MINUTES OF A MEETING OF THE FAYETTEVILLE CITY COUNCIL JANUARY 4, 2000

A meeting of the Fayetteville City Council was held on January 4, 2000 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Present: Mayor Hanna; Aldermen Reynolds, Austin, Davis, Trumbo, Daniel, Santos, Young, and Russell; City Attorney Jerry Rose; City Clerk Heather Woodruff; Staff; Press; Audience.

ITEM CONSIDERED	ACTION TAKEN	
Minutes	Approved	
Mt. Sequoyah Water Tank Lease	Approved	Res. 1-00
RZA 99-3 amendment	Approved	Ord. 4207
VA 99-13	Failed	
RZ 99-33	Passed	Ord. 4208
RZA 99-4	Passed	Ord. 4209
VA 99-15	Passed	Ord. 4210
A & B Taxi	Approved	Res. 2-00

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NOMINATING COMMITTEE REPORT

Alderman Daniel moved to appoint O.E. Luttrell and Tom Stockland to the Youth Center Board. Alderman Young seconded the motion. Upon roll call the motion carried unanimously.

CONSENT AGENDA

APPROVAL OF THE MINUTES: Approval of the minutes of the December 21, 1999 City Council meeting.

MT. SEQUOYAH WATER TANK LEASE: A resolution approving an amendment to the lease agreement with Mt. Sequoyah, Incorporated for the right to sub-lease space on or above the water tank.

RESOLUTION 1-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Trumbo moved to approve the consent agenda. Alderman Daniel seconded the motion. Upon roll call the motion carried unanimously.

OLD BUSINESS

RZA 99-3: An ordinance approving an amendment to Ordinance 4187 which annexed property owned by John DeWeese and Mike Schmidt in the City of Fayetteville. The amendment is to correct an error in the legal description.

Mr. Rose read the ordinance for the first time.

Mayor Hanna explained the purpose of the ordinance was to amend a typo in the legal description.

Alderman Davis moved to suspend the rules and move to the second reading. Alderman Trumbo seconded the motion. Upon roll call the motion carried unanimously.

Mr. Rose read the ordinance for the second time.

Alderman Santos moved to suspend the rules and move to the third and final reading. Alderman Daniel seconded the motion. Upon roll call the motion carried unanimously.

Mr. Rose read the ordinance for the third and final time.

Mayor Hanna called for the vote. Upon roll call the ordinance passed unanimously.

ORDINANCE ~~4208~~ 4207 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

VA 99-13: An ordinance approving vacation request VA 99-13.00 submitted by Mike Roetzel on behalf of Buddy Peoples for property located at 28th Court. The request is to vacate the undeveloped street right-of-way located west of Club Oak Drive within Edge Hill Subdivision. This item was left on the second reading at the December 21, 1999 meeting.

Mr. Frank Scott, an area resident, stated he was oppose to the vacation because it would leave only one egress and ingress to his property. If he were living on Club Oak Drive he would vote against having the street, but he had been lead to believe, for the past thirty years, that there would be access to his property. He had lived there since there were only eight houses there. It was a matter of principle and what had already been approved twice by both the original developer and Mr. Peoples. He thought it was a matter of principle since the street had been plated and on the books for over thirty years. He had signed his okay on the other developments, because he had been shown a plat that included 28th Court.

Mr. Buddy Peoples, applicant, stated his main concern was that the three lots and the easement had been there for nine years. Everything else in the subdivision had been developed. Theses lots could not be maintained properly. They were in the situation where the neighbors wanted the neighborhood completed. They had been working with the neighbors involved to see which was the best solution. He felt that in order to complete the subdivision and to put this to rest that they needed to eliminate the two rear lots, which would eliminate the need for the street. And construct one dwelling that would blend in with the rest of the neighborhood. All of the neighbors in the community, with the exception of one who had agreed to remain neutral, has agreed that they wanted their development complete. Everyone had been willing to sign the petition. The residents feared that a street could filter traffic through their neighborhood.

Alderman Russell asked Mr. Peoples how he would respond to Mr. Scotts argument that the street had been on the plat for Edgehill from the very beginning. Mr. Scott had stated he had given his okay for the whole development with this street on the plat. He had relied on the street when he gave his okay for the development.

