

**FAYETTEVILLE CITY COUNCIL
REGULAR MEETING MINUTES
COUNCIL CHAMBER
DECEMBER 11, 2017
7:00 P.M.**

Present: Mayor Mitch Colvin

Council Members Katherine K. Jensen (District 1); Tyrone Williams (District 2); Tisha S. Waddell (District 3); D. J. Haire (District 4); Johnny Dawkins (District 5); William J. L. Crisp (District 6); Larry O. Wright, Sr. (District 7); Theodore Mohn (District 8); James W. Arp, Jr. (District 9)

Others Present: Douglas Hewett, City Manager
Karen McDonald, City Attorney
Kristoff Bauer, Deputy City Manager
Jay Reinstein, Assistant City Manager
Telly Whitfield, Assistant City Manager
Gina Hawkins, Police Chief
Cheryl Spivey, Chief Financial Officer
Tracey Broyles, Budget and Evaluation Director
Gerald Newton, Development Services Director
Rob Stone, Public Services Director
Randy Hume, Transit Director
Victor Sharpe, Economic and Community Development Director
Kevin Arata, Corporate Communications Director
Marsh Bryant, Development Advocate
Craig Harmon, Senior Planner
Mark Brown, PWC Customer Relations
Tracey Jackson, Assistant Cumberland County Manager
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 Rabbi Eichenholtz of Beth Israel synagogue.

3.0 PLEDGE OF ALLEGIANCE

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

4.0 ANNOUNCEMENTS AND RECOGNITION

Council Member Jensen introduced Ms. Rebecca Mitchell, President of the Fayetteville-Cumberland Youth Council (FCYC), attending the City Council meeting and representing FCYC.

5.0 APPROVAL OF AGENDA

MOTION: Council Member Arp moved to approve the agenda with the exception of Item 10.03, Joint 911 and Emergency Operations Center Intergovernmental Agreement with Cumberland County; item to be tabled.

SECOND: Council Member Haire

VOTE: UNANIMOUS (10-0)

6.0 CONSENT AGENDA

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

SECOND: Council Member Haire

VOTE: UNANIMOUS (10-0)

6.01 Approval of Meeting Minutes:
September 25, 2017 - Discussion of Agenda Items
October 30, 2017 - Work Session

6.02 P17-24F Rezoning property from SF-6 Single Family to LI Light Industrial Zoning, located at 1333 Waterless Street near the intersection with Whitfield Street, containing 2.13 acres and being the property of Andrew D. O'Quinn.

6.03 Festival Park Plaza ("FPP") Lease and Parking Lease Relating to Property Sale Lease Agreement - Fayetteville FPP 12-09-17

Authorizing the City Manager to execute lease agreements for Festival Park Plaza and to provide parking as part of the closing of the sale of the Festival Park Plaza building.

6.04 Special Revenue Fund Project Ordinance 2018-11 (Cumberland Community Foundation Grant for Fire Safety Awareness) SRO 2018-11 (Cumberland Community Foundation Grant for Fire Safety Awareness) Cumberland Community Foundation Fire Safety Awareness Grant

Appropriates a \$10,000.00 grant received to fund fire safety awareness and education within the community and local schools. The grant was awarded by the Cumberland Community Foundation, Inc., in partnership with The Hartford.

6.05 17-579 Adoption of Budget Ordinance Amendment 2018-10 (Carryover of Encumbered, Assigned and Donated Funds from Fiscal Year 2017 and Other Items) and Adoption of Capital Project Ordinance

Budget Ordinance Amendment (BOA) 2018-10 will appropriate \$7,076,964.00 across several annually budgeted funds for outstanding purchase orders and contracts; \$13,260.00 in the General Fund for unspent donation proceeds; and \$1,457,103.00 for specific items for which funding was assigned (designated) at the close of fiscal year 2016-2017 for the General Fund. As \$126,740.00 of the assigned General Fund funding is for items to be expended in the Environmental Services fund, an equal additional appropriation is proposed for the Environmental Services Fund, supported by a transfer from the General Fund. Funding for these expenditures was included or available in the fiscal year 2016-2017 budget.

