A MEETING OF THE FAYETTEVILLE CITY COUNCIL

A meeting of the Fayetteville City Council was held on Tuesday, April 7, 1998, at 6:30 p.m., in the Council Room of the City Administration Building, 113 W. Mountain, Fayetteville, Arkansas.

PRESENT: **Mayor Fred Hánna; Aldermen Donna Pettus, Stephen Miller, Kit Williams, Len Schaper, Heather Daniel, Cyrus Young, Randy Zurcher, and Trent Trumbo; City Attorney Jerry Rose; City Clerk/Treasurer Heather Woodruff; staff; press; and audience.**

ABSENT: **None**

Mayor Hanna called the meeting to order with eight aldermen present.

NOMINATING COMMITTEE REPORT

Alderman Daniel nominated James Beamis to the Cable Board. Alderman Williams seconded. Upon roll call, the nomination carried on a vote of 8 to 0.

CONSENT AGENDA

Mayor Hanna introduced consideration of items which may be approved by motion or by resolution and which may be grouped together and approved simultaneously under a consent agenda:

A. Minutes of the March 17 regular City Council meeting;

B. MUD CREEK WATER LINE RELOCATION: Approval of the contract for Water Line Relocation for Mud Creek Str. and Apprs. with United Plumbing in the amount of $80,050. Approval of 15% contingency amounting to $12,000. The total funds requested being $92,050;

RESOLUTION 37-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

C. FULTON SANITATION SERVICES, INC.: Review of Amendment 2 of contract with Fulton Sanitation Services, Inc., for processing and marketing of the City's collected curbside recyclables.

RESOLUTION 38-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

D. OLD ANIMAL SHELTER RENOVATION: Approval of a project with Johnson Mech. for installation of plumbing and HVAC systems in Old Animal Shelter Renovation. Rates per annual plumbing contract (Res. 45-96). Not to exceed $44,500;

RESOLUTION 39-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

E. CHANGE ORDERS 6 AND 7 FOR 24TH STREET: Approval of change orders 6 and 7 to the contract for reconstruction of 24th Street with APAC Arkansas, Inc., McClinton-Anchor Div. in the amount of $61,420.86. Approval of a budget adjustment of $130,000;

RESOLUTION 40-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

F. SUMMIT WATER TANK: Approval of a contract with Avanti Demolition to demolish Summit water tank and water filter building and approval of a budget adjustment.

RESOLUTION 41-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

G. CLEVELAND ST. IMPROVEMENTS: A resolution authorizing the execution of a contract with Crafton, Tull, and Associates for engineering services in connection with the design of improvements to Cleveland Street from Garland Avenue to Gregg Street in the amount of $58,431.83 plus a contingency of $15,000;

RESOLUTION 42-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

H. CONSIDERATION OF 240 E. CENTER STREET: Approval of the offer and acceptance contract with Mary and Barbara Carr for acquisition of the property at 240 E. Center. In addition, staff requests a resolution to donate the property to Habitat for Humanity of Fayetteville, Inc.;

RESOLUTION 43-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

Alderman Miller moved the consent agenda. Alderman Schaper seconded. Upon roll call, the motion carried on a vote of 7-0-1, with Alderman Young abstaining.

OLD BUSINESS

VOLUME BASED GARBAGE COLLECTION

Mayor Hanna introduced consideration of an ordinance approving a change to our garbage collection program and approving a budget adjustment.

Alderman Young moved to suspend the rules and go to the next reading. Alderman Miller seconded.

City Attorney Rose confirmed for Alderman Miller that the Council could table this at anytime before the final vote.

Upon roll call the motion carried on a vote of 8 to 0.

City Attorney Rose read the ordinance for the third time.

Alderman Miller has received many phone calls about this and there seems to be a lot of confusion. Staff has told him this is not something that has to be done in the next couple of months. As chairman of the Environmental Concerns Committee, he would be willing to send this to that committee for their May meeting. He stated he thinks this is a good system but, because of the confusion and other good suggestions that have been made, he is amenable to having a public hearing on this in May.

Alderman Daniel reported a citizen's concern about animals getting in the garbage bags.

Cheryl Zotti, Environmental Affairs Director, responded that the purple bags can be placed in garbage cans.

Alderman Williams stated he has worked out something to send in the water bills that explains the options. He encouraged giving citizens plenty of time to respond with their preferences.

John Lindsey, citizen, stated he has talked to 30 or 40 people and the real issues are landfill problems and recycling. Two bags won't change the flow of trash. People will use a dumpster somewhere. We can't forget about the citizens and what they want. People should have options.

Larry Ash, Park Place, does not appreciate the city government micro-managing his life. The government is a servant of the people. It is not the citizen's job to make life easy for the people in the Public Works Department. Public input is a good idea. The right approach is for proponents and opponents to discuss the issue fully. Citizens should have the option to participate or not participate. It disturbs him that this would not be implemented until after the next election.

Alderman Schaper responded that the bag system does give options. You can throw out a lot of trash, but you have to pay for it.

Alderman Williams stated his insert discusses all the options, including the rate increase if we change nothing, and it encourages the public to call the Solid Waste Division with their opinions and ideas.

Wayne Brewster, citizen, asked what would be done with items larger than the bags but not necessarily big enough to send a separate truck for. Putting smaller trash bags in a larger one does not make much sense. He asked about smelly bags that are not yet full. He is against tax dollars subsidizing the poor to throw out their trash. In this town, many college students may fit under that. There are many things taxpayers pay for that they may or may not use. Right now $8.75 pays for an average of five or six bags every week. He asked why the rate would not decrease for fewer bags. He saw many disadvantages and no advantages for the citizens. He noted that 65% of the waste comes from the commercial sector. He thought the number of bags to be given each household was not arrived at scientifically.

