

**FAYETTEVILLE CITY COUNCIL
REGULAR MEETING MINUTES
CITY HALL COUNCIL CHAMBER
JULY 26, 2010
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) (arrived at 7:32 p.m.); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); Wesley A. Meredith (District 9)

Others Present: Dale E. Iman, City Manager
Doug Hewett, Assistant City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Janet Smith, Assistant City Attorney
Craig Harmon, Planner II
Jeffery Brown, Engineering & Infrastructure Director
Lisa Smith, Chief Financial Officer
Jackie Tuckey, Public Information Officer
Rita Perry, City Clerk
Members of the Press

• **CALL TO ORDER**

Mayor Chavonne called the meeting to order at 7:00 p.m.

• **INVOCATION**

The invocation was offered by Mayor Pro Tem Haire.

3.0 PLEDGE OF ALLEGIANCE

Following the invocation, the audience was led in the Pledge of Allegiance to the American Flag.

• **APPROVAL OF AGENDA**

MOTION: Council Member Meredith moved to approve the agenda.

SECOND: Council Member Bates

VOTE: UNANIMOUS (10-0)

• **CONSENT**

MOTION: Council Member Mohn moved to approve the consent agenda with the exception of Items 5.3, 5.4, and 5.8.

SECOND: Council Member Massey

VOTE: UNANIMOUS (10-0)

• **Approve CenturyLink five-year lease with option for five-year extension.**

The lease was approved pursuant to N.C.G.S. § 160A-272 which authorized the City Manager to enter into a five-year lease with an option for a five-year extension with CenturyLink beginning on October 1, 2010, with an annual rental rate of \$1,404.00, and further authorized him to do any and all things necessary to implement the lease consistent with the City Council's authorization.

• **Resolution to set a public hearing for September 13, 2010, to consider the Hope Mills Annexation Agreement.**

A RESOLUTION SETTING A PUBLIC HEARING DATE REGARDING THE FAYETTEVILLE-HOPE MILLS ANNEXATION AGREEMENT (PURSUANT TO N.C.G.S. § 160A-58.2).

RESOLUTION NO. R2010-066.

5.3 Pulled at the request of Mayor Pro Tem Haire.

5.4 Pulled at the request of Mayor Pro Tem Haire.

5.5 Case No. P10-24F. The rezoning of 0.44 acres at 8118 Cliffdale Road from C1P Commercial District to C1 Commercial District. Norris Asset Management Trust, owner.

5.6 Case No. P10-25F. The initial zoning of 0.97 acres of recently annexed property at 1500 Jossie Street to R6 Residential District. Eureka Chapel Missionary Baptist Church,

owner.

5.7 Condemnation for demolition of 1460 North Street, Pi-Marc Corporation.
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. ORDINANCE NO. NS2010-009.

5.8 Pulled at the request of Council Member Mohn.

5.9 Resolution to accept the State Grant and Capital Project Ordinance 2011-2 (Tree Clearing for Runways 10 and 4).

RESOLUTION. RESOLUTION NO. R2010-068A.

The resolution was adopted to accept the state grant and project ordinance to appropriate \$250,000.00 for the Tree Clearing at Runways 10 and 4 Project at the Airport.

5.10 Special Revenue Fund Project Ordinance 2011-3 (2010-2011 Take Me Fishing Program).

The special revenue fund project ordinance appropriated \$5,000.00 for the 2010-2011 Take Me Fishing program at Parks and Recreation.

5.11 Budget Ordinance Amendment 2011-1 and Capital Project Ordinance 2011-3 for Reid Ross track facility improvements.

Capital Project Ordinance 2011-3 and associated Budget Ordinance Amendment 2011-1 appropriated funding for improvements at the Reid Ross track facility. The \$176,404.00 improvement project would be jointly funded by Cumberland County Schools (\$88,202.00), the City (\$44,101.00), and the County Parks and Recreation District (\$44,101.00).

5.12 Tax refunds of greater than \$100.00.

<u>Name</u>	<u>Year</u>	<u>Basis</u>	<u>City Refund</u>
Murphy, Saludy (Payable to Vera Winn)	2004-2008	Duplicate Listing	<u>\$504.75</u>
Total			<u>\$504.75</u>

5.13 Bid Recommendation - Water Meters.

On July 14, 2010, the Public Works Commission approved the following bid recommendations for one-year contracts, with an option to extend the contract for additional one-year periods upon agreement of both parties, for the purchase of water meters. Bids were received June 29, 2010, as follows:

1. Miller Supply, Laurinburg, NC, low bidder, meeting specifications in the amount of \$412,360.00 for the purchase of approximately 6,500 5/8" x 3/4" water meters. Bids were solicited from four vendors with all four vendors responding. The bid received from Mainline Supply Company did not meet PWC specifications, therefore, the lowest bid meeting specifications was recommended.