7.0 REPORTS FROM BOARDS AND COMMISSIONS

7.01 Planning Commission Annual Report FY 16-17

Mr. Christopher Davis, Planning Commission Chair, presented the Planning Commission Annual Report for fiscal year 2016-2017.

7.02 Public Arts Commission Annual Report FY 16-17

Ms. Kathy Gregg, Public Arts Commission Chair, presented the Public Arts Commission Annual Report for fiscal year 2016-2017.

8.0 PUBLIC FORUM

Mr. Tom Clark, 4643 Goldsboro Road, Wade, NC 28395, expressed concerns regarding the proposed Atlantic Coast pipeline and environmental protection.

Mr. Andrew Bryant, Jr., 1020 George Street, Fayetteville, NC 28301, expressed concerns regarding the state of the City.

9.0 PUBLIC HEARINGS

9.01 Special Events Banner Policy, Community Street Banner Code Amendment and Budget Ordinance Amendment 2018-11 to Align with the Special Events Banner Policy

Ms. Marsha Bryant, Development Advocate, presented this item and stated at the September 5, 2017, Council work session meeting, Mr. Michael Gibson, Fayetteville-Cumberland Parks and Recreation Director, presented the Banner Policy. In light of recent events regarding free speech, staff requested to perform additional due diligence before presenting Council with a final proposed policy on this issue. Staff also wanted to clarify how this policy works with the City's sign code. It was the consensus of Council to move forward. Fayetteville-Cumberland Parks and Recreation (FCPR) staff has made a comprehensive revision to the City-wide special event banner policy. The proposed amendment aligns the Community Street Banner Code requirements with this revised policy. FCPR staff made several changes to the City-wide special event banner policy to consolidate review and approval of special events and associated banners through the Special Events Committee. The changes streamline the processing of banner applications and improve the efficiency of handling requests from groups or organizations interested in pole-mounted special community event banners. These changes were coordinated across affected departments. This process revealed a needed amendment to the City sign code to bring it into alignment with the policy, as well as an amendment to the City's fee schedule to accommodate new fees created by the policy. The change to the code will allow review and approval of special event pole-mounted banners by the Special Events Committee rather than City Council. The proposed amendment will align the review and approval of special event pole-mounted banners with the Banner Policy created by the FCPR Department and Special Events Committee. This will allow the Special Events Committee to review and approve special event pole-mounted banners during their review of special event requests. This will make staff interaction with the public more efficient and more "business-friendly" for institutions and nonprofits.

Discussion ensued.

This is the advertised public hearing set for this date and time. There was no one present to speak and the public hearing was opened and closed.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING SECTION 30-5.L.10, SIGNS PERMITTED BY SPECIAL APPROVAL, OF CHAPTER 30, THE UNIFIED DEVELOPMENT ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA. ORDINANCE NO. S2017-014

MOTION: Council Member Jensen moved to approve the Special Events Banner Policy and adopt the amendment to align the Code with the Special Events Banner Policy with the stipulation to not implement until further discussion with the Gateways Committee has taken place.

SECOND: Council Member Arp

VOTE: PASSED by a vote of 9 in favor to 1 in opposition (Council Member Williams)

9.02 P17-26F The rezoning of property from SF-10 Single Family to LI Light Industrial Zoning, located north of 1228 Seventy First School Road (Tax ID 9497-63-2172) near the intersection of Seventy First School and Old Bunce Roads, containing 4 acres and being the property of CARDINAL LANDSCAPING INC. (The owner agrees to AR Agricultural Residential zoning) (An appeal is filed by an adjoining property owner of the Zoning Commission's decision.)