Lonnie Gibson, citizen, commented on the lack of clarity in the previous public hearing notice that was published in the paper. He hoped the next notice would be more easily understood by the average citizen. He stated there are trash cans on the market that would work. He listed examples of gas and water bills where citizens pay for what they don't use. He stated the best for him would be to go back to picking it up twice a week.

Alderman Miller stated that the City could buy bags for about half what citizens could in the store and the City could specify a certain percentage of post consumer content.

Alderman Zurcher stated he had been ready to pass this but is willing to have more public input. Regarding Alderman Williams' plan, which lets people who recycle throw more trash away, he read portions of a letter from citizen Fran Alexander, which said, "Sorry, Kit, but rewarding recycling by giving extra trash bags for more trash is like rewarding someone trying to quit smoking with a free pack of cigarettes."

Alderman Williams also read from Ms. Alexander's letter, "As far as the half-bag issue goes, I say people have the choice of holding garbage another week and filling the bag up completely, if they choose not to compost their smelly, kitchen waste. If they can't stand it, they have the choice of putting out half a bag." He stated she also compared education vs. spending, saying education takes ten times more work and we shouldn't educate and should charge more. He stated he does not agree with that.

Alderman Schaper stated the staff has studied this a lot and is not working in a vacuum. This is based on a lot of research of what works in many communities.

Alderman Miller moved to table this to be discussed at a public hearing by the Environmental Concerns Committee in the May meeting.

City Attorney Rose read the definition of lay on the table.

Upon roll call, the motion carried on a vote of 8 to 0.

WARD BOUNDARIES

Mayor Hanna introduced discussion of ward boundaries presented by Alderman Williams and Alderman Zurcher.

Alderman Schaper stated he thought two of the understandings in drawing up the new wards were to try to preserve the existing precinct boundaries as much as possible and to change as little as possible how the wards are laid out. Three aldermen came up with maps like that. Alderman Williams' plan radically changes the configuration of the wards.

Alderman Trumbo did not remember wanting to keep it exactly the same.

Alderman Pettus also did not remember discussing keeping the ward boundaries the same as possible.

Alderman Zurcher stated there needs to be a very good reason for any big changes on a ward map. The people who voted you in should have the opportunity to vote you out.

Alderman Williams felt his map was being misrepresented. He made eight changes in the ward boundaries, but Alderman Zurcher's map has six changes.

Alderman Young stated the radical change is making Ward 2 go almost to the mall. Ward 2 has always been the central ward encompassing the central part of the city. Alderman Williams has combined people in the central part of the city with people who do not have the same interests. He also spit the votes in other northern wards, watering down the votes so there is no strong constituency in either ward.

Alderman Schaper stated that in terms of population, Ward 1 had to grow in area, Ward 2 had to grow in area, and Ward 3 and Ward 4 had to shrink. Alderman Williams has grown Ward 1 but has eliminated areas that were historically in Ward 1 and given it areas that were historically in Ward 3.

Alderman Williams responded most citizens aren't interested in just one area of town. Most see themselves as Fayetteville residents.

Alderman Schaper suggested using the major north-south and east-west streets of the city to define boundaries, if a major change is to be made.

Alderman Zurcher felt it is inappropriate to add precincts to a ward just to avoid splitting precincts. If a ward needs more people, you need to add that area to the precinct, not take away.

Richard Culver, 2810 Old Farmington Road, said he would like to see each council member represent a broader spectrum of the city's population.

Errol Conner, 333 Cleburn Street, asked if the layout of the wards was arrived at scientifically. He said the University could provide a scientific layout of any type of geography.

There being no further comments from the audience, Mayor Hanna brought the discussion back to the Council.

Alderman Williams moved his configuration, Configuration E. Alderman Daniel seconded. Upon roll call, the motion carried on a vote of 5-4-0, with Mayor Hanna voting yes and Aldermen Miller, Schaper, Young, and Zurcher voting no.

City Attorney Rose read the ordinance for the first time.

The ordinance was left on first reading.

NEW BUSINESS

SEWER USE ORDINANCE AMENDMENT

Mayor Hanna introduced revision of Chapter 51: Water and Sewers, Discharge and Pretreatment Regulations, of The Code of Fayetteville.

Mayor Hanna explained this is to comply with the DPC&E's latest ruling on our permit.

City Attorney Rose read the ordinance for the first time.

Kevin Crosson, Public Works Director, stated that the Council passed in 1996 a new chapter covering discharge and pretreatment regulations. This was submitted to the DPC&E, and these are the modifications they recommend. Most are only to bring it into compliance with their rules and regulations. He asked the Council to approve it at this meeting, so it can be approved before the rules are changed again. He stated each item in the ordinance is the DPC&E's recommendation and is insignificant to the substance of the original Chapter 51.

Alderman Williams moved to suspend the rules and go to the second reading. Alderman Miller seconded. Upon roll call, the motion carried on a vote of 8 to 0.

City Attorney Rose read the ordinance for the second time.

Billy Ammons, OMI, stated these are largely clerical changes to bring the language more in line with what the State recommends. A couple of substantive changes are relaxations in the limits based on the fact that we don't have a technical reason for being more stringent. If we have problems in the future, we can justify more strict limits.

Alderman Schaper noted this has been discussed by the Water & Sewer Committee and these are minor changes.

Alderman Schaper moved to suspend the rules and go to the third reading. Alderman Trumbo seconded. Upon roll call, the motion carried on a vote of 8 to 0.

City Attorney Rose read the ordinance for the third time.

