

**FAYETTEVILLE CITY COUNCIL
REGULAR MEETING MINUTES
COUNCIL CHAMBER
NOVEMBER 28, 2016
7:00 P.M.**

Present: Mayor Nat Robertson

Council Members Katherine K. Jensen (District 1); Kirk deViere (District 2); H. Mitchell Colvin, Jr. (District 3); Robert T. Hurst, Jr. (District 5); William J. L. Crisp (District 6); Larry O. Wright, Sr. (District 7); Theodore Mohn (District 8); James W. Arp, Jr. (District 9)

Absent: Council Member Chalmers McDougald (District 4)

Others Present: Douglas Hewett, City Manager
Karen McDonald, City Attorney
Jay Reinstein, Assistant City Manager
Cheryl Spivey, Chief Financial Officer
Scott Shuford, Planning and Code Enforcement Services Director
Tracey Broyles, Budget and Evaluation Director
Randy Hume, Transit Director
Craig Harmon, Senior Planner
Rob Stone, Engineering and Infrastructure Director
Victor Sharpe, Community Development Director
Jim Palenick, Economic and Business Development Director
Jane Starling, Deputy City Clerk
Pamela Megill, City Clerk
Members of the Press

1.0 CALL TO ORDER

Mayor Robertson called the meeting to order.

2.0 INVOCATION

The invocation was offered by Reginald Johnson, Pastor, My Father's House Christian Church.

3.0 PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was led by Mayor Robertson and City Council.

4.0 ANNOUNCEMENTS AND RECOGNITION

Mayor Robertson recognized and welcomed Mr. Charles Evans, Cumberland County Commissioner, to the meeting.

5.0 APPROVAL OF AGENDA

MOTION: Council Member Arp moved to approve the agenda.
SECOND: Council Member Wright
VOTE: UNANIMOUS (9-0)

6.0 CONSENT

MOTION: Council Member deViere moved to approve the consent agenda with the exception of Item 6.12, pulled for discussion and separate vote.
SECOND: Mayor Pro Tem Colvin
VOTE: UNANIMOUS (9-0)

6.01 Approval of Meeting Minutes:
September 1, 2016 - Special
September 6, 2016 - Work Session

September 12, 2016 - Regular
September 16, 2016 - Special
September 26, 2016 - Regular
October 10, 2016 - Regular

- 6.02 P16-29F. The rezoning of property from HI Heavy Industrial to LI Light Industrial on property at 2141 and 2089 Owen Drive, owned by Elizabeth Janet Parks and Edward Taliaferro Parks.

- 6.03 Rescind Demolition Ordinance - 1932 North Street Extension

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE
RESCINDING DEMOLITION ORDINANCE NO. NS2016-018. RESOLUTION NO.
R2016-077

- 6.04 Hurricane Matthew Disaster Assistance Agreement

Establishes an agreement between the State of North Carolina Division of Emergency Management and the City of Fayetteville to authorize Mr. Ray Oxendine, Treasurer, as the Primary Agent and Ms. Cheryl Spivey, Chief Financial Officer, as Secondary Agent to execute and file application for State or Federal assistance on behalf of the City of Fayetteville. The above named agents will be authorized to act for the City in all matters with the State of North Carolina and the Federal Emergency Management Agency pertaining to disaster assistance.

- 6.05 Approval of Municipal Certificates for Speed Limit revisions on Sapona Road

CERTIFICATION OF MUNICIPAL DECLARATION TO ENACT SPEED LIMITS AND REQUEST FOR CONCURRENCE. STATE ORDINANCE NO. 1071129 [Between 0.56 mile east of SR 2005 (Dunham Road) and 0.19 mile east of SR 2005 (Dunham Road)]. ORDINANCE NO. NS2016-034

- 6.06 Adoption of Capital Project Ordinance 2017-20 for Irrigation System Costs for the Owen Drive Median Project

Capital Project Ordinance 2017-20 will appropriate \$100,000.00 from the General Fund for costs to install an irrigation system in the median along Owen Drive from Eastern Boulevard to Walter Reed Road. The North Carolina Department of Transportation (NCDOT) is undertaking a median improvement project and, at the request of the City, the project will include landscaping and an irrigation system. The City's local commitment for the enhancements will be to reimburse costs incurred by NCDOT for the installation of the irrigation system and to also fund costs to connect to the water supply. The municipal agreement with the NCDOT will be forwarded for Council approval when it is available.

