MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
APRIL 20, 1999

A meeting of the Fayetteville City Council was held on April 20, 1999 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 Bob Reynolds, Ron Austin, Bob Davis, Trent Trumbo, Heather Daniel, Kevin Santos, Cyrus Young, and Kyle Russell, Planning Secretary Janet Johns (for City Clerk Heather Woodruff), City Attorney Jerry Rose, Staff, Press and Audience.

ABSENT: City Clerk Heather Woodruff.

The follow items were considered:

ITEM	ACTION TAKEN
Approval of the Minutes	Approved
Arkansas Avenue	Res. 55-99
Bid 99-47: Paul R. Noland Wastewater Treatment Plant	Res. 56-99
Insurance Policy Renewals	Res. 57-99
Historic District Commission	Removed
Land Possession - Rupple Road	Ord. 4157
Chief Executive Officer	Left on 2nd reading
Street Name Change: Hall Avenue to Garland Avenue	Res. 58-99
Cliffs Boulevard	Ord. 4158
Planning Commission Appeal: Cliff's Boulevard Phase 2	Motion
Discussion of Odor Emitting Businesses	No Action
1999 Water & Sewer Refunding Bonds	Ord. 4159

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ABSENT: City Clerk Heather Woodruff.

CONSENT AGENDA

APPROVAL OF THE MINUTES
Approval of the minutes from the April 6, 1999 City Council meeting.

ARKANSAS AVENUE
A resolution approving a budget adjustment and authorizing the Mayor to enter into a cost-sharing agreement with the University of Arkansas for the removal and replacement of the curbs and gutters located on the outside of each lane of Arkansas Avenue between Dickson and Maple Street.

RESOLUTION 55-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BID 99-47
A resolution awarding Bid number 99-47 to the selected bidder, Multi-Craft Contractors, for the installation of the ultraviolet disinfection system for the Paul R. Noland wastewater treatment facility.

RESOLUTION 56-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

INSURANCE POLICY RENEWALS: A resolution to exercise option to renew Blue Cross/Blue Shield, U.S. Able Life, Accidental Death and Dismemberment, and Long Term Disability Group increase in premium. Annualized total city contributions for calendar year 1999 will be approximately $184,606.

RESOLUTION 57-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

HISTORIC DISTRICT COMMISSION

An ordinance approving the amendment of Ordinance 3836 to provide for two additional members to the Historic District Commission for a total of nine members. Item was tabled on the first reading at the April 6, 1999 meeting..

Mayor Hanna stated the item had been tabled until the Historic District Commission could meet again.

LAND POSSESSION: RUPPLE ROAD

Mayor Hanna introduced an ordinance authorizing the City Attorney to seek court-ordered possession of 0.317 acre of land owned by Tony and Bobbye Hardin, located north of Mount Comfort Road and west of Salem Road for the purpose of extending Rupple Road from Mount Comfort road to the proposed new middle school. Ordinance should also include specific temporary easements. Item was left on the first reading at the April 6, 1999 meeting.

Mr. Rose read the ordinance for the first time.

Alderman Trumbo stated he would like to hear from Mr. Carr from the Fayetteville School. He asked Mr. Carr to give a history of procedure that the school board had gone through and the public notification they had done during the planning process. He also asked him to explain the location of the proposed road.

Mr. Carr explained they had looked at several parcels of land. They had been offered a piece of property off Mount Comfort. There had been several public hearings on the location of the new school. They then selected an architect to design the building to work with Rupple Road. The school had to pay the architects additional money, so they could have the benefits of having Rupple Road to the south. The best pick up and drop off of students was off of Rupple Road. All of their utilities were coming off Rupple Road. Currently all the foundations were poured and the utilities were stubbed out on the east side of the building. To change the location of the utilities and drop-offs would be financially devastating. If they had to move the drop offs, then the playgrounds would be reduced significantly. To move things now would be over $600,000 to the school district.