Mr. Peoples stated he did not know that much about that as far as the approval. He thought at the time they developed the subdivision the street would not be approved. So they did not try and pursue putting the street in. They had been told that the street would not meet the minimum street standards, so they did not pursue the street. He had been involved in two subdivisions in the last five years. As far as easements and ingress and egress was concerned. There was one subdivision which was 95 acres that had only two egress and ingress and it functioned perfectly, Savannah Estates. He had also been involved in Brookbury Woods. It was 45 acres and had only one egress and ingress and a sub-out to the rear. There was no way he would try to develop the street and force it down the existing neighborhood with as much resistance as there was from these neighbors, especially if he had two other ways to get to the property. He thought Ravenswood was a perfect entrance into the property. If they were to use another route they would have to filter the traffic through Edgehill subdivision.

In response to questions from Alderman Santos, Mr. Peoples stated 28th Street had been left on his plat because there had been no changes on the plat. They had more/less gone by the old plat because the utilities were already in. The street had never been stubbed out because he knew it would not meet the minimum building codes.

Mayor Hanna asked if the grade on 28th Street was any greater than Peach Street.

Mr. Peoples stated it had been estimated that Peach Street was in the neighborhood of 10%. If they were to go by the City Engineers specifications, their latest survey was 18.7%.

Mr. Venable stated looking at the elevations of Peach Street it appeared to be approximately the same as 28th Street.

Alderman Reynolds stated it was his understanding that there was a 50 foot right-of-way on Ravens Wood to the corner of Mr. Scott's and Mr. Starr's property. He noted there was a 25 foot right-of-way which ran through there. More right-of-way would have to come off one of their property.

Mr. Peoples noted Mr. Scott's property had city right-of-way off Ravens Wood. He could widen the right-of-way to any width using his own property.

Alderman Russell questioned the number of entrances and exists required for a development of this size.

Mr. Venable replied it would depend on how he developed it. He thought the developer would want more than one way in and out.

Alderman Trumbo thought a lot of it would depend on the Planner and the Planning Commission.

Alderman Austin asked what would happen to the property after it was vacated.

Mr. Rose stated when the right-of-way is vacated half of the property would go to each property owner.

Ms. Linda Falington???stated she had lived there for three years. She stated one of the reasons why they had purchased property there was because of the convenience of only one way in and one way out. They felt safer because only the people having any business there should be coming up there.

Alderman Daniel stated she was going to side with Mr. Scott on this issue, because the right-of-way had been their for many years. It was her responsibility to give landowners access and providing streets. The form letter (petition) did not impress her very much. It was human nature to want to help your neighbors. People did not educate themselves on the issue. No one wanted more streets or more traffic. They had to consider the future and giving people in and out of places. She thought they needed to have more than one entrance to a subdivision. She thought this was a lovely piece of property and that there were people who were going to want to live there. She was not for the vacation.

Alderman Santos stated they needed to stick with their plans and to keep their promises that they made. It was a promise everyone should have been aware of before they moved in. It had been required by the planning commission. Cutting and filling could solve any grade problem. He thought they could construct the road when it was needed.

Alderman Russell stated there were no neighbors on Peach Street to fight for their entrances and exists. Vacating was so permanent. This was a very hard decision to make, but he would be siding with Mr. Scott for the time being. If they left the right-of-way open there was nothing to prevent them from asking for the vacation later. The vote against the vacation did not mean that he supported a street going through there. It meant that he thought they needed to wait until the area was developed and until the property was being developed before they made a decision, because this decision would affect a lot of people and a lot of land.

Alderman Austin added this was a difficult decision, but most of the people that had contacted him was in favor of the street vacation, so that was how he was going to vote.

Mayor Hanna called for the vote. Upon roll call the motion failed by a vote of 4-4-1. Santos, Young, Russell, and Daniel voting nay. Hanna abstaining due to conflict of interest.

Mr. Rose stated the ordinance failed for lack of majority.

NEW BUSINESS

RZ 99-33: An ordinance approving rezoning request RZ 99-33.00 submitted by Charles Venable on behalf of the City of Fayetteville for property located west of School Street, east of West Street, south of Mountain Street, a and north of Rock Street. The property is zoned R-2, Medium Density Residential, and R-O, Residential Office, and contains approximately 2.42 acres. The request is to rezone the property to C-3, Central Commercial.

Mr. Rose read the ordinance for the first time.