- 6.07 Uninhabitable Structures Demolition Recommendations

209 B Street District 2

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY 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. 209 B Street, PIN # 0437-93-2517. ORDINANCE NO. NS2016-035

1420 Granada Drive District 7

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY 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. 1420 Granada Drive, PIN # 9497-40-0789. ORDINANCE NO. NS2016-036

507 Murchison Road District 2

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY 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. 507 Murchison Road, PIN # 0437-37-4723. ORDINANCE NO. NS2016-037

877 W Orange Street District 2

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY 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. 877 W. Orange Street, PIN # 0437-59-5376. ORDINANCE NO. NS2016-038

103 Wiley Street District 2

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY 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. 103 Wiley Street, PIN # 0438-50-8024. ORDINANCE NO. NS2016-039

- 6.08 Authorize NCDOT Municipal Agreements Awarding Federal Transportation Alternatives Program Grants for Rosehill Road and Skibo Road Sidewalk Projects, Adoption of Capital Project Ordinance Amendments 2017-22, 2017-23, 2017-24, and 2017-25, and Adoption of Capital Project Ordinances 2017-21 and 2017-22**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE TO AUTHORIZE EXECUTION OF AGREEMENTS WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR ROSEHILL ROAD AND SKIBO ROAD SIDEWALK PROJECTS INCLUDING ACCEPTANCE OF GRANTS OF FEDERAL TRANSPORTATION ALTERNATIVES PROGRAM FUNDS. RESOLUTION NO. 2016-078

6.09 Request for Legal Representation of City Employees

Authorization from the City Council to provide legal representation for City employees in the matter of Aristolis Bennett and Aristacia Bennett, by and through Their Guardian Ad Litem Alfricka Bennett v. City of Fayetteville, et al. The employees were acting within the scope and course of their employment with the City when the alleged incident occurred.

6.10 Request for Legal Representation of a Council Member and City Employees

Authorization from the City Council to provide legal representation for Council Member H. Mitchell Colvin, Jr., in his individual and official capacities, and City employees Scott Shuford, Bart Swanson, and James Rutherford in the matter of NC Property Network, Inc. v. Mitch Colvin, et al. Council Member Colvin was acting within the scope and course of his duty as a member of the City Council and the employees were all acting within the scope and course of their employment with the City when the alleged incident occurred.

6.11 Approval of Modification of Lease Agreement for Festival Park Plaza Suite to Vetpride Services, Inc.

Vetpride Services, Inc., has been leasing an office space in the Festival Park Plaza building since September of 2010. The current lease expired October 31, 2016, and the tenant would like to extend the lease agreement for one year. The current rental rate is

\$2,809.25 monthly with an annual rental rate of \$33,711.00. The current lease expired October 31, 2016, and they wish to renew the lease for a one-year term to expire on October 31, 2017. This amendment has a new lease rate of \$2,974.50 monthly with an annual rental rate of \$35,694.00.

6.12 Hardball Capital Ballpark Development Service Agreement

This item was pulled from the agenda for discussion and separate vote by Council Member DeViere.

MOTION: Council Member DeViere moved this item be sent to the Baseball Committee for review and then be brought back before Council.

SECOND: Mayor Pro Tem Colvin

VOTE: UNANIMOUS (9-0)

7.0 PUBLIC HEARINGS

7.01 Consideration of a Substantial Amendment to the 2016-2017 Annual Action Plan for disaster recovery activities as a result of Hurricane Matthew.

Mr. Victor Sharpe, Community Development Director, presented this item and stated a public hearing is being held on this item to consider a Substantial Amendment to the 2016-2017 Community Development Annual Action Plan to reprogram funds to provide assistance for repairs to the homes of low-income residents who sustained damages from Hurricane Matthew. At the October 24, 2016, meeting, the Community Development staff briefed City Council on a proposal to establish the Disaster Recovery Housing Repair Program. Changes being made to the 2016-2017 Annual Action Plan require a Substantial Amendment to HUD for the use of the City's Community Development Block Grant (CDBG) and Home Investment Partnership (HOME) funds. The Substantial Amendment being proposed will reprogram identified funding for disaster recovery activities to meet unmet housing repair needs as a result of damage caused by Hurricane Matthew. Unmet needs shall be defined as those housing repair needs remaining after application and assistance provided by the Federal Emergency Management Agency (FEMA) and any privately owned insurances. HUD allows grantees the option of reprogramming its Community Development Block Grant (CDBG) and Home Investment Partnership Grant (HOME) funds for disaster recovery activities. We have requested and received approval for a waiver to expedite the public comment period from 30 days to 7 days. It is recommended that a Disaster Recovery Housing Repair Program be established that will offer grants up to \$5,000.00 for owner-occupants and a zero percent interest loan up to \$5,000.00 for investor-owners to assist with housing repairs. Existing Community Development housing programs currently available to residents that sustained damages from the Hurricane Matthew includes the Owner-Occupant Housing Rehabilitation Loan Program, Investor-Owner Housing Rehabilitation Program, Mobile Home Urgent Repair Program and the Emergency Home Repair Program. Eligibility for the proposed Disaster Recovery Housing Repair Program will be based on the applicant meeting HUD's income guidelines. This will apply to the owner-occupant and the tenant of the investor owner property. Applications will be processed on a "first-come first-serve" basis until the funding runs out. The screening process will include verification of damages caused by Hurricane Matthew that the applicant has applied for FEMA assistance and filed a claim for any applicable insurance.