<u>Bidders</u>	<u>Unit Cost</u>	<u>Total Cost</u>
Miller Supply (Laurinburg, NC).....	\$63.44.....	\$412,360.00
HD Supply Waterworks (Fayetteville, NC).....	\$73.53.....	\$477,945.00
Ferguson Waterworks (Raleigh, NC).....	\$92.77.....	\$603,005.00

2. Miller Supply, Laurinburg, NC, low bidder in the amount of \$94,724.00, for purchase of approximately 850 1" x 1" water meters. Bids were solicited from four vendors with all four vendors responding as follows:

<u>Bidders</u>	<u>Unit Cost</u>	<u>Total Cost</u>
Miller Supply (Laurinburg, NC).....	\$111.44.....	\$94,724.00
Mainline Supply (Fayetteville, NC).....	\$112.65.....	\$95,752.50
HD Supply Waterworks (Fayetteville, NC).....	\$127.11.....	\$108,043.50
Ferguson Waterworks (Raleigh, NC).....	\$140.40.....	\$119,340.00

5.14 Verizon Wireless First Amendment to License Agreement and Memorandum of First Amendment to License Agreement for the Cliffdale Road and Wilson Street sites.

The Public Works Commission entered into a License Agreement with Alltel Communications, LLC, d/b/a Verizon Wireless, for antenna attachments on the Cliffdale Road and Wilson Street water tanks. The amendments were necessary to replace the exhibits of the current agreements to reflect a new location of an expanded equipment shelter.

- **Budget Amendment #3 – Annexation Phase V - Project 1 Capital Project Fund for Fiscal Years 2007-2011; and Budget Amendment #2 – Fort Bragg Interim Water Service Project Fund for Fiscal Years 2007-2011 (PWC Financial Matters).**

On July 14, 2010, the Public Works Commission approved the following financial matters relating to the PWC Budget:

1. Amendment #3 – Annexation Phase V - Project 1 Capital Project Fund for Fiscal Years 2007-2011. The budget amendment reduced the utility installation cost by \$2 million and transferred it equally to the City and PWC General Fund Accounts. Interest income was also adjusted to the expected earnings.
2. Amendment #2 – Fort Bragg Interim Water Service Project Fund for Fiscal Years 2007-2011. The budget amendment reflected CLIN and pricing changes. The proposed amendment more closely reflected the expected outcome of the fund.

5.3 Case No. P10-21F. The rezoning of 0.13 acres more or less at 2212 Murchison Road from R5A Residential District to C1 Commercial District or to a more restrictive zoning classification (C1A recommended). Adrienne D Thorpe, owner.

This item was pulled by Mayor Pro Tem Haire.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed a vicinity map and gave an overview of the current land use, current zoning, surrounding land use and zoning, and 2010 Land Use Plan. He stated the Zoning Commission recommended approval of rezoning to C1A, which was a neighborhood commercial district.

MOTION: Mayor Pro Tem Haire moved to approve C1A rezoning.

SECOND: Council Member Meredith

VOTE: UNANIMOUS (10-0)

5.4 Case No. P10-22F. The rezoning of 3.62 acres at 719 Murchison Road from R5 Residential District to P2 Professional District. United Gospel Fellowship Covenant Ministries, owner.

This item was pulled by Mayor Pro Tem Haire.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed a vicinity map and gave an overview of the current land use, current zoning, surrounding land use and zoning, and 2010 Land Use Plan. He stated the Zoning Commission recommended approval of rezoning to P2.

MOTION: Council Member Davy moved to approve rezoning from R5 Residential District to P2 Professional District.

SECOND: Council Member Bates

VOTE: UNANIMOUS (10-0)

- **Resolution authorizing the execution and delivery of a financing agreement and deed of trust and related documents in connection with the financing of a new parking deck and related improvements for the City of Fayetteville, North Carolina.**

This item was pulled by Council Member Mohn.