Alderman Santos moved to suspend the rules and go to the second reading. Alderman Russell seconded the motion. Upon roll call the motion carried unanimously.

Mr. Rose read the ordinance for the second time.

Alderman Trumbo moved to suspend the rules and move to the third and final reading. Alderman Daniel seconded the motion. Upon roll call the motion carried unanimously.

Mr. Rose read the ordinance of the third and final time.

Mayor Hanna called for the vote. Upon roll call the motion carried unanimously.

ORDINANCE 4208 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZA 99-4: An ordinance approving annexation request RZA 99-4.00 submitted by Don Bunn on behalf of the City of Fayetteville for property located south of Persimmon, bound on the west by 54th Street and bound on the east by County Road 648. The request is to annex the approximately 320 acres.

Mr. Rose read the ordinance for the first time.

Mayor Hanna stated he had some calls regarding this annexation. particularly from neighbors that wanted assurances that if their permits were approved and they were able to build their waste water treatment plant in that location that they would put in their request for the bids that the order control be address specifically and special attention be given to that and that the screening issue be addressed and to make it as attractive as possible. The city had already agreed to do this. There will be when the consultants report is brought back to them. There would be an additional hearing on how the construction of the plant placement and what they were going to have was going to be. That would be prior to the bid specification being let out and the project being let on. The opportunity will be their to address there for them to address those. Tonight they were looking specifically at the annexation of 320 acres that the city had spent approximately 3 million dollars for. Even if they were unable to place the sewer treatment plant there they still needed inside the city of the Fayetteville.

Alderman Russell asked if it was illegal for them to own property out side the city limits.

Mayor Hanna replied it would be a bigger loss for them if they were to leave it outside city limits. They had to have something go their, like a city park. They could not place them outside city limits. If they were going to sell the property they would want it inside the city limits, because it would be worth more money. It would be foolish if they did not get as much money for the property as the could for the citizens. He did not know of the city selling too much property like this. His feeling was that the city would use the property as park land. In fact, part of the property was going to be used as park land anyway. All these issues would be addressed in the meeting was talking about. Public input would be had.

Alderman Trumbo stated he thought the logical thing to do was to annex the property, then have the public hearings.

Alderman Russell stated he had been prepared to leave the ordinance on the first reading, because he did not like how the project had been handled from the being. They had submitted an annexation to the public with the stated purpose of placing an second wastewater treatment plant on the west side of town. Every one who lived inside Fayetteville had a chance to vote and they had voted it down. It had been said that the purpose of purchasing the land had been the city's way of getting around the public vote on the annexation. But with what had been said on annexing the property tonight regardless was what its use ended up being made since to him. Regardless of what happen, he hoped the council would look out for the interest of the citizens of west Fayetteville with regard to the odor and the physical attractiveness of the plant. He stated he would like to hear from the neighbors tonight.

Alderman Austin stated the city had said they were not going to construct anything out there unless the people voted it in. The sewer plant would have to be brought to a vote by the public and the public would make the decision the bond issue which would allow them to construct the plant. He felt good about annexation issues in that regard.

Alderman Russell asked what the rule was on a bond issue being put to a vote.

Mr. Rose stated that bond issue would definitely be put to vote by the public.

Mr. Bill Jowers, 452 N. 46th Street, as city voters they could say what they wanted to. People knew what they were voting on. The people had said three to one "no". If they could vote for this with a clear concise to go one, but it would be voted on again and the public would vote voice it opinion again. What they did out there was wrong. They had circumvented what the people voices were. Tonight he had heard someone say that the city needed to "keep their promises". He asked for a resolution that those people affected out there should be reimburse for the depreciation of their property. He had been told that this could be done, but he would like to see it in writing.

Mayor Hanna asked Mr. Jowers if the what the people had been concerned about was the wastewater treatment plant or having their property annexed into the city of Fayetteville.

Mr. Jowers replied it was some of both, but the greater percentage was one the wastewater treatment plant.

Mayor Hanna stated he felt that way about it too, he did know that the people would have the opportunity to vote on that again, because the bond issue would have to voted on by the people. They had been left with very few avenues. The city had wanted to move out further west on the Illinois River, but they had been denied they by a state law. This location was one of the locations that was less desirable in the eyes of the city government, but they had been forced into something, then they needed to present to people what was available.