Mayor Pro Tem Colvin asked what the criteria for the income levels are; would it be the property owner or the tenant. Mr. Sharpe responded the tenant would have to meet the income criteria.

Council Member DeViere asked if there is a window of opportunity to apply for this funding. Mr. Sharpe responded the program is a

first-come, first-serve basis and will remain open until the funding has been used.

Council Member Hurst thanked Mr. Sharpe for his timeliness in putting this program together, and asked how citizens would be notified of this program. Mr. Sharpe responded there will be a marketing of the program.

Council Member Wright asked when the funds would be available. Mr. Sharpe responded he would hope to be able to release some of the funding by mid-December.

Council Member Arp asked what kind of security we have on the loan. Mr. Sharpe responded the property would be used to secure the loan. Council Member Arp stated council should establish a cut-off date.

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

Ms. Bridget Smith Osbourne, 5137 Aftonshire Drive, Bronx, NY, appeared in favor and thanked the City for the debris cleanup in the Creeks Edge neighborhood.

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

Discussion ensued.

MOTION: Mayor Pro Tem Colvin moved to approve the Substantial Amendment to the 2016-2017 Annual Action Plan to reprogram funds from the CDBG, HOME and the General Fund to establish a Disaster Recovery Housing Repair Program.

SECOND: Council Member Arp

VOTE: UNANIMOUS (9-0)

8.0 OTHER ITEMS OF BUSINESS

8.01 Appointment of a Council Member to Serve a One-Year Term on the Economic Development Corporation, Board of Directors

MOTION: Council Member Wright moved to appoint Council Member Jensen to serve a one-year term on the Economic Development Corporation Board of Directors.

SECOND: Council Member Arp

VOTE: UNANIMOUS (9-0)

8.02 P16-24F. The rezoning of property from MR-5 Mixed Residential to LI/CZ Limited Commercial Conditional Zoning District, located at 2848 Enterprise Avenue, and being the property of John Degreef.

Mr. Craig Harmon, Senior Planner, presented this item with the aid of a PowerPoint presentation and stated the property in question is located on Enterprise Avenue, between light industrial (JD Vending Storage) and mixed residential (low-income housing) uses. In 2012, this same applicant rezoned the adjacent property to the west from a Heavy Industrial District to a Light Industrial District. Due to the proximity to residential development, it is staff's opinion that many of the uses allowed in the LI district are too intense. The owner has accepted the City staff's suggestion that the following uses be conditioned out of the table of allowed uses on this property.

1. Correctional facility
2. Passenger terminal, surface transportation
3. Adult entertainment
4. Parking structure
5. Parking Tractor Trailers etc.

6. Bar, nightclub, or cocktail lounge
7. Tattoo parlor/body piercing establishment
8. Flea market
9. Electronic gaming operation
10. Aircraft parts, sales, and maintenance
11. Automotive wrecker service
12. Transmission shop
13. Truck stop
14. Extractive Industry
15. Fuel oil/bottled gas
16. Heavy equipment servicing and repair
17. Laundry, dry cleaning, and carpet cleaning plants
18. Machine shop
19. Parcel services
20. Truck or freight terminal
21. Incinerator
22. Land application of wastes
23. Landfill, land clearing, and inert debris or construction debris
24. Landfill, sanitary
25. Recycling center
26. Tire disposal or recycling
27. Waste composting

On August 9, 2016, the Zoning Commission held a public hearing on this case. There was one speaker in favor and four in opposition. Those in opposition spoke of the compatibility issues between Enterprise Avenue and the adjacent single-family residential neighborhood. Most of those in opposition spoke about the loud noise and traffic that is already generated by the industries on Enterprise Avenue. The Zoning Commission and City staff recommend denial of the proposed rezoning based on:

1. Existing residential development surrounds the property on three sides.
2. The City's land use plan calls for medium density residential on this property.
3. Light industrial uses do not provide an adequate buffer to the existing residential uses.