Alderman Trumbo stated that Mr. Hardin had suggested the road be moved to the west, but it was Alderman Trumbo's understanding that the engineering and the curvature of the road would make it infeasible to move it to the west. He thought this was the only option available.

Mr. Carr stated their engineers and architects had looked at the site and agreed this was the best site for the road. It was unfortunate that Mr. Hardin was not aware of this going on. They had had several advertisements in the local paper. It would be impossible for them to make changes at this time.

Alderman Trumbo asked if he had exhausted all avenues rather than placing this road so close to Mr. Hardin's house.

Mr. Carr replied they were following the Master Street Plan. All their planning had been done around the Master Street Plan.

Ms. Laleh Amirmoez, architect for school, stated the location of the school within the property was to take advantage of the Rupple Road access and utilities and would allow more room for playgrounds. They could not move the building further west because of the drainage. They had located the school the most effecient way possible.

Alderman Daniel noted the street had been on the Master Street Plan for a long time and was not just a result of the school.

In response to questions from Mr. Austin, Mr. Carr stated the finished construction date was May 25, 2000. They intended to occupy the school that fall.

Alderman Davis stated the school would be looking at an additional cost of $650,000 if they were to change the road at this point.

Mr. Carr stated that would be a minimum, because the utility extensions could be more.

Alderman Davis noted that Mr. Venable had estimated the relocation of the road would cost an additional $500,000 cost to the city.

Mayor Hanna stated they could all understand Mr. Hardin's concerns. He thought they should seriously consider moving ahead with the ordinance but broadening it to include negotiating with Mr. Hardin to purchase his house. The fire chief thought they could use the location as a substation in the location. Mr. Hardin had stated he would consider it as a last resort. He thought this was a fair settlement rather than condemning the land and constructing a road thirty to forty feet from his house.

Mr. Rose read a proposed amendment to the ordinance by adding a section 2 which would authorize the city staff to enter negotiations for the purchase of the house and the property.

Alderman Trumbo moved to amend the ordinance. Alderman Daniel seconded the motion. Upon roll call the motion carried unanimously.

Mr. Hardin stated that utilities and roads were two different things. He stated they could still run the utilities through the same place. He did not see a problem with the cost of the utilities. He thought the majority of the cost would be utilities. He had looked at the master plan of the school. The only thing that would have to be done would be to change the parking areas. He did not believe there would be any additional cost to the schools.

Mr. Carr replied if they were to move they would have to construct two access roads: one for buses and another for the parents. Two roads would wipe out their play ground area.

In response to questions from aldermen, Mr. Rose stated they were on the second reading and if they were to pass the ordinance they would authorize him to start legal action to obtain the smaller portion of the property. They would also be authorizing city staff to begin negotiations to obtain the house and property.

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

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

Mr. Hardin asked if they would be voting on moving the road.

Mayor Hanna stated it would depend on how the council voted on this motion.

Alderman Austin explained a motion had been made on the ordinance.

Mr.Hardin disagreed with the cost estimate from Mr. Venable.

Mayor Hanna stated it was a tough decision.

Alderman Trumbo explained they had all listened to his side.

Alderman Austin pointed out the motion on the floor gave Mr. Hardin another option.

Mr. Hardin explained he had lived in this house for over 30 years and had buried a son in the cemetary. In response to questions from Mayor Hanna, Mr. Hardin stated he only owned one and half acres.

Mayor Hanna called for the vote. Upon roll call the motion carried by a vote of 7-1-0, Daniels voting nay.

ORDINANCE 4157 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CHIEF EXECUTIVE OFFICER
Mayor Hanna introduced an ordinance amending Chapter 10, General Provisions, of the Code of

Fayetteville, to add Section 10.13, Chief Executive Officer, to define miscellaneous powers and duties of the Mayor. The item was left on the first reading at the April 6, 1999 meeting.

Mr. Rose read the ordinance for the second time.

