in downtown areas as businesses may need to provide child care centers for their workers. He stated educational facilities were complementary to the surrounding uses. He stated the current standards would significantly limit where these uses could be located in the Downtown District. He stated the proposed text amendment had been shared with the Downtown Alliance and other downtown stakeholders and the Downtown Alliance submitted a letter of support. He reported the proposed text amendment was recommended by the Planning Commission and staff.

Discussion ensued following the presentation.

This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Ralph Huff, 1127 Offshore Drive, Fayetteville, NC 28305, appeared in favor and stated he was a member of the Capital Partners LLC. He stated on behalf of Capital Partners they had turned down a lot of businesses that wanted to turn the Capital Building into a night club.

Mr. Mark Adams, 822 Schley Drive, Fayetteville, NC 28314, appeared in favor and stated having a school in the downtown area would be beneficial for everyone and the location was ideal.

Mr. Art Duke, 151 Buckingham Avenue, Fayetteville, NC 28301, appeared in favor and stated he was a proponent for small businesses and believed having a school downtown was a great proposal.

Mr. John Thompson, 112 Anderson Street, Fayetteville, NC 28301, appeared in favor and stated he was the President of the Downtown Alliance and the Downtown Alliance was in favor of the amendment. He stated there were concerns for the safety of the children with regards to traffic and homeless people.

Mr. Karl Merritt, 4405 Biway Circle, Fayetteville, NC 28311, appeared in favor and stated he was a member of First Baptist Church. He expressed concerns that a proliferation of bars could appear without tighter restrictions.

There being no one further to speak, the public hearing was closed.

Further discussion of the item continued with regards to charter schools.

MOTION: Council Member Davy moved to approve the text amendment as recommended by the Planning Commission and City staff.

SECOND: Mayor Pro Tem Arp

VOTE: PASSED by a vote of 7 in favor to 3 in opposition (Council Members Haire, Bates, and Massey)

6.5 Case No. P12-04F. Special Use Permit for a major utility on property located at 8880 Cliffdale Road. Containing 1.9 acres more or less and being the property of Lumbee River EMC.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and gave overviews of the current land uses, current zoning, surrounding land uses and zonings and 2010 Land Use Plan. He provided background information and stated Lumbee River wanted to expand an existing facility which would require a Special Use Permit under the UDO. He

explained a setback of at least 100 feet from any lot line was required of major utilities in the AR District. He also explained only the new construction would fall under the UDO standards since this was an expansion of a utility that was in existence prior to the adoption of the UDO. He reported that all the proposed expansion was greater than 100 feet from any property line and there were no special buffering standards for utilities and no buffering requirements between the AR district and other single-family zoning districts. He also reported that the applicant has agreed to (1) plant additional evergreen trees to the south portion of the property to help increase the buffer with the adjoining residential use and (2) plant low-growing trees, such as Crepe Myrtles, and ground cover along the road frontage of the property. He stated the Zoning Commission and staff recommended approval based on the following standards:

- 1.The use would comply with all applicable standards in Section 30-4.C, Use-Specific Standards;
- 2.The use would be compatible with the character of surrounding lands and the uses permitted in the zoning district(s) of surrounding lands;
- 3.The use would avoid significant adverse impact on surrounding lands regarding service delivery, parking, loading, odors, noise, glare, and vibration;
- 4.The use would be configured to minimize adverse effects, including visual impacts of the proposed use on adjacent lands;
- 5.The use would avoid significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources;
- 6.The use would maintain safe ingress and egress onto the site and safe road conditions around the site;
- 7.The use would allow for the protection of property values and the ability of neighboring lands to develop the uses permitted in the zoning district; and
- 8.The use would comply with all relevant City, state, and federal laws and regulations.

This is the advertised public hearing set for this date and time. The public hearing was opened. Mr. David Ledford, 2730 Maiden Way, Linkerton, NC 28092, appeared in favor and stated he was hired by Lumbee River EMC as the consultant for the project and provided a site plan for each of the Council members.

Mr. Perry Cummings, 605 E. Fourth Street, Red Springs, NC 28377, appeared in favor and stated he was representing Lumbee River Engineering and requested the City Council approve the request for the Special Use Permit.

A brief question and answer period ensued.

There being no one further to speak, the public hearing was closed.

A brief question and answer period ensued.

MOTION: Council Member Fowler moved to approve the Special Use Permit with the provision of additional landscaping.

SECOND: Council Member Massey

VOTE: UNANIMOUS (10-0)

7.0 OTHER ITEMS OF BUSINESS

7.1 Uninhabitable Structures Demolition Recommendation

Mr. Bart Swanson, Housing and Code Enforcement Division Manager, presented this item with the aid of a power point presentation and multiple photographs of the properties. He stated staff recommended adoption of the ordinances authorizing demolition of the structures. He reviewed the following demolition recommendations:

906 Branson Street

Mr. Swanson stated the structure was a vacant residential home that was inspected and condemned as a blighted structure. He further stated the owner had not appeared at the hearing and therefore an order to repair or demolish the structure within 60 days was issued. He noted to date there were no repairs to the structure and the utilities were disconnected in July 2005. He further noted within the past 24 months there had been 20 calls for 911 service and nine code violations with pending assessments of \$535.80 for lot cleanings. He advised the low bid for demolition of the structure was \$1,500.00.