There being no comments from the audience, Mayor Hanna called for the vote:

Upon roll call, the ordinance passed on a vote of 8 to 0.

ORDINANCE 4088 AS RECORDED IN THE CITY CLERK'S OFFICE.

Steve Ward, Chamber of Commerce, was concerned about the impact of this on industries.

Alderman Schaper thought the changes in the local limits would not be a problem for anybody.

RAZE & REMOVAL

Mayor Hanna introduced approval for raze and removal of structure at 2173 W. Deane per Ord. 3948.

Neither the property owner nor the owner's representative was present.

Alderman Daniel stated this has been a concern of hers for a number of months. There have been two fires there. Empty places can harbor criminal activity. There is nothing salvageable about this.

Alderman Williams stated there was a good report from the Inspection Division about how long this has been a problem.

Mayor Hanna stated Mr. Weatherford told him he has made arrangements with architectural students to rehabilitate the property. He stated he called the owner to inform him this was on the agenda. He wants to be certain the owner does not want to be represented before the Council votes.

Alderman Pettus was confused about who the actual owner is.

Mayor Hanna told her it is Mr. Weatherford.

Alderman Pettus asked why Ms. Schuman's name is on the deed and other documents.

Alderman Daniel did not see how architecture students could in any way benefit this house.

Alderman Schaper thought it would be dangerous for them.

Alderman Pettus was still uncertain about the ownership and whether or not the true owner has been notified.

Alderman Young stated the ordinance was meant to apply to a building like this.

Alderman Trumbo agreed it needs to be razed but was also concerned about the legalities of who actually owns it and who has been signing the notices.

Alderman Daniel agreed the Council needs to be clear on the ownership but did not want to wait more than two more weeks.

Burt Rakes, Inspection Superintendent, stated it is his understanding that Mr. Weatherford represents the owner. There have been no communications with the owner.

Alderman Williams stated we need to notify the owner directly.

Alderman Young moved to table this to the next meeting. Alderman Williams seconded. Upon roll call, the motion carried on a vote of 8 to 0.

GREENSPACE WAIVER FOR DINERSTEIN APARTMENTS

Mayor Hanna introduced a resolution waiving the greenspace land requirement in part and accepting 1.28 acres and $34,800, money in lieu, for the proposed Dinerstein apartment complex.

Harold Heady, representing the Dinerstein Company, stated there are a couple of changes to discuss. One is a little more land in lieu of a little less money. The total land donation would be 1.53 acres, and the dollar value would be about $31,000. This came from conversations with Kathleen Ramsey, who will be the ultimate user of the land. He stated he understands it is all right with the Parks Board to make this minor change, though he has no confirmation in writing. He intends to put the new proposal on paper and forward it to the Parks Board.

Mr. Heady stated another aspect is that part of the original proposal to the Parks Board regarded occupancy of the land, the third codicil on the agreement. The requirement of getting access to the land early on is not an issue. He asked that the proposal be accepted at face value.

Mayor Hanna thought the Council could take care of the changes in land and dollar amounts. He stated vacating the property quicker does not have anything to do with the Parks Board. It affects the Water & Sewer Department. We have been in favor of doing this ever since it was first proposed.

Mr. Heady reiterated that this is not now a requirement of the proposal.

Alderman Williams stated this is a good proposal and he agreed with the Parks Board's recommendation. It is good use of the land and gives Children's House enough room.

Kevin Crosson, Public Works Director, stated there is a possibility that if something can be worked out to relocate the Water & Sewer Department, a temporary lease might be brought to the Council for a facility somewhere else in town.

Alderman Zurcher asked how much park land they would have been required to give.

Alett Little, Planning Director, stated for 180 units, the total amount of acreage is 3.6 acres.

A representative of Children's House stated the land is sufficient for their needs and planned expansion. It will not be park land, but children will play there every day.

Alderman Trumbo moved the resolution. Alderman Miller seconded. Upon roll call, the resolution passed on a vote of 7 to 1, with Alderman Zurcher voting no.

RESOLUTION 44-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

RZ 98-6.00/DINERSTEIN

Mayor Hanna introduced a rezoning request for property located at the southeast corner of Cato Springs Road and Razorback Road. The property is zoned I-1, Heavy Commercial-Light Industrial, and contains approximately 19.47 acres. The request is to rezone the property R-2, Medium Density Residential.

City Attorney Rose read the ordinance for the first time.

Alderman Williams stated this goes along with the 2020 Plan. It is down zoning.

Alderman Schaper stated R-2 zoning would allow 24 units per acre. The R-2 is needed in order to build apartments. 24 units per acre on 18 acres would allow 412 apartments to be built on that parcel. He asked if Mr. Heady would be willing to offer a bill of assurance that all they would build on that property is 180 dwelling units.

Mr. Heady replied their plans are to build 180 units. He stated the best assurance would be that it has to go back through the development process. He stated he would like to have an opportunity to discuss it with the main office.

Alderman Williams thought the City has some protection, as the developer has to come back for another greenspace requirement waiver if they go over 180 units, because their figures are based on 180 units. If they come back with more units, they would have to give more greenspace. Also, he thought the number of units was mentioned in the contract.

Mr. Heady agreed there was a ceiling or an approximate amount of units.

Alderman Schaper noted that land ownership changes but rezoning is permanent; whoever owns it is legally entitled to build that many units. A contract is with the owner, but a bill of assurance runs with the land.

This item was left on first reading.

AD 98-5.00/ADVANCED TOWING/BARBED WIRE

Mayor Hanna introduced a request submitted by Nick Jeffries of Advanced Towing for property located at 331 West Poplar Street. The request is to allow barbed wire on the fence surrounding the impound lot for a towing business.