Alderman Santos asked that the council table this item until they had more time to do research. The only town he could find that had something like this was Los Angeles, California. They had gone through a charter reform and the decision they had made was that the mayor should not have the power to remove department general managers as Fayetteville had now. They had thought it would be better if the council hired and fired the general managers. They had pointed out that the authority of the mayor was that he was the dominant player in the city's budget and was the political leader. He thought this would make decisions which should be made by professional positions to be made by political appointees. He thought they should redefine the qualification definition for department heads and let the council as a whole decide the hiring and firing of the senior management. He read a letter from Bill Moler expressing concern of a shift of power. He noted the mayor to override or bypass a department head. He read questions from Mr. Moler. What were the specific needs being met by the ordinance?

Alderman Trumbo responded that it was a legal question. It was currently a mayoral decision to hire and fire staff now. He did not feel that he as an alderman had the time to micromanage the city's hiring and firing. The mayor was elected to make those decisions. In the past there had been a lot of complaints about the red tape and bureaucracy they had to go through.

Alderman Santos stated he was not answering the question about the specific need that it met. He stated the ordinance was a solution begging for a problem. He asked what the problem was.

Mr. Rose replied he had attempted to avoid having the mayor change every ordinance in the code book that mentioned individual job titles. He mentioned that the mayor currently has the authority to hire and fire and redesignate and restructure job positions.

Mayor Hanna stated that, in his opinion, they were creating the ordinance to clarify questions, not to make it more complicated. Some of the things prescribed in the ordinance were state laws.

Mr. Rose explained that the state of Arkansas gave the voters and the people in each city a list of ways in which they can be governed, such as City Manager, Mayor-Council, City Charter, or City Administrator forms of government. The voters had chosen the Mayor-Council form of government. In that section the law stated that the Mayor of the city shall be the chief executive officer. As chief executive officer it generally meant that they could hire, fire and be the supervisor of the employees. The council would hold the purse strings and the mayor would supervise the day-to-day running and administration of the city hall. He thought the example Mr. Santos had given was a charter form of government, where the citizens had negotiated a charter or contract with the government. He did not believe this ordinance would change the form of government. The state statute would always prevail. They were operating under the Mayor-Council form of government and they could not pass an ordinance to change that.

Alderman Santos stated he could not see the reason to pass this ordinance, because it did not fulfill any currently need.

Alderman Young stated one of the problems of passing an ordinance was the unintended consequences of the ordinance. He added it was harder to undo an ordinance. It was very hard to override a veto.

Alderman Davis asked Mr. Rose some of the possible problems which could occur if they passed the ordinance.

Mr. Rose stated he could not answer it from a legal point of view. He thought it was for the council to discuss. If they were to have a bad mayor or council they would have bad mayors.

Alderman Trumbo stated all the time he had served on the city council he had never been involved in the interviewing, hiring or firing of an employee.

Alderman Santos asked that they not approve this ordinance which allowed the Mayor's duly appointed representative to serve in the positions, if the only reason they were passing the ordinance was so they did not have to change all the job title specifications in the code book. He stated that it did not make any sense at all, because it should be a public decision and not a political appointment. If they defined the positions of the people making the decisions it would be better than giving a blanket approval to reappointed anyone to those positions.

In response to questions from aldermen, Mr. Rose explained the mayor could currently do that now.

Alderman Russell stated Section B was completely consistent with state law. Section B was about all the power which the mayor currently has under the Mayor-Council form of government. What he had a problem with was the unintended consequence of firing an individual. In regards to Section A, there were sections in the code which specifically delegated certain tasks to certain city staff members. The "and/or" gave people the option to bypass the staff and to go straight to the mayor. He had a problem with people bypassing the steps. He had a problem with part A and not part B of the ordinance.

Alderman Trumbo pointed out that anyone had the right to file a lawsuit for wrongful discharge.

Mayor Hanna explained his duly appointed person was the "planning director," and if they were not available the city had a good enough staff to advise him to make a good a decision. He asked Ms. Little how many times he had asked her to change her decision.

Ms. Little replied he had not asked her one time.