Mr. Craig Harmon, Senior Planner, presented this item with the aid of a PowerPoint presentation and stated this is a general rezoning

from a low-density residential district to the lowest intensity residential district. The zoning purpose of the AR District is intended to accommodate rural uses, including agricultural uses, uses that complement or support agricultural uses, and very low-density residential uses. It encourages residential development that preserves farmland and other open space through flexibly-designed conservation subdivisions. The zoning district also permits the continuation of the existing landscaping activity on the property. When reviewing this parcel's zoning, the issue to be primarily considered is if (1) the current zoning's idea of a use being designed to serve mostly single-family detached housing fits with the surrounding properties and the current plant nursery use or (2) rezoning to AR to allow the current use with the standards of the new zoning is appropriate to this neighborhood. The proposed zoning classification permits the applicant's request as a principally permitted use which is allowed by right. It also allows other low-intensity residential uses. While the applicant's proposed use can be shared, the Council must remember that this is a straight rezoning request to make the current use conforming to the City's zoning regulations. The basis of the rezoning is that the request is the most minimally impactful zoning district that allows the current use. Though other activities could occur with a straight rezoning, Cardinal Landscaping desires to keep its current operation on this property. This property is used as an auxiliary storage area for Cardinal Landscaping. The owner's application requests a rezoning to LI; however, the owner has agreed to a more restrictive rezoning to AR Agriculture Residential, which will also allow a plant nursery. The AR zoning only permits limited activities and is more restrictive in the uses than the current zoning of SF-10.

Discussion ensued.

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

Senator Wesley Meredith, 4111 Village Drive, Fayetteville, NC 28305, applicant for this item, appeared in favor.

Mrs. Mary A. Mclean, 1300 71st School Road, Fayetteville, NC 28314, appeared in opposition.

Mr. Roger Mclean, 1300 71st School Road, Fayetteville, NC 28314, appeared in opposition.

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

Discussion ensued.

MOTION: Council Member Arp moved to approve the requested rezoning of property from SF-10 Single Family to LI Light Industrial Zoning, located north of 1228 Seventy First School Road (Tax ID 9497-63-2172) as recommended by staff and the Zoning Commission.

SECOND: Council Member Crisp

VOTE: PASSED by a vote of 9 in favor to 1 in opposition (Council Member Wright)

9.03 P17-27F The rezoning of property from NC Neighborhood Commercial to IC Limited Commercial Zoning, located at 901 McArthur Road and adjacent to property to the south at the intersection of McArthur and Rosehill Roads, containing 1.77 acres and being the property of CIRCLE K STORES INC and THOMAS R AND ELIZABETH E MCLEAN. (Appeal of the Zoning Commission's decision)

Mr. Craig Harmon, Senior Planner, presented this item with the aid of a PowerPoint presentation and stated this is a general rezoning from the first commercial type of zoning in the regulations (the second business type) to the next higher commercial form. The zoning

purpose of the LC District is to "serve groups of neighborhoods instead of just an individual neighborhood [which is the intent of the NC zone]." Within the purpose section are examples which include gas stations (30-3.E.4.). In the existing zone (NC), gas stations are also allowed but only after going through a similar process to a rezoning called a Special Use approval. Generally, the purpose of a Special Use hearing is to allow the property owner a particular use that is designed to "fit" the area it is proposed. The use has already been viewed as acceptable; however, how it is to be put in becomes the question in Special Use approvals. In this case, the applicant believes asking for the next higher business zoning district is a better solution to their plans for the parcel. When reviewing this parcel's zoning, the issue to be primarily considered is if (1) the current zoning's idea of a use being designed to serve a small, singular neighborhood with the special use process option is best to stay in place or (2) rezoning to allow the same use with the standards of the new zoning. The proposed zoning classification permits the applicant's request as a principally permitted use which is allowed by right. It also allows other low-intensity business uses. While the applicant's proposed use can be shared, the Council must remember that this is a straight rezoning request to make the out parcel similarly zoned to the adjoining shopping center. The basis of the rezoning is that the request makes the parcel the same as the shopping center, allows an appropriately designed business that will serve more than one neighborhood, betters the existing site design, and implements a part of the long-term plan of the area. Though other activities could occur with a straight rezoning, Circle K desires to expand their current convenience store at 901 McArthur Road, as shown on the site plan. These properties are surrounded by commercial and office zoning and uses. In 2015, the City Council rezoned the adjacent Food Lion shopping center from NC to LC recognizing the area did not serve only one neighborhood but rather a larger community. The site plan has been submitted to the Technical Review Committee for the City's review but is not a part of the rezoning.