Mayor Hanna stated there are conflicting regulations.

Nick Jeffries stated he is asking to be allowed to put the barbed wire up. People have been climbing his fence.

Alderman Daniel stated the business is very visible. She asked if Mr. Jeffries plans to expand the fenced area.

Mr. Jeffries replied he is. He has had the business almost 9 months. The Police Department requires the business be in the city limits.

Alderman Pettus stated the towing services used by the police department range from Greenland to Springdale.

Mr. Jeffries stated he needs to be zoned industrial and the farther out he gets hurts his business.

Alderman Schaper was concerned that if this was granted, the ordinance would be voided.

Alderman Young thought the unique circumstance here is the Police Department's regulations. The fundamental problem is a conflict in regulations.

Little stated the zoning regulations do not permit barbed wire and call for screening. The Police Department adopted the State's operating procedures, which do call for barbed wire. Options for resolution include having the Police Department changed their requirements, having the Planning Commission devise a compromise, and giving the Planning Commission authority to waive requirements or grant variances.

Little stated the reason the discussion has centered on the barbed wire, and not the screening, is because that is the only conflict with the Police Department's regulations. There is no screening conflict, though they would prefer to see into the lot.

Little stated a new business could be required to remove the barbed wire, if this is kept up with.

Mr. Jeffries was aware of the regulations before he moved here but assumed it could be taken care of quickly. He has towed cars for the police at the owner's request.

Alderman Williams could see that Mr. Jeffries is in a bind but did not want to handle this case by case. The City needs to organize itself on what is required.

Alderman Schaper asked if the City allows the barbed wire, could they require screening.

Little replied if the Council does not grant the waiver for that specific part of the ordinance, then that part still stands.

Alderman Schaper stated the goal is if we allow barbed wire, we don't want to look at it.

Little stated an important consideration is whether barbed wire is necessary for protection.

Alderman Miller stated he doesn't like barbed wire, but this is necessary to this citizen's livelihood. There are times when barbed wire is appropriate. The ordinance should be looked at so people know what they are dealing with.

Alderman Miller moved to grant the variance and to direct staff to look at the ordinance and come up with times barbed wire can be used.

In response to questions from Alderman Zurcher, Mr. Jeffries stated he has been in business 9 months, impounded 1,000 cars, and at least ten have been broken into.

Alderman Pettus seconded. Upon roll call, the motion carried on a vote of 5-3 with Aldermen Schaper, Daniel, and Zurcher voting no.

RESOLUTION 45-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

IMPROVEMENT DISTRICT NO. 4/HAWG HEAVEN

Mayor Hanna introduced a petition to form Fayetteville Municipal Property Owner's Improvement District No. 4--Hawg Heaven Subdivision Project.

City Attorney Rose read the ordinance for the first time.

Jim McCord, attorney, stated the Council is required to determine whether the petition is signed by the record owners of all the property in the improvement district. He stated he filed a certificate certifying the petition is in fact signed by all the record owners of the property to be included. The statute provides if the Council makes that finding, it is their duty to pass the ordinance.

Mr. McCord stated the legal description for the improvement district matches the legal description for the subdivision. There are only three owners: Christopher Adams, Charles Wright, and Linda Wright.

Alderman Williams moved to suspend the rules and go to the second reading. Alderman Young seconded. Upon roll call, the motion carried on a vote of 7-0, with Alderman Pettus voting no.

City Attorney Rose read the ordinance for the second time.

Rose stated the law provides that if the governing body determines that all the owners of the real property to be located in the district have petitioned for the improvements, it shall be its duty by ordinance to establish and layoff the district as defined in the petition and to appoint the commissioners named in the petition.

Alderman Young noted there are only three owners and they are not challenging this. The abstractor has certified these are the owners.

Alderman Pettus wanted to be sure Mr. McCord has gone through all the statutory procedures.

Alderman Williams moved it to the third reading. Alderman Young seconded. Upon roll call, the motion carried on a vote of 8 to 0.

City Attorney Rose read the ordinance for the third time.

There being no further comments, Mayor Hanna called for the vote.

Upon roll call, the ordinance passed on a vote of 8 to 0.

ORDINANCE 4089 AS RECORDED IN THE CITY CLERK'S OFFICE.

AFFIRMING PLANNING COMMISSION FINDINGS

Mayor Hanna introduced an ordinance requiring the Planning Commission to take a separate vote to affirm findings.

City Attorney Rose read the ordinance for the first time.

Alderman Young stated he would talk to the Planning Commission about this.

This item was left on first reading.

ENTRY PLAZA FOR THE PROPOSED TOWN CENTER

Mayor Hanna introduced a recommendation from the City Council on whether or not to proceed with negotiations of a long-term lease with Mr. F. G. Bradberry for the entry plaza into the proposed town center.

Mayor Hanna explained that City Attorney Rose needs to know if the Council is willing to enter into a lease. He stated when the town center was first conceived at a meeting with of some of the A&P Commission and Chamber of Commerce, we were asked how we would access the town center. At that time, before the architects were involved, one of the thoughts was that we could access the town center and parking deck by the walkway beside Tim's Pizza, in Mr. Bradberry's south side building. Mayor Hanna stated he had called Mr. Bradberry and asked him if he'd be willing to go along with that. Mayor Hanna stated Mr. Bradberry said not only would he be willing to go along with it, but he would extend that walkway, if we wanted to make a nicer entrance from the square into the town center.