Alderman Russell replied he was not talking about Mayor Hanna, he was talking about what would happen if they were to pass the ordinance, it would take a vote of six council members to rescind the ordinance. He suggested the ordinance should read the Mayor's duly appointed representative.

Mayor Hanna replied he would not have a problem. He stated he was ready to move on with the ordinance and would support a change if he wanted to make it.

Alderman Santos moved to amend the ordinance as alderman Russell had suggested. Alderman Young seconded the motion. Upon roll call the motion carried by a vote of 5-3, Trumbo, Reynolds, and Austin voting nay.

Mr. Rose read the amended ordinance to read "the Mayor's duly authorized representative."

Ms. Terry Easton, citizen, stated the staff was around him to protect him with their expertise and knowledge in different fields. If the ordinance were to pass they would open themselves up to unfavorable opinions. She did not believe the ordinance would serve the general public.

Mr. Randy Zurcher, a resident, urged the council to vote against the ordinance.

Mr. Jeff Erf stated he had yet to hear a need for the ordinance and urged the council to vote against it.

Mr. Glenn Sowder, an area resident, stated there were people that had a lot of time on their hands that had good imaginations about conspiracies. He asked them to keep doing a good job.

Mr. Dan Coody, an area resident, asked if the mayor was still considering withdrawing the ordinances. He stated many people were concerned about the "good old boy" system.

Alderman Davis stated the mayor could not change existing ordinances.

Mr. Coody stated the Mayor had stated someone would need to interpet the ordinances.

Ms. Pat Jackson, an area resident, stated the feeling in this town was that if it was a done deal, why bother to go. She referred to Mr. Hardin's property being condemned.

Alderman Austin replied they had gone to Mr. Hardin's property. He could see that Mr. Hardin was proud of his home by the way he had taken care if it and the layout of the property. He stated they had considered it more. They had authorized the staff to negotiate for the purchase of the property. He stated it had not been a done a deal for him.

Mr. Jay Kerri, an area resident, thought this could create a dinosaur in lawsuits. He thought this could create a lot of problems that were not a problems now.

Alderman Trumbo moved to suspend the rules and move to the third and final reading.

Alderman Santos asked the other council members if they were supporting the ordinance to support Mayor Hanna or the ordinance.

Alderman Trumbo replied in terms of the respect of the office. Mayor Hanna would do nothing to damage or deteriorate the office.

Alderman Santos asked Mr. Trumbo if he would still be as supportive of the ordinance if it did not go into affect until the next mayoral election.

Alderman Trumbo stated they had looked at the proposed ordinance for three years.

Alderman Davis seconded the motion. Upon roll call the motion failed by a vote of 5-3-0, Santos, Young, and Russell voting nay.

Mr. Rose stated the ordinance would be on the third and final reading at the next meeting.

NEW BUSINESS

STREET NAME CHANGE

A resolution changing the name of Hall Avenue (Highway 112) to Garland to make Garland Avenue the continuous street name south from I-540 to West Maple Street.

Alderman Austin moved to approve the resolution. Alderman Russell seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 58-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CLIFFS BOULEVARD

An ordinance approving a budget adjustment, cost share and bid waiver in the amount of

$300,129 for construction of Cliffs Boulevard Phase 2 and Happy Hollow extension south of Cliffs Boulevard with the developers of Cliffs PUD.

Alderman Young stated he would be abstaining from the discussion and vote because he worked for the company doing the engineering.

Mr. Rose read the ordinance for the first time.

Mr. Rose explained they would be approving the cost-share, bid waiver, budget adjustment and the requirements for competitive bidding and everything he had just read.

Mr. Venable explained when the first phase of the Cliffs had come through, the city had requested a boulevard be constructed and a cost share had been done in the phases completed. He explained this was the next phase in the work.

Alderman Davis moved to suspend the rules and go to the second reading. Alderman Daniel seconded the motion. Upon roll call the motion carried by a vote of 6-0-2, Young and Trumbo abstaining.