Discussion ensued.

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

Mr. Neil Yarborough, 115 East Russell Street, Fayetteville, NC, appeared in favor and stated he is the attorney representing the applicant, Circle K.

Mrs. Sandra Williams, 5429 Sandstone Drive, Fayetteville, NC, appeared in opposition, and expressed environmental and contamination concerns.

Mr. Dennis Murphy, 462 Bayshore Drive, Fayetteville, NC, appeared in opposition.

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

Discussion ensued.

MOTION: Council Member Jensen moved to approve the rezoning of property from NC Neighborhood Commercial to LC Limited Commercial Zoning, located at 901 McArthur Road and adjacent to property to the south at the intersection of McArthur and Rosehill Roads, containing 1.77 acres and being the property of Circle K Stores, Inc., and Thomas R. and Elizabeth E. McLean.

SECOND: Council Member Waddell

VOTE: UNANIMOUS (10-0)

9.04 P17-30F the issuing of a Special Use Permit to reduce the separation standards for industrial properties within 500 feet of residential zoning districts, for property located at 1333

Waterless Street near the intersection with Whitfield Street, containing 2.13 acres and being the property of Andrew D. O'Quinn.

Mr. Craig Harmon, Senior Planner, presented this item with the aid of a PowerPoint presentation and stated industrial uses shall be located at least 500 feet from any residential district, school, or child care center. The closest residential structure to the proposed warehouse is 150 feet. This separation standard may be waived or reduced through a Special Use Permit (SUP) process. Due to this area having similar surrounding uses and having its access provided from Whitfield Street, it is staff's opinion that a reduction in the separation requirement is appropriate in this case. The residential structures in this area will be separated from the warehouse by open space, detention ponds, and Waterless Street. Uses within the LI District are smaller-scale and have fewer adverse environmental and visual impacts than those allowed in the Heavy Industrial District. The district is subject to standards intended to minimize potential nuisances or damage to the environment and adverse impacts on surrounding uses. Warehousing and distribution as well as light manufacturing uses may be accompanied by limited supporting retail. When reviewing this applicant's request, the issues to be primarily considered are the following findings of fact:

- (1) The special use will comply with all applicable standards in Section 30-4.C, Use-Specific Standards. [With the separation reduction requested in this SUP, the owners will meet all of the Use Standards.]
 - a. The use shall be located at least 500 feet from any residential district, school, or child care center. [Yes, with the separation reduction to 150 feet this standard will be met.]
 - b. The use shall not locate storage areas within a required setback or perimeter buffer. [Meets this standard, as shown on the site plan.]
 - c. The use shall locate outdoor storage areas to the rear of the principal structure and screen them with a wooden fence or masonry wall no less than eight feet in height in accordance with Section 30-5.D, Fencing Standards. [Any outdoor storage will meet this requirement.]
 - d. The use shall be designed to ensure proper functioning of the site as related to vehicle stacking, circulation, and turning movements. [As shown on the site plan, these items will be met.]
 - e. The use shall have direct access onto an arterial or major collector street. [This development will have direct access to Whitfield Street.]
- (2) The special use is compatible with the character of surrounding lands and the uses permitted in the zoning district(s) of surrounding lands. [Yes, this property is mainly surrounded by industrial uses and zoning.]
- (3) The special use avoids significant adverse impact on surrounding lands regarding service delivery, parking, loading, odors, noise, glare, and vibration. [The SUP will avoid these types of impacts since the entrance from Whitfield Street, and the separation from other uses by the open space provided on this property and Waterless Street.]
- (4) The special use is configured to minimize adverse effects, including visual impacts of the proposed use on adjacent lands. [The SUP will avoid these types of impacts since

the entrance from Whitfield Street, and the separation from other uses by the open space provided on this property and Waterless Street.]