Mr. Dale Iman, City Manager, presented this item and provided background information. He stated the estimated number of parking spaces in the Franklin Street Parking Deck would be 299. He stated PWC would contribute \$1,500,000.00 as a cash contribution toward the design and construction of the deck and the City would borrow the remaining \$5,950,000.00 through an ARRA Recovery Zone Economic Development Bonds (RZEDB) financing. He stated that based on Federal tax regulations for this type of financing, the City could only dedicate up to 10 percent of the financed parking spaces for "private use". He stated "cash funded" parking deck spaces would not be subject to the limitation. Mr. Iman stated as a result of the RZEDB financing regulations, the estimated number of parking deck spaces that could be dedicated to the R. C. Williams Building was formulated as follows:

- Based on \$1,500,000.00 cash contribution, 20.13% of the 299 spaces = 60.2 spaces
- In addition, based on RZEDB financed portion of the parking deck, 79.87% x 10% limitation x 299 spaces = 23.9 spaces
- Total estimated number of spaces that could be dedicated to the R. C. Williams Building was 60.2 spaces + 23.9 spaces = 84.1 spaces

Mr. Iman stated it was important to note that the number was subject to change. He stated the final number of spaces would depend on the final cost of the parking deck, actual number of parking spaces constructed, and amount borrowed through the RZEDB financing. Council Member Meredith inquired whether store fronts on the bottom floor of the parking deck were still a possibility. Mr. Iman responded this option would require further research.

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT AND DEED OF TRUST AND RELATED DOCUMENTS IN CONNECTION WITH THE FINANCING OF A NEW PARKING DECK AND RELATED IMPROVEMENTS FOR THE CITY OF FAYETTEVILLE, NORTH CAROLINA. RESOLUTION NO. R2010-068.

MOTION: Council Member Bates moved to adopt the resolution.

SECOND: Council Member Hurst

VOTE: PASSED by a vote of 7 in favor to 3 in opposition (Council Members Applewhite, Crisp, and Mohn)

6.0 PUBLIC HEARINGS

- **Case No. P10-16F. The rezoning of property located at 9271 Cliffdale Road from AR and R15 to R10. Virginia Newton Barefoot, owner.**

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed a vicinity map and gave an overview of the current land use, current zoning, surrounding land use and zoning, and 2010 Land Use Plan. Mr. Harmon stated the property was surrounded by R15 and AR Residential, R10 zoning was also near the property, and the existing subdivisions zoned R15 were built prior to the extension of public water and sewer to the area. He stated the Zoning Commission and staff recommended approval of the rezoning based on the following: (1) the 2010 Land Use Plan called for low-density residential for the property, R10 was one of the City's low-density districts; (2) the public utilities were available to the development; and (3) Cliffdale Road was a major thoroughfare, appropriate for reasonable access.

This is the advertised public hearing set for this date and time. The public hearing opened at 7:29 p.m.

Mr. Tim Evans, property owner representative, 2256 Cypress Lake Road, Hope Mills, NC 28348, appeared in favor and stated the applicant had addressed concerns from the resident located to the left of the subject property. He stated the developer had offered to donate the wetland areas.

Mr. Scott Brown, 409 Chicago Drive, Fayetteville, NC 28306, appeared in favor.

There were no speakers in opposition.

There being no one further to speak, the public hearing closed at 7:32 p.m.

Council Member Bates questioned whether a written agreement existed regarding the dedication of the wetlands. Mr. Harmon stated there were no restrictions and no determinations as to whether the area qualified as wetlands. Mr. Brown further stated the development would be required to meet the City storm water ordinance regulations.

MOTION: Council Member Applewhite moved to approve the rezoning.

SECOND: Council Member Meredith

VOTE: UNANIMOUS (10-0)

- **Case No. P10-23F. Appeal of a Zoning Commission denial. The rezoning of 2.04 acres of property at 6016 Cliffdale Road to C1P/CZ Commercial Conditional Zoning District. Phyllis K. Hemingway, owner.**

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed a vicinity map and gave an overview of the current land use, current zoning, surrounding land use and zoning, and 2010 Land Use Plan. He stated the area surrounding the property was almost completely residential. Mr. Harmon stated the Zoning Commission and staff recommend denial of the rezoning based

on the following: (1) the 2010 Land Use Plan called for low-density residential for the property, and the 2030 Vision plan supported retaining the residential character; (2) the property and most of the surrounding properties were already zoned and developed for low- to moderate-density residential uses; (3) the few properties not zoned for low-density residential were residential in form and used residentially or for small business use within the residential structure; and (4) although the C1P Commercial District was being conditioned down to a singular use, it was staff's opinion that a hotel was not an appropriate use for that part of Cliffdale Road; it would introduce an entirely different pattern of development with negative impacts on the neighborhood immediately behind the subject property. Mr. Harmon submitted a preliminary plat (Exhibit 6.2 Item A) and aerial photography (Exhibit 6.2 Item A), provided by the applicant, into the record (Hereby incorporated by reference and made part of these minutes as Exhibit 6.2 Item A and Exhibit 6.2 Item B).