Mayor Hanna stated that as we got into it architecturally, we were shown a beautiful plaza entrance. It was discussed that the plaza would be dug down and leave Mr. Bradberry's parking underneath, which would be covered over with the entryway to the plaza. Before we got to the negotiations, the architect decided that would be too expensive. We could let Mr. Bradberry have parking spaces in the plaza itself. He was willing to negotiate and talk with us about doing it that way, but now we are to the point of talking about using the Bradberry property as the plaza entrance. What we discussed has been changed twice and this is the third suggestion.

Ed Bradberry, owner of property on the south side of the square, stated he supports the town center project, which he understood was conceived to revitalize and support the development of business on the downtown square and to provide much needed additional parking. He stated he was shocked and somewhat bewildered to learn that the City would consider the possibility of condemning his business development and destroying his parking in order to accomplish a project designed to promote the very same thing. This is especially true in light of the fact that he has offered a viable alternative to such drastic and expensive action. He is also concerned about the message this sends to businesses considering investment on the square.

Mr. Bradberry stated it took almost 15 years and 4 separate purchases to put together the land on the south side necessary to complete phase one of his project, which was to bring back the dignity of this property and to provide office, restaurant, and retail leases to businesses. It now exists as a single project known as Executive Square serving over 40 clients representing a wide variety of businesses. The parking spaces serve these businesses. It was absolutely necessary to provide assigned parking spaces adjacent to interior spaces to the majority of the clients in order to attract them to the project. Parking spaces are leased to each client under leases ranging in terms from one year to several years. He listed many clients of statewide or national prominence and many fine local companies. The vast majority have leased individually assigned parking spaces.

Mr. Bradberry showed the Council an artist's rendition of phase two of his project. Phase two of Executive Square was already planned and included an office tower, so badly needed in our town; additional underground parking spaces; and a small plaza surrounded by additional retail space. Proceeding to phase two was being discussed about two years ago, when he was approached by representatives of the City concerning a possible Town Center behind this.

Mr. Bradberry stated the position stated in a letter sent to the City is not a new or changed position. It has remained the same throughout all discussions with City representatives. He was led to believe that a long-term lease, as proposed by him, would not only be acceptable, but would assist the City with this project financially and in getting it approved by the voters. As a result, he strongly supported the project. He stated he was even presented a draft of the proposed lease prior to the election and was advised certain points could be negotiated if the project was approved by the voters.

Mr. Bradberry stated he hoped the Council would proceed to negotiate a fair lease so they can work together on this worthwhile project. He assured the Council he is only motivated by the desire to protect the property, to serve his clients, and to retain ownership of the property.

In response to a question from an Alderman Trumbo, Mr. Bradberry stated he does not expect free trash pickup. He explained this came up because there has to be a place for a dumpster to serve his building. At the present time, the dumpster is right under where the town center will be. That point has been discussed with his architects and they will have a place for the dumpster.

In response to another question from an Alderman Trumbo, Mr. Bradberry stated he has always wanted to discuss a lease that would be satisfactory to the City, if it would accomplish his purposes. He has a large investment on the south side of the square. He has property on either side of this particular space. It is the heart of the property. He stated he needs ongoing control as to what would happen to the property on either side.

Alderman Schaper stated the town center would be a major public facility. The entrance is critical to its functioning. The City needs to own what becomes the public space. He is not opposed to doing this in a way that would not hurt Mr. Bradberry's businesses. He suggested leasing to Mr. Bradberry what he needs for his businesses.

Alderman Trumbo stated he has a problem with the City taking the land. Mr. Bradberry has invested a lot of money to build a viable, ongoing concern. He did not see a problem with a properly worded, long-term lease.

Alderman Young agreed and added that if it comes down to condemning the land and the devaluing of the other properties is added, the price could get expensive.

Alderman Williams thought the value of the other properties would increase dramatically by having a seven or eight million dollar project built right next to it. He would like to work out an accommodation, but had a problem with investing half a million dollars on property the City does not own. A jury would say the property value has increased. He stated he does not want to condemn the building, but would rather work with Mr. Bradberry.

Alderman Young asked Mr. Bradberry if he would consider leasing land from the City, after the City purchased it.

Mr. Bradberry replied he would not be interested in that. He stated he does not mind giving up the primary use of the land for the City to use as a town center, but he wants to own the property in order to have some control of what happens on either side of it. It is a single unit they want to keep together. It is there for the City to use and cheaper than if the City bought it. This has been talked about for two years and never seemed to be a problem. Many public facilities are built on leased land.

Alderman Schaper stated he has said from the first that the City needs to own the property under the town center, including the plaza. The public investment is seven-plus million dollars. He stated he is willing to go along and protect Mr. Bradberry's 21 parking spaces in the town center, but the public needs the security of owning the land. He is not sure the plaza needs to be as large as it is drawn. He mentioned Mr. Bradberry had talked about retaining the right to build on the eastern 25' of this space.

Mr. Bradberry stated it was brought up by the Planning Commission that it might be desirable to have little shops on the side of the plaza, next to Mr. Bradberry's building. He stated his point was to be allowed to build them. That could be taken out of the lease.

Alderman Schaper stated that is a plus for Mr. Bradberry, but the public interest has to come first.

Alderman Young stated Mr. Bradberry's position is the same; the land is necessary for his project.

Alderman Pettus stated that over the next 75 years, almost a million dollars would go to Mr. Bradberry's family and the City still would not own the property. There is precedent for taking business land, the Walton Arts Center.

Alderman Williams added this is not a business. It is a parking lot.

Mr. Bradberry responded it is an integral part of his business. They simply could not have leased spaces had they not been able to control those parking spaces to lease spots that are adjacent to the interior spaces.

Alderman Williams stated there has been no talk of refusing to replace those parking spaces and with more desirable parking spaces, covered spaces. Several on the Council feel the plaza should be City owned and are willing to work out the details to make it a positive for Mr. Bradberry's businesses.