Alderman Daniel stated Mr. Jowers was also concerned about the people who did not have a vote in this who lived surrounding the 320 acres. They needed to consider those folks.

Alderman Russell state that some of the neighbors felt that this was being rail roaded. In his opinion was to go out there and have neighborhood meetings with the citizens, especially if they were not allowed a vote. The meeting should be indicated by the city and explain the situation to them. And address their needs. He did not feel that had been done with this.

Mr. Jowers replied if that had been done up front with the people, they would not be in this position.

Alderman Russell stated he was sorry for the way things had been handled, but he was going to vote for the annexation tonight. He thought the first annexation vote, the people were saying they did not want an second sewer treatment plant. He thought before they constructed a second sewer treatment plant the city would do a better job of working with the people out there. He added the city should not wait until they were required to have a public hearing.

Mr. Venable replied they had several hearings on what to build and the location of the plant. He thought there had been plenty of opportunity for public hearings.

Alderman Reynolds stated they had begun this process before the new law was enacted. He thought they had done this right and by the book.

Alderman Austin stated he had to vote for the best of the city at large. He knew several of the individuals that lived out there and knew how they were hurting. He thought he needed to go with the majority of the people that would be served.

Alderman Trumbo moved to suspend the rules and go to the second reading. Alderman Daniel seconded the motion. Upon roll call the motion carried.

Mr. Rose read the ordinance for the second time.

Alderman Trumbo moved to suspend the rules and move to the third and final reading. Alderman Reynolds seconded the motion. Upon roll call the ordinance passed.

ORDINANCE 4209 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

VA 99-15: An ordinance approving vacation request VA 99-15.00 submitted by Roger Trotter of Development Consultants, Inc. on behalf of Steve Clary Development Corp. for property located at Lots 3R and 8 of Wedington Place. The request is to vacate the 20-foot utility easement between Lots 3R and 8 and a portion of a 15-foot drainage easement located within Lot 8.

Mr. Rose read the ordinance for the first time.

Alderman Austin moved to suspend the rules and move to the second reading. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

Mr. Rose read the ordinance for the second time.

Alderman Davis moved to suspend the rules and move to the third and final reading. Alderman Daniel seconded the motion. Upon roll call the motion carried unanimously.

Mr. Rose read the ordinance for the third and final time.

Mayor Hanna called for the vote. Upon roll call the motion carried unanimously.

ORDINANCE 4210 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

A&B's TAXI: A resolution approving a Certificate of Public Convenience and Necessity for A&B's Taxi.

Alderman Austin stated an alderman had asked for the issue of the Taxi Service be placed on the Ordinance Review Committee.

Alderman Davis thought they should go ahead and proceed with the item tonight.

Alderman Reynolds stated he was the one who had pulled this off the consent agenda. Since that time had receive phone calls from all over. He did not think people wanted to do away with Taxi Cabs, but they wanted the cabs to be cleaned up and marked. They wanted things redone. He thought they needed to revisit the ordinance. He wanted to clean things up and to have good cab companies. He thought there were several violations.

Mr. Brian Jacobs, the owner of A&B, he understood the need and want to have cleaner cabs. All of the cars within the next few months would be the same color. They were going to get uniforms. He stated if they were given the chance to get this off the ground they would see some changes. They had a lot of elderly people that they catered to. His mother in-law was nice enough to hold the business open until they receive their own permit. He wanted a chance to try and make this work.

Alderman Trumbo moved to approve the resolution. Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 2-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

INFORMATIONAL/ BAKERY FEEDS

Mr. Rose stated it was not uncommon in Federal Court for the court order a settlement conference. In the case of Bakery Feeds and the City of Fayetteville, such a settlement conference had been ordered. He stated it was going to be unusual from their experience. In federal court they were there because the neighbors indicate a nuisance action against Bakery Feeds, the council then voted to join the suit and seek to have the nuisance declared to be a public nuisance and their for abated. Now Bakery Feeds has counter claimed against the city for a tort of intentional interference with a business expectancy. The conference had been ordered by the court for 1:00 , January 11. It was in the Federal Court House, on Mountain Street, 5th floor. Each party had to provide a settlement conference. There would be a neutral judge. The judge had requested a personal appearance from the parties. The council was invited to be their. He encouraged them to be there.

Meeting adjourned.