211 Davis Street

Mr. Swanson stated the structure was a vacant residential home that was inspected and condemned as a blighted structure. He further stated the owner had not appeared at the hearing and therefore an order to repair or demolish the structure within 90 days was issued. He noted to date there were no repairs to the structure and the utilities were disconnected in December 1999. He further noted within the past 24 months there had been no calls for 911 service and two code violations with no pending assessments. He advised the low bid for demolition of the structure was \$2,300.00.

407 Quality Road

Mr. Swanson stated the structure was a vacant residential home that was inspected and condemned as a blighted structure. He further stated the owner had not appeared at the hearing and therefore an order to repair or demolish the structure within 60 days was issued. He noted to date there were no repairs to the structure and the utilities were disconnected in December 2007. He further noted within the past 24 months there had been two calls for 911 service and six code violations with pending assessments of \$758.40 for lot cleanings. He advised the low bid for demolition of the structure was \$1,500.00.

505 Quality Road

Mr. Swanson stated the structure was a vacant residential home that was inspected and condemned as a blighted structure. He further stated the owner had not appeared at the hearing and therefore an order to repair or demolish the structure within 60 days was issued. He noted to date there were no repairs to the structure and the utilities were disconnected in November 2004. He further noted within the past 24 months there had been three calls for 911 service and five code violations with pending assessments of \$1,109.55 for lot cleanings. He advised the low bid for demolition of the structure was \$1,400.00.

608 School Street

Mr. Swanson stated the structure was a vacant residential home that was inspected and condemned as a blighted structure. He further stated the owner attended the hearing and an order to repair or demolish within 90 days was issued. He noted to date there were no repairs to the structure and the utilities were disconnected in July 2007. He further noted within the past 24 months there had been 25 calls for 911 service and 11 code violations with no pending assessments. He advised the low bid for demolition of the structure was \$1,300.00.

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA, REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO, OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY (906 BRANSON STREET). ORDINANCE NO. NS2012-011.

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA, REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO, OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY (211 DAVIS STREET). ORDINANCE NO. NS2012-012.

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA, REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO, OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY (407 QUALITY ROAD). ORDINANCE NO. NS2012-013.

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA, REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO, OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY (505 QUALITY ROAD). ORDINANCE NO. NS2012-014.

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA, REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH

RESPECT TO, OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY (608 SCHOOL STREET). ORDINANCE NO. NS2012- 015.

MOTION: Council Member Davy moved to approve the demolitions by adopting the ordinances.

SECOND: Council Member Bates

VOTE: UNANIMOUS (10-0)

8.0 ADMINISTRATIVE REPORTS

8.1 Monthly statement of taxes for February 2012.

2011 Taxes.....	\$1,125,520.92
2011 Vehicle.....	410,965.35
2011 Taxes Revit.....	6,585.04
2011 Vehicle Revit.....	161.22
2011 FVT.....	50,453.77
2011 Transit.....	50,453.84
2011 Storm Water.....	42,125.58
2011 Fay Storm Water.....	84,251.29
2011 Fay Recycle Fee.....	67,678.62
2011 Annex.....	0.00
2010 Taxes.....	19,398.68
2010 Vehicle.....	53,734.74
2010 Taxes Revit.....	11.40
2010 Vehicle Revit.....	50.56
2010 FVT.....	9,098.62
2010 Transit.....	9,098.61
2010 Storm Water.....	484.13
2010 Fay Storm Water.....	968.24
2010 Fay Recycle Fee.....	956.99
2010 Annex.....	0.00
2009 Taxes.....	3,680.52
2009 Vehicle	4,402.91
2009 Taxes Revit.....	0.00
2009 Vehicle Revit.....	0.00
2009 FVT.....	843.06
2009 Transit.....	843.05
2009 Storm Water.....	96.20
2009 Fay Storm Water.....	192.40
2009 Fay Recycle Fee.....	304.63
2009 Annex.....	0.00
2008 Taxes.....	2,394.72
2008 Vehicle	2,366.77
2008 Taxes Revit.....	0.00
2008 Vehicle Revit.....	0.00
2008 FVT.....	440.89
2008 Transit.....	305.19
2008 Storm Water.....	119.80
2008 Fay Storm Water.....	144.00
2008 Fay Recycle.....	252.00
2008 Annex.....	0.00
2007 and Prior Taxes.....	3,144.85
2007 and Prior Vehicle.....	4,591.58
2007 and Prior Taxes Revit.....	0.00
2007 and Prior Vehicle Revit.....	0.00

2007 and Prior FVT.....	972.14
2007 and Prior Storm Water.....	130.55
2007 and Prior Fay Storm Water.....	96.00
2007 and Prior Annex.....	275.60
Interest.....	56,883.48
Revit Interest.....	197.26
Storm Water Interest.....	1,327.24
Fay Storm Water Interest.....	2,553.06
Annex Interest.....	85.94
Fay Recycle Interest.....	2,103.64
Fay Transit Interest.....	1,841.81
Total Tax and Interest.....	\$2,022,586.89

9.0 ADJOURNMENT

Mayor Chavonne thanked Mr. Dale Iman, City Manager, for his leadership over the past five plus years and announced the City Council had accepted Mr. Iman’s resignation effective March 31, 2012.

There being no further business, the meeting adjourned at 9:13 p.m.