Mr. Bradberry stated that if the City has to pay for the property and pay its value to him, he is not only giving up parking spaces, he is giving up the ability to complete the south side as he has elected to do it. He is giving up a great deal as far as future business is concerned. The money the City would pay for this lot could return a lot more to the City then it would from a small lease.

Alderman Schaper hoped the City would not end up paying a huge amount, as Mr. Bradberry would be getting a 75-year lease on 32 parking spaces, covered garage parking worth a considerable amount of money and is more than he has now.

Alderman Trumbo stated there is a big difference between what is being replaced here and what was replaced by the Walton Arts Center. The Walton Arts Center replaced rundown businesses that were eyesores.

Alderman Pettus stated they were still people's businesses that they got their livelihood from.

Alderman Williams stated the only thing being taken is an asphalt parking lot. We are not talking about taking a single building.

Mr. Bradberry asked if it were cheaper for the City and made more economic sense for them to lease this over 75 years, getting the same benefits they would have if they purchased it outright, wouldn't that be something that the City should consider as a way to save money.

Alderman Daniel stated it is not just a money consideration. It is the flexibility it gives the City.

Alderman Williams added that another consideration is not saddling the generations to come with having to buy this plaza or to negotiate a new lease that might cost a tremendous amount of money.

Mayor Hanna stated it is quit possible a lease could be negotiated and a portion of the money that we would have to pay for the property if we bought it could be invested to make enough money to make the lease payments for the next 75 years. That would save the City money, not spending $900,000. Another option would be for Mr. Bradberry to retain air rights up two or three stories, so he could still build his tower across those buildings.

Mr. Bradberry stated the tower was going to be phase two of his project. The plans were drawn up several years ago, before the remaining part of the south side property was acquired. The idea was that once it was acquired, they would move towards this. He stated he believes there is a need for office space in downtown Fayetteville. He stated he has preliminary plans, not specific plans.

Alderman Young stated it appears that some do not want to negotiate a lease and Mr. Bradberry is not interested in selling. He asked Mr. Bradberry if he is interested in negotiating the sale of the land. The question before the Council is whether or not to instruct Jerry Rose to continue negotiating a lease or change to negotiating a sale of the property.

Mr. Bradberry reiterated this is the heart of his project and it is not for sale. He stated he is doing his dead level best to come up with a lease that is satisfactory to the City that will last a long time. He stated the City should at least try to negotiate a satisfactory lease. He stated if that is not possible, the only conditions under which he would be interested in discussing a sale would be if the City just bought the whole thing, the whole south side.

Alderman Schaper stated a public project has to be able to stand on its own and not be held hostage.

Mr. Bradberry stated there are many public properties built on leased land.

Alderman Pettus stated the Arkansas legislature has proposed an amendment to the State constitution which would allow state and local governments to enter into long-term leases to lease property or equipment. The state constitution does not now allow that and she asked if the City can legally enter into a lease.

City Attorney Rose replied it is possible to enter into a long-term lease. It may require budgetary approval and be subject to yearly budgetary approval. That risk would be run by Mr. Bradberry more than the City. The City would be secure in the lease as long as the budgetary advances are made. If the City stopped making payments, Mr. Bradberry would still own the land.

Alderman Trumbo asked if this should not have been anticipated and addressed before this all got started.

Alderman Schaper responded it was always anticipated that we would buy this thing. We've always said we need to own the land it is on. That's why we worked out the elaborate deal with the

Downtown Parking District.

Alderman Williams stated he, too, always assumed we would own the property. He was not aware of any lease proposal until he heard from Mr. Bradberry. There was some miscommunication. Evidently, the staff had talked to some extent with Mr. Bradberry about a lease, but it was not presented to the City Council.

Alderman Trumbo stated protracted litigation will not serve anybody in this situation. Interest rates could be 200 bases points higher by the time it is rectified.

Alderman Miller stated this looks like a good deal for Mr. Bradberry. The City has to pay the taxes, the insurance, and all the upkeep. Mr. Bradberry gets access to some of the property. He stated he does not like the lease the way it is. If a better lease can't be negotiated, we should try to do what needs to be done on a friendly basis to expedite this.

Alderman Williams stated condemnation proceedings would not prevent the project from going forward. He stated it would be better to reject the lease concept. He hoped a good sale could be negotiated.

Alderman Williams moved to ask the City Attorney to enter into negotiations to purchase the Bradberry property. Alderman Pettus seconded.

Alderman Trumbo had confirmed that there is no money allocated for this and we are already over budget.

Steve Ward, Fayetteville Chamber of Commerce, stated what the Council is pursuing is out of context with what it started out with. The A & P Commission entered into discussions and negotiations with Mr. Bradberry. Mr. Bradberry assured the A & P Commission that he supports the project and has shown that support all the way through. He stated what is being done at the meeting is unfair to Mr. Bradberry. He hoped to continue to negotiate with Mr. Bradberry to a point that can't be resolved and then to proceed from there. Mr. Bradberry is owed the opportunity to attempt to negotiate a lease.

Mr. Ward stated this project is an A & P Commission project, from beginning to end.

Alderman Williams stated he has been on the A & P Commission for the last year and a half and no lease agreement or negotiation has been brought forward from Mr. Bradberry.

Mr. Ward stated the Mayor made the initial contact with Mr. Bradberry.

Mayor Hanna stated that when this idea was started, we weren't talking about leasing or buying that whole lot. We were talking about an entry way, a sidewalk, an elevated walkway to get to the town center. It is important to have access from the square to the town center. Mr. Bradberry offered that free, to begin with, as a walkway. In the beginning, no one was discussing using that whole piece of property.