Mr. Rose read the ordinance for the second time.

Alderman Austin moved to suspend the rules and move to the third and final reading. Alderman Reynolds seconded the motion. Upon roll call the motion carried by a 6-0-2 vote, Trumbo and Young abstaining.

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

Mr. Jeff Erf, an area resident, asked what the justification was for spending $300,000 for a project that was a private development. He asked how the citizens would benefit from this.

Mayor Hanna explained the developer agreed originally to construct a two-lane road through there. The city had requested at the time, that the road be made four lanes with a boulevard in the middle to connect Cliff Boulevard to Happy Hollow Road to give them another connection from Hwy. 16 to Hwy 265 to make it easier for children to get to Happy Hollow school. The additional cost was to cover what the city had requested.

Mr. Venable stated that Mayor Hanna was correct. The Master Street Plan showed the street as a minor arterial which went on towards the east which finally would hook up to the bypass. He expressed concern that it would look like a private road because of the entry arches.

Mayor Hanna stated the citizens would be getting a four-lane boulevard which connected Hwy.

265 to Happy Hollow Road.

Mr. Erf asked if part of the justification was to alleviate some of the traffic congestion on Hwy. 265. He noted Hwy. 265 was in the process of being widened. He questioned who would be using the boulevard.

Alderman Russell wondered what the reasoning was for a four-lane road in this location.

Alderman Reynolds stated it was to bring kids to Happy Hollow School.

Alderman Santos asked if this had originated with the Master Street Plan.

Mr. Venable stated that the Master Street Plan showed the street as a minor arterial.

Alderman Santos stated a lot of planning had gone into the Master Street Plan and there had been a lot of public input.

Mr. Erf felt it was a waste of taxpayer money.

Mr. Dan Coody asked for a point of clarification. He thought Happy Hallow was supposed to be two-lane street.

Mr. Venable replied Happy Hollow was designated as a collector and part of it was a minor arterial which went to the east to the bypass. They had cost-shared on the first phase and this was the second phase. Once this was complete there would be a connection all the way through to Happy Hollow and Hwy. 16 and Hwy. 265.

Mr. Coody stated the Master Street Plan showed a four-lane going into a two-lane which might cause problems. He stated he preferred for Happy Hollow to be two lanes because they owned property there. He noted Happy Hollow was not a wealthy neighborhood and a lot of people would be losing their entire front yard and porches because of the widening. He added they did not even have fire protection now. There was no water or sewer in the area. There was no plan for upgrading the water and sewer when the street improvements were made. The people will be losing their yards but they would not be gaining any city services. The city wanted developers to upgrade the city's services.

Mayor Hanna called for the vote. Upon roll call the ordinance passed by a vote of 6-0-2, Young and Trumbo abstaining.

ORDINANCE 4158 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PLANNING COMMISSION APPEAL
A request for an appeal of a Planning Commission requirement for the Cliff's Phase 2 Preliminary Plat.

Mr. Venable explained this was a request from Mr. Underwood to offset some of the things the Planning Commission had requested. At the time he was dealing with the State Highway Department on land acquisition from the Cliffs. The Planning Commission had asked him to donate a tract of land. The other request was the cost involved in the upgrades along Hwy. 265 in front of the Cliffs. There had been some questions along Hwy. 265. Mr. Venable had consulted with their attorney, Mr. Jack Butts, on a possible offer. Mr. Venable and Jerry Rose thought it was a reasonable offer.