- (5) The special use avoids significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources. [Most of the property in question is already cleared and development will meet all required regulations.]
- (6) The special use maintains safe ingress and egress onto the site and safe road conditions around the site. [Technical Review Committee requires safe access, therefore, the condition is assured.]
- (7) The special use allows for the protection of property values and the ability of neighboring lands to develop the uses permitted in the zoning district. [No evidence has been submitted showing that neighboring property values will be affected in a negative way. This SUP will not affect the neighboring zoning districts.]
- (8) The special use complies with all other relevant City, State, and Federal laws and regulations. [Yes, the property will not be allowed to develop without meeting these standards.]

With the condition of the site plan, the property owner will be required to follow those plans during construction. The LI zoning matches most of the zoning surrounding this property. If the SUP is approved, there would only be two properties left on the south side of this section of Waterless Street that are not zoned and used for industrial purposes. The attached site plan has been submitted to the TRC for the City's review and is part of this SUP application.

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

Mr. George Rose, 1206 Longleaf Drive, Fayetteville, NC 28305, appeared in favor and stated he is the Site Engineer for this project.

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

MOTION: Council Member Dawkins moved to approve the issue of a Special Use Permit with the incorporation of the eight findings of fact.
SECOND: Council Member Arp
VOTE: UNANIMOUS (10-0)

Mayor Colvin recessed the meeting at 9:31 p.m. Mayor Colvin reconvened the meeting at 9:39 p.m.

10.0 OTHER ITEMS OF BUSINESS

10.01 Adoption of Special Revenue Fund Project Ordinance 2018-12 for Community Development Block Grant - Disaster Recovery Program (CDBG-DR) and Approval of CDBG-DR Agreement with Cumberland County.

Mr. Victor Sharpe, Economic and Community Development Director, presented this item and stated Council is asked to adopt Special Revenue Project Ordinance (SRO) 2018-12 to appropriate \$15,325,000.00 of Community Development Block Grant - Disaster Recovery funding to be received from Cumberland County and approve the agreement with the County for the CDBG-DR program. The State of North Carolina is receiving \$198 million of CDBG-DR funds from the Department of Housing and Urban Development as a result of damage caused by Hurricane Matthew. Cumberland County is expected to receive \$34,945,328.00 of

this amount over a three-year period. Eligible Cumberland County residents who were directly impacted by the hurricane will have an opportunity to apply for assistance from a variety of Housing Recovery Programs. This Housing Recovery Program will provide assistance to low- and moderate-income homeowners and businesses who experienced major to severe damage to their homes and businesses and have remaining unmet needs, after subtracting benefits from FEMA, SBA, and private insurance. This program will include reconstruction activities, acquisition, and construction of new homes and insurance subsidies to eligible low- and moderate-income families. Affordable housing is the State's number one priority associated with the CDBG-DR program. City staff worked with Cumberland County to develop a proposal to carry out a variety of housing and recovery programs. The proposal includes a Homeowner Recovery Program, Small Rental Repair Program, Multi-family Rental Housing, and a Community Recovery Program that will include a Day Center and a Homeless Shelter. Businesses will have to apply directly to the North Carolina Department of Commerce. On August 28, 2017, City Council approved submission of the grant application to the State for the CDBG-DR funding. Cumberland County was awarded the CDBG-DR funds from the NC Department of Public Safety as a sub-recipient. The City will receive funding of \$15,325,000.00 for the first two years of the program through Cumberland County as a sub-sub-recipient to carry out the various programs. Additional funding may be awarded to the County at a later date for the third year of the program. The CDBG-DR Action Plan and the Cumberland County Resilient Redevelopment Plan was used by the State as the basis for local priorities and projects that address unmet needs as it relates to affordable housing. The proposed projects are consistent with the City's Consolidated Plan which includes providing decent affordable housing and in meeting HUD's national objectives of the Community Development Block Grant Program. The State is only releasing to Cumberland County two-thirds of the funding for a two-year period in the amount of \$23,260,000.00. The City's portion of this amount is \$15,325,000.00. The remaining funds of \$11,685,328.00 will be made available in year three to Cumberland County, with the City receiving \$8,042,500.00 of third-year funding. Applications are currently being accepted at the Cumberland County/Fayetteville Application Center located at the Department of Social Services, Monday through Friday from 7:30 a.m. to 5:00 p.m. The State has provided application specialists to meet with applicants to complete the intake of their application. Resident eligibility will be determined at a later date. There is no budget impact to the General Fund as no local match is required.