Alderman Zurcher hoped no one is under the impression that the A & P Commission could speak for the Council. It sounds like Mr. Bradberry had assurances that we wanted to lease, but it never came to this Council as any kind of a lease agreement.

Mr. Ward stated these are A & P funds and this is an A & P project. Within those guidelines, the A & P Commission was pursuing what it took to make the project come together, including access to the property. Those negotiations were entered into in a business-like manner.

Alderman Trumbo pointed out that the brochure that went out before the city vote says 12,000 sq. ft. of new plaza and landscape areas would span the square gardens. That is what the voters voted on.

Anne Murphy, citizen, underscored that no money has been allocated for the lease or the purchase of this land. This means that whichever way the City goes, additional money will have to go into the project. She reminded the Council that this passed by a small margin of a small percentage of voters. If we are talking about cost overruns, the voters have a place in this discussion. This situation illustrates there is not clear communication. The details have not been covered. She is very concerned about the flawed decision making process. She felt Mr. Bradberry made a good point when he said he has contributed to the enhancement of the Fayetteville square. She wondered if it is not unjust to even suggest condemning the property. In light of what we now know, perhaps the project should be reconsidered.

Diane Boyd, manager of Executive Square, Inc., responded to comments that the Council did not know about a lease. Since 1995, she has been involved in numerous meetings with representatives from the A & P Commission, the City, and the architect to work out the details of the lease. She stated she was presented with a draft of a lease. The entire time this has been dealt with under the representation that the City or the A&P Commission would lease the property, because she has not been interested in selling it.

Ms. Boyd stated that rather than increasing the value of the property, there are some definite problems. The plaza cuts off a big part of their building. It towers over another building. She stated she has spent hours with the architect talking about what would have to be done in order not to harm the other buildings.

Ms. Boyd stated it is not as though they are suddenly saying they want a lease. They have helped with the town center and want to do it and will do anything to cooperate in working out terms of the lease. The initial lease received from the City did not have some of the protections that were asked for to protect the property. She was told those could be worked out and she was told to draft a lease. She stated they have never negotiated on the lease.

Ben Mayes, Administrative Services Director, stated he drafted the initial lease. He stated staff had brought to the Council the acquisition of a lot owned by the Downtown Parking Improvement District. The Council told staff to stop working on this until after the vote. That is why the lease was started in 1995 and never came forward until after the vote. After the vote, they met one time with Ms. Boyd. The Council could either have done all this work and then voted on it, or it could have voted on the project and then proceeded. The Council and A & P Commission elected to proceed without detailed drawings and without leases and land acquisition. The initial lease was drafted by staff because Mr. Bradberry had been approached and was not interested in selling the land. It was only for the provision of the exact number of parking spaces they were losing. The initial idea of the town center was to have the parking extend under the plaza area, so it made sense to provide them spaces immediately below what they were losing. Once staff was instructed not to go forward, staff did not go forward. This is the first response since that date.

Mayor Hanna stated he thinks it is wrong not to give the lease a chance to be brought forward and worked on.

Alderman Pettus was not in favor of this because it has been shown that initial conversations about a lease have become binding representations in the minds of some people. If we vote to negotiate a lease, it may be perceived to be binding. She stated she wants to buy the property, not lease it.

Mayor Hanna called for a vote on the motion to have the City Attorney enter into negotiations to purchase the property.

Upon roll call, the motion carried on a vote of 5 to 3, with Aldermen Miller, Young, and Trumbo voting no.

PROPOSED CHANGES TO TOWN CENTER

Mayor Hanna introduced proposed changes to the town center from the Advertising and Promotion Commission.

Mayor Hanna stated that staff continues to believe that it is important to provide as much parking as possible and prudent as part of the town center project. As Mayor, he recommended that the Council instruct the architect to proceed with bid plans to include all three complete levels of anticipated parking, approximately 230 spaces, for the following reasons:

- The town center was introduced several years ago as a project that could help the parking situation in the downtown area. The citizens understood during the town center campaign that there would be approximately 230 parking spaces in conjunction with the project. The town center feasibility study on which the bond requirements were based estimated the parking deck to cost \$3.3 million to \$4 million, for an average of \$3.7 million. The latest estimate of the total project cost of \$8.5 million includes a parking estimate of \$3.7 million for all the approximately 230 spaces. This item is closer to the estimated cost used in the feasibility study and bond sizing estimates than any other construction cost item. The current estimates are just that, estimates. The bids could come in higher or lower than these estimates. When bids are received, the City Council and Advertising & Promotion Commission will make the final decisions, if necessary, on design alterations and additional financing. He proposed having Richard Alderman bid on all three decks.

Alderman Daniel asked if the Council could go with Mr. Alderman to look at the actual model, which was in the foyer.

Richard Alderman, architect, stated that model is for the ultimate project, the \$8.5 million. He offered to bring it to the council chamber. The difference in the model has to do with the roof line and the materials on the outside, which were never in any of the preliminary drawings.

Alderman Williams agreed with the Mayor, though one of the ways the A & P Commission looked to save money was a \$450,000 saving from eliminating half of the bottom parking deck. If it were bid, it might actually come down and we could afford the full parking deck as originally designed. If not, it could be faced at that time. It would be hard to add that on, if the bids came in lower than expected.

Mr. Alderman pointed out that State law requires having deductive alternates only. Regarding the tower, he stated it is his responsibility to show what the City can afford. He does not think the City can afford a real tower with a point.

Alderman Young asked how much having the full parking deck underneath the town center would cost. He asked if what the Mayor suggested could be done for \$6.95 million.

Mr. Alderman did not think the building could be built with that on there, it is worth an estimated $450,000.