Following the denial by the Zoning Commission, the applicant/owner filed an appeal to be heard by the City Council. On September 26, 2016, the City Council held a public hearing on this case. The applicant spoke in favor of the rezoning and two others spoke in opposition. Council Member McDougald moved to table this item to allow for both parties to continue negotiations toward a favorable outcome for both parties (owner and neighborhood residents), asking both parties to be reasonable. On November 2, 2016, Mr. Craig Harmon, Senior Planner, facilitated a community meeting between the owner of 2848 Enterprise Avenue and five of the surrounding property owners. Unfortunately, no resolution was reached between the applicant and the nearby residents. No Council members attended. Since case P16-24F is a conditional rezoning, Mr. Harmon encouraged the property owners in opposition to the rezoning to suggest additional conditions. The applicant has already conditioned out 27 of the uses allowed in the LI district and he expressed a willingness to consider conditioning out more uses that the opposition finds

objectionable. Those owners in opposition, however, did not wish to suggest any additional conditions. Mr. Henry Davis, who spoke in opposition at the City Council meeting, seemed to take the lead for those in opposition. He said that unless they knew specifically what would go on the property or unless the property was used for residential purposes the neighbors would remain in opposition. Mr. Degreef, the applicant, offered to install a wooden privacy fence between his existing business and the neighbors to lessen the visual impact of the cars that are in storage on his property. His existing business is not part of the rezoning in case P16-24F. He also asked if there was anything else that he could do at his existing business to help the neighbors out. After an hour of meeting, it was evident that the applicant and the surrounding property owners would not be able to come to any agreement or even settle on a middle ground.

MOTION: Council Member deViere moved to deny the rezoning from MR-5 Mixed Residential Zoning District to LI Light Industrial Zoning District, as presented by staff based on the the amendment not being consistent with the applicable plans because (1) the City's Land Use Plan calls for medium-density residential, (2) the uses on three sides of this property are incompatible with the proposed zoning, and (3) the proposed zoning is not reasonable and in the public interest because the proposed zoning does not fit with the character of most of the development in this area.

SECOND: Mayor Pro Tem Colvin

VOTE: PASSED by a vote of 8 in favor to 1 in opposition (Council Member Hurst)

8.03 Disaster Recovery Small Business Assistance Loan Program

Council Member deViere asked for this item to be discussed at a work session prior to taking a formal vote on this item.

MOTION: Council Member Wright moved to table this item to the December 5, 2016, work session.

SECOND: Council Member Mohn

VOTE: UNANIMOUS (9-0)

8.04 Request from Developers of Proposed Spring Hill Suites Hotel for Final Action on Tabled Request for Property Tax Grant-Back Economic Development Incentive

Mr. Jim Palenick, Economic and Business Development Director, presented this item and stated Naynesh and Manish Mehta, representing Five Points Hospitality, Inc., developers and owners of the 165-room Embassy Suites Hotel and 18,000-square-foot Conference Center on Lake Valley Drive, had earlier submitted a formal request for property tax grant-back economic development incentives for the proposed additional new development of a 121-room Spring Hill Suites (Marriott Corp.) immediately adjacent to the Embassy Suites facility. Originally, the City and County granted five-year grant-back incentives to the Embassy Suites facility because it was designed to fulfill the community need identified in the BRAC process for quality lodging rooms and meeting space in close proximity to the military base. That original plan had called for 250 hotel rooms, but the Embassy Suites was constructed to include only 165 rooms, with the developers planning to build a second, smaller and complementary future facility on the same site to meet the total room count. It was based on that original premise that these developers requested a similar property-tax grant-back incentive for the proposed new Springhill Suites Hotel. A noticed public hearing was held on the matter at the June 27, 2016, City Council meeting and the Council "Tabled" the matter with no date-specific for return action. It is clear that the original agreement for the granting of property tax grant-back incentives with the City, and for that matter the PWC and/or Cumberland County, did not include or reference the Spring Hill Suites project and was specific exclusively to the Embassy Suites and the attached and integrated conference/meeting facilities. While the developers acknowledge this, they reference discussions and