Mr. Jack Butts explained when this item had been presented by Cliffs Limited Partnership, the Planning Commission had approved a subdivision on a condition that a $46,000 off-site improvement be assessed as a condition of approval. At that time they had pending from the State of Arkansas an offer of $17,000 to buy the right-of-way. If they could have waited they could have sold the right-of-way to the state which they needed for the widening. Before the Planning Commission the issue had come up as to whether they could get some credit for the fact that the Planning Commission was requiring them to forfeit the land rather than getting $17,000. The developer was also challenging the method of calculations for the off-site improvement fees. He asked if the city could charge any fees at all and if so how much they could charge. He had met with Mr. Rose to try and come up with a fair proposal. The off-site improvement fees of approximately $47,000 they were willing to pay half of it. They were asking for credit for $8,500 for half of what the State would have paid them for the right-of-way. He felt they owed the city $23,000 and the city owed them $8,500. They were willing to pay the city $15,212 for off-site improvements fees. The city had came back and told them they were to pay for their sidewalks out of the off-site fees of $3,300 for a total of $18,512 dollars.

Alderman Austin stated he appreciated the developer coming to them with a solution rather than a problem. He thought this was a reasonable solution.

Alderman Russell asked if it was legal for them to be doing this. He stated he wanted to be fair. He stated they were opening themselves up for a lot of people to be coming forward. If they agreed to cut this in half they would have to agree to cut it in half for everyone.

Mr. Rose replied he had looked at the city's off-site improvements very hard after his conversation with Mr. Butts. He thought their off-site improvement ordinance was very enforceable. This was a rather unusual situation in which the State of Arkansas was paying 100% of state tax money for the widening of Hwy 265. The argument they were getting into was that if they were charging the Cliff's Phase 2 development the full amount of $46,000 they would take that money and give it to the state. They would not get to keep it. Normally when they had an off-site improvement ordinance the city had an out-of-pocket expense that they seek to recover from the developer. In this situation the causation was not there. The city was not out of any money for this transaction. It was as if they were acting as the agent for the State. He felt that was enough of a distinguishing situation that would allow them to enforce their off-site improvement ordinance, but would allow compromise in this particular situation. He did not believe they were setting a precedent. One thing that had cost the city was the sidewalks. And the city was charging them for the sidewalks, $3,300 and would be collecting that fee.

Mr. Butt added the stipulation was that the developer would pay $15,212 as a compromise as lost for the condemnation fee as well as a matter for the off-site improvement fee. They would also pay for the sidewalk, not to exceed an additional $3,300.

Alderman Davis did not like the city taking a right-of-way without giving just compensation.

Mr. Butts stated every developer was obliged to give up right-of-way to the roads they were building onto as an addition to development. He added it was a fact of life.

Alderman Davis moved to accept the settlement as outlined. Alderman Austin seconded the motion. Upon roll call the motion carried by a vote of 6-0-2, Trumbo and Young abstaining.

DISCUSSION OF ODOR-EMITTING BUSINESSES
A discussion of the permitting process for odor emitting business in Fayetteville, i.e. Bakery Feeds and Hanna's Potpourri.

Mayor Hanna stated this would be a report on the city's permitting process and not a discussion. The city attorney had advised them they did not want to discuss a specific instance they had voted on because of the lawsuit. They would be limiting questions.

Ms. Little stated she had been asked to discuss facilities emitting odors and facilities handling explosives. She presented a handout. She defined a conditional use, a use permitted in certain zoning districts subject to certain conditions imposed by the Planning Commission after review of a development plat. She thought it was important for them to notice the words that were used in the definition. The general purpose behind a conditional use was to permit those uses. They were not a use by right, certain businesses were not allowed to go in without review by the Planning Commission. The Planning Commission was to assign enough conditions on those uses that they would be compatible with the area they were attached to. Conditional uses were not uses by right. They could not be placed in districts unless the Planning Commission decided they could be. Th Planning Commission did not have the authority to decide what they were going to hear. They could only hear those items that were in the chart of use permitted upon appeal to the Planning Commission. The Planning Commission could grant the conditional use with conditions and safe guards which were appropriate under the chapter. They could assign whatever conditions they thought were necessary under the chapter to make the use compatible. The Planning Commission must decide the use was going to have general compatibility with adjacent properties and other property in the district.