Alderman Schaper stated the A & P Commission was happy to delete the parking but didn't budge on the suggestion to trim 20' off the south side of the building, which was over the estimate and would have saved $454,000. The Council needs to set its priorities.

Alderman Young, referring to a conceptual budget dated June 10, 1996, asked if the building, without the parking, would cost roughly $4 million.

Mr. Alderman replied that on June 10, 1996, a preliminary budget was made. The total cost of the building, the exhibition hall and support spaces, was given as $2.6 to $3.4 million. The parking deck was $3.125 million to $3.750 million. The overall budget was $6.1 million to $7.6 million, hard construction numbers at that time. Taking the contingency of $.5 million, it looks like $4 million for the parking deck and $3.3 million for the building itself.

Mr. Alderman stated the March 9, 1998, document is the breakdown of all the numbers, the $7 million budget. The building itself is $3.75 million. The parking deck is $300,000. The plaza is $250,000. The parking deck number includes the basic site work.

Mr. Alderman clarified that he was being asked to bid the project with just the parking and not the other features being discussed, bidding something that is around $7.5 million and hoping it will come in at $7 million.

Mr. Alderman stated they are fine bidding the rest of the parking as a deductive alternative. They have tried to show what they have heard everyone wants the building to be.

Alderman Young stated the people voted for $6.95 million. His vote for the bonds must reflect what the public voted for. If the A & P Commission wants more money, they can ask the people for more. This is between the A & P Commission and the people.

Alderman Trumbo stated he is in favor of bidding this project based on all the material presented to the voters and based on the drawings shown to the public.

Mr. Alderman responded there is no difference other than 40 parking spaces.

Mayor Hanna reiterated he is asking for those parking spaces to be included. Three A & P Commissioners, one or two councilmen, the Downtown Parking District, and a lot of business people got behind this project because of the parking.

Mr. Alderman stated that to bid this out and then change the project afterwards is not cost effective. We need to come up with the best possible project with hopefully one deductive for parking. If we start negotiating, we will get sixty to seventy-five cents on the dollar. He cautioned against trying to change the job later.

Alderman Williams agreed to bidding what the A & P Commission has worked out to meet the budget with at least that one deductive alternate. He did not support using the concept drawing that was done after the election and making cuts from that.

Alderman Zurcher supported taking it back to voters, if it costs more money to give them what they want.

Alderman Williams responded that the A &P Commission has already determined what they can leverage through bonds and through the current tax. We would not have to go to the voters to use capital improvement funds to improve or to build a portion of this project. He hoped we don't have to do this, but he is in favor of building a building that is a true asset and civic improvement.

Alderman Miller stated the voters were presented with a town center and a bond issue. They did not agree to spend capital improvement money on this.

Alderman Schaper asked if one of the deductive alternates could be to decrease the size.

Mr. Alderman responded that much smaller than 14,000 sq. ft. doesn't help us any. That is the breakpoint for handling the bigger conventions and making a difference in attracting people to Fayetteville. This could be done, but the fewer deductive alternates, the better.

Alderman Williams reported that the A & P Commission was unanimous in not wanting to reduce the size. It would cut the available uses of the building dramatically and it would be difficult to enlarge in the future.

Mr. Alderman pointed out the land south of this building needs to be looked at as possible future parking and expansion. The property and view from the back end of the building is very important, too.

Alderman Trumbo asked if the original picture showed the whole plaza on Mr. Bradberry's parking lot.

Mr. Alderman replied it did show the plaza go all the way out. An area was marked off reflecting Mr. Bradberry's desire for some future retail.

Sue Clemons, Friends for Fayetteville, gave written comments to the Council regarding the town center. She stated Friends for Fayetteville likes the idea of a town center to enhance the sense of community on the square and to enhance economic viability. Personally, she is concerned about all the details that need to be worked out. She asked if costs for landscaping and purchasing or leasing the plaza were included. She was told $250,000 has been budgeted to do the plaza. She asked about ownership and operation of the facility. She stated it is a concern that whoever manages the building commits to providing meeting space for non-profit organizations and public bathroom accessibility.

City Attorney Rose replied that the Council has reflected that the City of Fayetteville will be the owner of the building. The management may be anyone the City names. It is logical for that to be the A & P Commission. He stated he would present to the Council at the next meeting a management lease with the A & P Commission.

TOWN CENTER BOND ISSUE

Mayor Hanna introduced an ordinance providing for the execution of documents needed to complete the issuance of the Hotel and Restaurant Gross Receipts Tax Bonds, Series 1998, the proceeds of which will be used to partially finance the construction of the Town Center and Parking Garage on the south side of the downtown square. In addition, the City Council is requested to grant the authority for the Budget Coordinator to execute any budget adjustments necessary to recognize the bond proceeds and bond issuance costs.

City Attorney Rose read the ordinance for the first time.

Ben Mayes, Administrative Services Director, stated staff does not intend to market the bonds until directed but wants the Council to have time to look at it and ask questions. The bond attorney could be present at the next meeting.

David Hausam, of Llama Company, reviewed a handout.

Jeff Erf, citizen, asked why there are two underwriters for the bond issue and if there was a bidding process for the underwriting contract.

Mayes replied there can be any number of underwriters. It was decided to use two because of the size of the issue.

Alderman Schaper added that these two firms are complementary in their strengths and marketing plans. It doesn't cost more money.

This item was left on first reading.

ADJOURNMENT

Alderman Miller announced a household hazardous waste roundup for April 18, 1998.

City Attorney Rose announced he would not be present for the next Council meeting but would be at the next agenda session.

Mayor Hanna adjourned the meeting at 11:00 p.m.