possible informal understandings with previous City Officials indicating that the full build-out of the plan to meet the BRAC-suggested total of 250 lodging rooms could never have been fulfilled without this follow-on construction of the 121-room Spring Hill Suites to complement the initial 165-room Embassy Suites. It is our understanding from the FCEDC that Cumberland County has provided preliminary indications that there is a consensus among the County Commission to not grant incentives for the Spring Hill Suites project as proposed. Under the City's existing Economic Incentive Policy it would not be consistent or typical to grant a property tax grant back incentive for a hotel or retail facility, however, the City did grant the Embassy Suites project a 5-year grant-back incentive of 70 percent, 65 percent, 60 percent, 55 percent, and 50 percent of new taxes paid; and to the extent that the justification for "public purpose" is fulfilled by completing the originally-identified (BRAC process) community need for 250 upscale lodging rooms, then the June 27, 2016, hearing request (50 percent for 5 years) in this case could be seen as entirely necessary and legitimate. Assuming that, following completion of the hotel project, the "taxable" increase in property value is set at \$7,000,000.00, then using the City's FY 2017 tax levy rate of .4995, the project would generate \$34,965.00 per year in new property taxes, or \$174,825.00 over the first five years. If granted a five-year grant-back incentive at 50 percent per year, the City would actually receive \$87,412.50 in new taxes, while rebating an equal \$87,412.50 back to the developer/owners.

MOTION: Council Member Arp moved to grant property-tax grant-back incentives for the Spring Hill Suites in the amounts of 50 percent of actual total increases in real and personal property taxes paid to the City as a result of completion of the hotel, for each of the five tax years commencing January 1, 2018, for the 121-room hotel facility as contemplated, consistent with the terms of an Economic Development Incentive Agreement (EDIA) to be developed by the office of the City Attorney and consistent with NC Statutes for the granting of local government economic incentives.

SECOND: Mayor Pro Tem Colvin

VOTE: PASSED by a vote of 6 in favor to 3 in opposition (Council Members Crisp, deViere, and Mohn)

9.0 ADMINISTRATIVE REPORTS

9.03 Monthly Statement of Taxes - October 2016

2016 Taxes	8,771,519.12
2016 Vehicle	1,685.51
2016 Taxes Revit	8,129.18
2016 Vehicle Revit	0.00
2016 FVT	0.00
2016 FTT	0.00
2016 Storm Water	605,953.51
2016 Fay Solid Waste Fee	461,145.67
2016 Annex	0.00
2015 Taxes	26,315.46
2015 Vehicle	78.81
2015 Taxes Revit	3.17
2015 Vehicle Revit	0.00
2015 FVT	0.00
2015 FTT	0.00
2015 Storm Water	834.97
2015 Fay Storm Water	1,669.92
2015 Fay Solid Waste Fee	2,190.02
2015 Annex	0.00
2014 Taxes	1,739.03
2014 Vehicle	0.00
2014 Taxes Revit	16.55

2014 Vehicle Revit	0.00
2014 FVT	0.00
2014 FTT	0.00
2014 Storm Water	63.28
2014 Fay Storm Water	113.90
2014 Fay S Waste Fee	168.74
2014 Annex	0.00
2013 Taxes	666.37
2013 Vehicle	432.65
2013 Taxes Revit	0.00
2013 Vehicle Revit	0.00
2013 FVT	149.27
2013 FTT	149.28
2013 Storm Water	12.00
2013 Fay Storm Water	24.00
2013 Fay S Waste Fee	38.00
2013 Annex	0.00
2012 and Prior Taxes	614.12
2012 and Prior Vehicle	1,521.63
2012 and Prior Taxes Revit	0.00
2012 and Prior Vehicle Revit	0.00
2012 and Prior FVT	249.77
2012 and Prior FTT	184.77
2012 and Prior Storm Water	36.00
2012 and Prior Fay Storm Water	24.00
2012 and Prior Fay S Waste Fee	38.00
2012 and Prior Annex	0.00
Interest	4,336.92
Revit Interest	3.41
Storm Water Interest	102.40
Fay Storm Water Interest	173.13
Annex Interest	0.00
Solid Waste Interest	252.52
Fay Transit Interest	147.14
Total Tax and Interest	\$9,890,782.22

This item was for information only, no action was taken.

11.0 ADJOURNMENT

There being no further business, the meeting adjourned at 8:04 p.m.