Ms. Little defined a facility emitting odors; the definition gave them the authority to look at things that had the potential for emitting an odor. The odors that were referenced in the ordinance suggested that the Planning Commission would be reasonably satisfied that the permitted use would not generate generally offensive or noxious odor or create an unreasonable hazard to the public.
The odor ordinance was not like the noise ordinance. The Planning Commission had to be reasonably assured that the odors would not be noxious or create an unreasonable hazard to the public. There had to be a public hearing and the building had to inspected by the fire marshall and building inspector to ensure compliance with state code. The building had to pass inspection before the use was permitted, and they were subject to the large scale development process.

Ms. Little read the definition for non-conforming uses. Non-conforming uses could continue, however, they were not to encourage their survival. It was the intent that non-conforming uses shall not be enlarged upon, expanded or extended. If it was there it could stay there. It could be maintained but it could not be enlarged.

In response to questions from Alderman Trumbo, Ms. Little replied a facility emitting odors had to be considered for the potential for emitting odor. If they thought there was a potential for a plant to emit an odor then they would place that development into this process. What the Planning Commission had to do was to add enough conditions onto permitting that facility that the use would not be generally offensive or generate noxious odor or create a hazard to the public. The staff did not make that decision, the Planning Commission would.

Alderman Russell clarified it was the planning director's responsibility to categorize each applicant into a use unit. And it they fit into the use unit then it was their responsibility to send them to the Planning Commission.

Ms. Little added when an applicant came in they consulted with staff. It was very important that they had accurate information on what would be going on there and what equipment would be used in the process.

Alderman Russell asked what the city would do if someone was not forthright with the information provided. What was the next step if they started emitting odors.

Ms. Little replied only that all projects would have two public hearings with the exception of the projects that were less than an acre. What they expected to happen was that all the information that was necessary surfaces at the hearings. They required representatives to come to all the meetings. The public was invited to come to the Subdivision and the Planning Commission meetings.

Mr. Rose stated the legal remedy was what they had approved earlier that the city would seek to enjoin them from operating in what would be an illegal zone. Then they would have to go back through the permitting process. The other way was to seek ways to improve the ordinance. The State of Arkansas defined odor as an "air contaminant or air pollution." Arkansas statutes state that it was the intent to occupy by preemption the field of control and abatement of air pollution and contamination. No political subdivision of the state shall enact or enforce laws or ordinances in this field. The State of Arkansas has preempted a lot of this coverage. They had discussed this during the Ordinance Review Committee. He thought this ordinance had come up at the time they were discussing the noise ordinance. He did not believe they could go a great deal further than what they had already gone.

Alderman Russell stated the DEQ had determined that if a business did not need a DEQ permit, it did not preclude the city from requiring them to go through the conditional use process as an odor-emitting business.

In response to questions from Alderman Young, Mr. Rose stated the city could require them to go through our conditional use process and the city could seek to enforce the conditional use. But in terms of odor abatement they could only enforce those regulations the state had given them.

Alderman Reynolds stated their discussion was going into a different area. Industrial Park was what it said, I-2. He stated he lived right across the street from the Industrial Park. He stated he had never smelled Hanna's Potpourri. He thought they would run every one off from the Industrial Park because they had smells. He stated he would rather have the smell rather than the noise he currently has.

Ms. Little explained the whole purpose of the conditional use was that the Planning Commission needed to be reasonably satisfied that the permitted use would not generate general or noxious odors.

In response to questions regarding Hanna's Potpourri, Ms. Little stated they had constructed warehouses after this ordinance had been passed. The construction of a storage facility had nothing to do with the manufacturing process. As far as she knew they had not expanded their manufacturing process. They had constructed additional buildings.

Alderman Austin stated he jogged all over the town. He looked forward to the different smells within the city. He smelled the bakery, coffee shop, flower gardens, dogs. Blind people experienced Fayetteville by their smells. It was not a bad thing.

Alderman Daniel stated odors were part of their experiences.

Mayor Hanna thanked Ms. Little for the report.