This is the advertised public hearing set for this date and time. The public hearing opened at 7:48 p.m.

The following speakers appeared in favor:

NAME/ADDRESS	COMMENT SUMMARY
Tony Free, Developer 15 Waterview Drive New Bern, NC 28560	Stated he wanted to construct an extended stay facility.
Harry King 333 Morganton Road Fayetteville, NC 28305	Addressed traffic concerns.
Keith Allison Fort Bragg Road Fayetteville, NC	Stated this area needed development, houses in the area were deteriorated and the area was a low-rent district.
Amy Cannon, Daughter of Property Owner 611 Bluffside Drive Fayetteville, NC 28312	Stated the property was no longer suitable for residential zoning and addressed traffic concerns.

The following speakers appeared in opposition.

NAME/ADDRESS	COMMENT SUMMARY
Ralph Reagan 1006 Blatmore Place Fayetteville, NC 28314	Stated there was no reason to overturn the Zoning Commission's decision to deny the rezoning.
Glen E. Borg 1018 Amstead Avenue Fayetteville, NC 28314	Stated he was the owner of properties located at 1614 and 1618 Cliffdale Road and expressed his opposition.
Marion Cains 102 Lynnhurst Drive Fayetteville, NC 28314	Expressed concerns about traffic as the basis for his opposition.
James Clifton 1005 Cornish Street Fayetteville, NC 28314	Stated he was against the rezoning request.

There being no one further to speak, the public hearing closed at 8:12 p.m.

Mr. Tony Free, the developer, fielded questions regarding whether there would be a restaurant, bar, or lounge in the facility and questions regarding balconies, buffering, clientele, and rates. Mr. Free clarified that neither a restaurant, bar, lounge, nor balconies were not proposed and explained the buffering would be a six foot privacy fence lined by trees on the outer view. He stated there was a strong demand for this type of facility due to BRAC contracting, however, the facility would not be exclusive. He stated the average government per diem rate was \$65.00 nightly.

Council Member Applewhite requested those at the meeting in support of the rezoning who reside in the neighborhood to stand. Four individuals stood in response to the request.

MOTION: Council Member Meredith moved to send the case back to the Zoning Commission following an update of the tax records.

The motion died due to lack of a second.

Council Member Meredith questioned whether the notice requirements were met. Ms. Karen McDonald, City Attorney, explained the notice requirements and stated there was no evidence to substantiate that the requirements had not been met.

MOTION: Council Member Bates moved to deny the rezoning.

SECOND: Council Member Mohn

VOTE: FAILED by a vote of 5 in favor (Council Members Applewhite, Bates, Crisp, Haire, and Mohn) to 5 in opposition (Council Members Chavonne, Davy, Massey, Hurst, and Meredith)

MOTION: Council Member Meredith moved to approve C1P/CZ with conditions 1 through 6.

SECOND: Council Member Hurst

Council Member Mohn stated the facility was not exclusively for DOT contractors' use.

Council Member Applewhite stated this facility was in direct contrast to the harmony of the neighborhood and trees and a fence were an insufficient buffer to adjacent properties.

VOTE: FAILED by a vote of 5 in favor (Council Members Chavonne, Davy, Hurst, Massey, and Meredith) to 5 in opposition (Council Members Applewhite, Bates, Crisp, Haire, and Mohn)

- **Case No. P09-39F. Special Use Permit to allow the location of a wireless telecommunications tower on the property located at 2610 Dundle Road. Containing 0.584 acres. L.J. Bruton Living Trust, owner.**

Mayor Chavonne explained this item was a "limited public hearing" and a quasi-judicial matter which would require the speakers to be sworn in. He stated this was a public hearing limited for the purpose of considering the application and the packet materials, as well as the Zoning Commission and Appearance Commission's recommendations for approval. Mayor Chavonne clarified there would not be any further presentation by the applicant; however, members of Council were permitted to ask questions of the applicant and applicant's counsel. He stated the record and public hearing were not to be otherwise reopened.

All speakers and staff were administered the oath.

Ms. Janet Smith, Assistant City Attorney, presented this item and provided an overview. She stated the applicant, American Tower, filed a Petition for the decision to be reviewed by a Superior Court judge. She further stated the judge reviewed the certified record of the Council proceedings and the briefs of both parties, and heard oral arguments by counsel for the City and American Tower. She stated the Court ordered that the case be remanded back to the City Council with specific instructions that the Council review and consider the application for the Special Use Permit and related documents as evidenced in the record. She stated the Court's order further specified that no additional evidence in opposition to the application would be heard. Finally, she stated Council could ask the applicant and applicant's counsel questions. This is the advertised public hearing set for this date and time. The public hearing opened. The following speakers appeared in favor:

NAME/ADDRESS	COMMENT SUMMARY
Tom Johnson 101 Shannon Oaks Circle; Suite 100 Raleigh, NC	Appeared in favor and provided a summary of the request.
Graham Herring 1052 Grey Oak Drive Raleigh, NC	Appeared in favor and stated he evaluated the site regarding the impact to surrounding areas.

ave La Cava T&T Representative aleigh, NC	Wireless carrier to use the proposed tower.
evin Jackson Mobile Representative harlotte, NC	Wireless carrier to use the proposed tower

There were no speakers in opposition.