Discussion ensued.

MOTION: Council Member Arp moved to adopt Special Revenue fund Project Ordinance 2018-12 and authorize the City Manager to execute an agreement with Cumberland County.

SECOND: Council Member Wright

VOTE: UNANIMOUS (10-0)

10.02 Prince Charles Holding ("PCH") Downtown Development Agreement - Third Amendment, Garage Contract, Construction Project Ordinance 2018-32

Mr. Kristoff Bauer, Deputy City Manager, presented this item and stated the City executed a Memorandum of Understanding with PCH in March 2016. At that time, the main topics of discussion were the availability of parking and how to reconfigure the street system to support the renovation of the Prince Charles into a mixed use building, a hotel, and mixed use development on the site. That process was moving forward when the concept of placing a minor league baseball stadium was introduced in June 2016. The Downtown Development Agreement (DDA) is a complex legal document and the full completion of which is dependent upon the successful completion of design, survey, and other activities performed. The City, however, required control of the land in the development area in order to plat the property creating individual lots for the stadium, garage/hotel

development, Amtrak, and a plaza area. These separate lots are required in order to move forward with financing, permitting, and other activities critical to the stadium development and redevelopment of the area. The DDA has been executed and several individual property transactions agreed therein have been completed. The Council authorized the execution of the First Amendment to the Downtown Development Agreement on June 12, 2017. At the time the initial DDA was executed, it was believed that a portion of the residential development would be constructed above the stadium project. That overbuild idea has been eliminated due to the estimated cost of the support structure required and concerns regarding construction staging. PCH has redesigned their project to stack both the residential and hotel development on top of the parking garage to be developed on Lot 3 of the plat. That has increased the complexity of the financing of the project and led to some delay and unanticipated cost. The Council authorized the execution of DDA Two on October 9, 2017.

Mr. Bauer further stated it was initially agreed that the City would purchase the parking deck component of this project upon completion which is scheduled for the spring of 2019. The City's Capital Improvement Plan (CIP) and the supporting financial plan included a financing at that time and debt payment for 15 years thereafter. It is now proposed that the City will fund construction through a limited obligation bond issuance combined with the stadium project in May 2018. This will reduce the financing costs and spread the debt repayment over 20 years. Further, Council did not include a proposed parking deck behind City Hall in the FY 18 CIP. All three options presented, however, are higher than previously anticipated in the funding plan to support the adopted CIP. Council appropriated \$125,000.00 to support the execution of the second amendment to the DDA. The execution of this final amendment will require the appropriation of funding sufficient to support the City's commitment to fund the parking garage portion of this project. Approving the DDA is projected to generate additional revenue for the sale of the lot, additional tax revenue on the private development, and parking fee revenue from the lease of the spaces in the parking deck. This analysis does not include additional parking revenue that will be generated from daily or event parking fees. There will, however, be an additional operating cost for the parking deck estimated to be \$100,000.00 per year.

Discussion ensued.

MOTION: Council Member Wright moved to authorize the City Manager to execute the Third Amendment to the Downtown Development Agreement, Garage Contract and other closing documents necessary to comply with all terms of the DDA and approve proposed Capital Project Ordinance 2018-32, Version 1 supporting Option B parking deck design.

SECOND: Mayor Pro Tem Mohn

VOTE: FAILED by a vote of 5 in favor (Council Members Colvin, Jensen, Wright, Mohn, and Arp) to 5 in opposition (Council Members Williams, Waddell, Haire, Dawkins, and Crisp)

Council Member Crisp cited parliamentary procedure and stated a member that casts a nay vote may call for the question again, with no discussion. Council Member Crisp called for the question.

VOTE: PASSED by a vote of 7 in favor to 3 in opposition (Council Members Williams, Waddell, and Dawkins)

10.03 Joint 911 and Emergency Operations Center Intergovernmental Agreement with Cumberland County

This item was tabled at the request of Council Member Arp.

10.0 ADJOURNMENT

There being no further business, the meeting adjourned at
10:31 p.m.

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