WATER AND SEWER PLANT
A recommendation from the Water and Sewer Committee to exercise their option to purchase the land on the west side of town for a sewer treatment plant.

Mayor Hanna added they had a resolution concerning the odor.

Mr. Rose stated they had two resolutions prepared. One was to exercise the options on purchasing the property. The other was to establish odor abatement and control as a priority in the design.

Alderman Young asked where it was on the agenda.

Alderman Trumbo stated he had been under the impression that after the Water and Sewer Committee had met that it would be on the agenda.

Alderman Young stated it was not on the agenda that was published in the paper.

The topic was taken off the agenda and placed on the next agenda.

1999 WATER AND SEWER REFUNDING BONDS
An ordinance that provides for the issuance of Water and Sewer System Refunding Revenue Bonds, Series 1999 in the amount of $8,370,000. All costs associated with the issuance of the bonds will be paid from bond proceeds. The refunding bonds result in an approximate savings of $600,000 to the city.

Mr. Rose read the ordinance for the first time.

Mr. Trumbo moved to suspend the rules and go the second reading. Alderman Austin seconded the motion. Upon roll call the motion carried 7-0-0. Alderman Daniel was absent for the vote (she left early to catch a flight).

Alderman Austin moved to suspend the rules and move to the third and final reading. Alderman Trumbo seconded the motion. Upon roll call the motion carried 7-0-0, Daniel absent for vote.

ORDINANCE 4159 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Trumbo moved to invoke the emergency clause so that the ordinance would be effective immediately rather than waiting the customary 30 days. Alderman Austin seconded the motion. Upon roll call the motion carried by a vote of 7-0-0.

Meeting adjourned at 10:00 p.m.

THE CITY OF FAYETTEVILLE, ARKANSAS

April 29, 1999

Mr. William G. Underwood
611 West Dickson
Fayetteville, AR 72701

Dear Bill: Bill

Enclosed is a copy of the information I have on hand regarding the agreement reached between you and the City Council on April 20, ~~1995~~ 1999. As can be seen, there are some differences in the information we had at the time of the council meeting and what AHTD has now furnished us.

The AHTD should be contacting you shortly if they have not already. It appears they will pay you the $15,550 if this is the agreed to figure. You in turn will pay the City $31,549.35. The net will be $15,999.35 rather than the $15,211.85 we discussed at the time of the council meeting. We will then bill you for the sidewalks after the contract has been awarded for the widening of Highway 265.

If you have any questions regarding this, please do not hesitate to contact me.

Yours truly,

Charles

Charles Venable
Public Works Director

CV:msm

enclosure

Original based on information Bill Underwood furnished in his letter to the City Council dated March 27, 1999.

AHTD Offer	$17,125.00
City Impact Fee	47,548.70

An Agreement was reached on April 20, 1999, to split the offer and the fee and add the sidewalk costs for Phase II of the Cliffs.

This amounted to:

AHTD Offer $17,125/2	=	$ 8,562.50
City Impact Fee $47,548.70/2	=	23,774.35
Net due from Underwood		$15,211.85
Plus cost not to exceed sidewalk 220' @ $15	=	$ 3,300.00
TOTAL DUE		$18,511.85

However in checking with AHTD, the offer made to Mr. Underwood was as follows:

Original offer from AHTD

Tract 37 (0.14 acre)	$ 1,700.00
Tract 37E	125.00
Tract 39 (1.27 acres)	15,250.00
TOTAL	$17,075.00

Since these offers were made, they have been revised as follows by AHTD:

Tract 37 has been changed by AHTD to require no R/W	$ 0.00
Tract 37E has been revised to	375.00
Tract 39 has been revised to	15,175.00
AHTD will pay Underwood total	$15,550.00

1/2 $15,550.00	=	$ 7,775.00
1/2 $47,548.70	=	23,774.35
Due from Underwood		$31,549.35

Net to City	=	$31,549.35
	minus	15,550.00
	=	$15,999.35
	plus sidewalk	3,300.00
	TOTAL	$19,299.35