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

A question and answer period ensued regarding the determination of an adverse affect to a neighborhood process and the future look of the community as it related to additional towers.

MOTION: Council Member Crisp moved to approve with additional conditions 1 and 2 as stated in City Code Section 30-107(17). (1) prior to issuing a building permit, there be written confirmation, acceptable to the City, that there is an agreement that one or more providers will use the tower once built; and (2) the Special Use Permit becomes null and void if a building permit is not issued after two years from the date of approval of the request.

SECOND: Council Member Bates

VOTE: PASSED by a vote of 8 in favor to 2 in opposition (Council Members Haire and Meredith)

• **OTHER ITEMS OF BUSINESS**

7.1 Consider adoption of resolution authorizing condemnation to acquire right-of-way for the Ramsey Street Project.

Mr. Doug Hewett, Assistant City Manager, presented this item. He provided background information and briefed Council regarding the difficulties in acquiring the needed right-of-way for the project. He explained that NCDOT had bid the project and Highland Paving Company (a local contractor) was sent the notification of award letter by NCDOT on June 28, 2010; therefore, the project would be delayed should the necessary right-of-way not be acquired.

A RESOLUTION AUTHORIZING CONDEMNATION TO ACQUIRE CERTAIN PROPERTY. RESOLUTION NO. R2010-067.

MOTION: Council Member Bates moved to adopt the resolution as presented in the packet.

SECOND: Council Member Massey

VOTE: PASSED by a vote of 8 in favor to 2 in opposition (Council Members Haire and Meredith)

8.0 ADMINISTRATIVE REPORTS

8.1 Tax refunds of less than \$100.00.

<u>Name</u>	<u>Year</u>	<u>Basis</u>	<u>City Refund</u>
Daniels, Waverly	2007-2008	Illegal Tax	<u>\$28.03</u>
Total			<u>\$28.03</u>

8.2 City Clerk - Monthly statement of taxes for June 2010 from the Cumberland County Tax Administrator.

2009 Taxes.....	\$213,384.82
2009 Vehicle Taxes.....	371,802.25
2009 Revit.....	652.87
2009 Vehicle Revit.....	367.65
2009 FVT.....	46,752.56
2009 Transit Tax.....	46,747.57
2009 Storm Water.....	6,083.51
2009 Fay Storm Water.....	12,167.05
2009 Recycle Fee.....	12,835.37
2009 Annex.....	35.84

2008 Taxes.....	2,040.65
2008 Vehicle	9,109.80
2008 Revit.....	1.92
2008 Vehicle Revit.....	0.00
2008 FVT.....	1,582.84
2008 Transit Tax.....	1,297.16
2008 Storm Water.....	206.32
2008 Recycle.....	101.43
2008 Fay Storm Water.....	81.96
2008 Annex.....	0.00
2007 Taxes.....	1,465.72
2007 Vehicle	2,208.85
2007 Revit.....	0.00
2007 Vehicle Revit.....	0.00
2007 FVT.....	563.59
2007 Storm Water.....	72.08
2007 Fay Storm Water.....	48.00
2007 Annex.....	0.00
2006 Taxes.....	559.45
2006 Vehicle Taxes.....	1,464.19
2006 Revit.....	0.00
2006 Vehicle Revit.....	0.00
2006 FVT.....	253.75
2006 Storm Water.....	29.08
2006 Annex.....	59.70
2005 and Prior Taxes.....	426.54
2005 and Prior Vehicle.....	2,117.04
2005 and Prior Revit.....	0.00
2005 and Prior Vehicle Revit.....	0.00
2005 and Prior FVT.....	494.77
2005 and Prior Storm Water.....	84.00
Interest.....	24,071.57
Revit Interest.....	32.50
Storm Water Interest.....	437.90
Fay Storm Water Interest.....	713.35
Annex Interest.....	19.84
Fay Recycle Interest.....	746.39
Total Tax and Interest.....	\$761,119.88

9.0 ADJOURNMENT

There being no further business, the meeting adjourned at 9:00 p.m.