MINUTES OF A MEETING OF THE FAYETTEVILLE CITY COUNCIL MARCH 21, 2000

A meeting of the Fayetteville City Council was held on March 21, 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 Austin, Davis, Daniel, Santos and Young, City Attorney Jerry Rose, Deputy City Clerk Gina Roberts, Staff, Audience and Press. Aldermen Reynolds, Trumbo and Russell were absent.

CONSENT AGENDA

APPROVAL OF MINUTES
Approval of the minutes of the March 7, 2000 City Council meeting.

MUD CREEK TRAIL
A resolution approving a contract in the amount of $73,763.99 with Milholland Engineering for the design of a multi-use trail along Mud Creek.

RESOLUTION 30-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MAINTENANCE BUILDING
A resolution awarding Bid No. #2000-24 to the lowest bidder, Heckathorn Construction Co., in the amount of $190,863 plus 15% contingency and a budget adjustment in the amount of $19,492 for the construction of the solid waste container maintenance building.

RESOLUTION 31-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ADVANTAGE ARKANSAS PROGRAM
A resolution certifying local government endorsement of Computer Management Information Systems located at 2927 N. Point Cir, Ste 1, Fayetteville, Arkansas to participate in the Advantage Arkansas Program (Act 947 of 1993).

RESOLUTION 32-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

YOUTH CENTER
A resolution authorizing substitute uses of funds appropriated to the Fayetteville Youth Center on Resolution 93-99. The Youth Center Board requests Resolution 93-99 be amended to provide

maintenance at the Youth Center as per their revised maintenance schedule dated February 8, 2000.

RESOLUTION 33-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

GULLEY PARK
A resolution approving RFP #00-06 for the Gulley Park Tot Lot Playground to Arkoma Playground and Supply in the amount of $49,999.

RESOLUTION 34-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BLOCK AVENUE GRANT
A resolution approving a budget adjustment and expressing the willingness of the City of Fayetteville to utilize Federal Aid Funds in the amount of $150,000 for improvements to Block Avenue from Dickson Street south and to provide 20 percent ($37,500) matching funds.

RESOLUTION 35-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PARKING EQUIPMENT
A resolution authorizing the Mayor to execute contracts for the purchase and installation of parking management equipment for the Municipal Parking Deck and approving a budget adjustment funding request.

RESOLUTION 36-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

OLD BUSINESS

SENIOR COMMUNITY CENTER
An ordinance approving a 2 mil tax for one year to fund a Senior Citizens Center/Services.

Mayor Hanna said he spoke with Alderman Reynolds at the hospital this afternoon and Alderman Reynolds asked him to pass the word that he does support this item.

Mr. Rose read the ordinance.

Alderman Daniel stated that she is in favor of this project but she would like to see the deductible alternatives put back in. If this is to be put on the ballot, it should be done right. The site is worthy of a great building. She said she didn't want to approve this to go on the ballot unless it is the best we can have.

Mayor Hanna said that this would not go on the ballot, but is a discretionary tax. He said he had not heard any negative reports at this time. He realizes some people will object to the tax, however, and would like to see the ordinance go through all its readings so people with concerns can contact him, the staff or their alderman.

Alderman Davis said he too would like to see this proceed slowly to make sure everyone has the opportunity to call and express their views. He was concerned about the petition that has been discussed to get property taxes off the books. If the Council approves this discretionary tax and gives authorization to start work on the Senior Center, and this move to eliminate property taxes succeeds in November, where would that leave the City.

Alderman Santos said if that happened, we would be in a complete state of anarchy anyway, the schools would close and the government would shut down.

Alderman Davis said he understood what Alderman Santos was saying, but he felt this should be discussed and legal advise sought from the City Attorney.

Mayor Hanna said he believed the ballot title was Act 4 and that in it is the provision that if the millage were repealed, there would be a sales tax added that would make up for most, if not all, of the funds. He did think there would be some belt tightening and pencil sharpening, but didn't think things would shut down.

Alderman Austin said he agreed that they should be cautious. And he agreed with Heather that if we can afford the whole building package, we should have it. He said it is not often you have an opportunity to play a key role in providing a service for such a worthy cause for a group that will include each of us at some point. He said he supports this issue.

Alderman Davis stated he wanted to make it clear he supports this issue also.

In response to a request from Mayor Hanna, Jerry Rose said the Attorney General's office should have information about the proposed amendment and he would contact them and try to have the information by the next agenda session.

Alderman Daniel stated that she had not heard any objections to the millage. She felt it showed that our community is community minded and supportive.

In response to a question about whether there would be enough members present at tonight's meeting to suspend the rules should the Council wish to move this item to the second reading, Jerry Rose stated that after checking with the Municipal League and re-reading the Attorney

General's opinions, it has been established that the Mayor can vote anytime his vote is needed for the passage of a motion or an ordinance or resolution. All aldermen present would constitute five votes. The Mayor's vote would count as six and that would be sufficient to move an item to its second or third reading.

In response to a question from Alderman Santos regarding a three fourths majority, Mr. Rose said the requirement is a two thirds majority which requires six votes.

Alderman Young thought they should wait to allow Swifty to vote on this.

Mayor Hanna said he felt the public should be given more opportunity to comment on this item. He asked if there was anyone in the audience who wished to comment.

Randy Zurcher said he felt many people are waiting on this facility. He thinks the design is fantastic, even after the cuts. He asked the Council to move on the item when they could.

Mayor Hanna asked if there was any further comment. There was none.

RZA 00-1
An ordinance approving annexation request RZA 00-1.00 submitted by Engineering Design Associates on behalf of Arkansas Oaks for property located east of New Bridge Drive and south of Mount Comfort Road. The property is in the planning growth area and contains approximately 15 acres. The request is to annex subject property into the City of Fayetteville.

This item is on its third and final reading.

Mr. Rose read the ordinance.

Alderman Daniel moved that the Council approve the annexation.

Mayor Hanna asked if there was anyone in the audience who would like to address this annexation.

In response to a question from Alderman Davis, Mayor Hanna said the Planning Commission vote had been 8-0 on this item.

Upon roll call the motion carried unanimously.

ORDINANCE 4235 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZ 00-3
An ordinance approving rezoning request RZ 00-3 submitted by Engineering Design Associates on behalf of Arkansas Oaks for property located east of New Bridge Drive and south of Mount Comfort Road. The property is zoned A-1, Agricultural and contains approximately 15 acres. The request is to rezone to R-1, Low Density Residential. The ordinance was left on the second reading.

Mr. Rose read the ordinance.

Mayor Hanna opened the floor for public comment. There was none.

Upon roll call the motion carried unanimously.

ORDINANCE 4236 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

RZ 00-10.00
An ordinance approving RZ 00-10, submitted by M.B. Stiles for property located at 2650 Old Farmington Road. The property is zoned A-1, Agricultural and contains approximately 0.72 acres. The request is to rezone the property to C-2, Thoroughfare Commercial.

Mr. Rose read the ordinance.

Alderman Daniel said she attended the Planning Commission meeting where this was discussed. She also drove out to this property and said she thought this was a beautiful old house. She was glad somebody wanted to do something constructive with it. The Planning staff had pointed out the petitioner could build a dinner theater here anyway and are simply asking to rezone the portion that will allow them to have parking.

Alderman Santos stated that this rezoning would give the petitioner enough room to make a more effective development.

Alderman Santos made a motion to suspend the rules and go to the second reading. Alderman Austin seconded the motion. Upon roll call the motion carried unanimously.

Mr. Rose read the ordinance.

Alderman Young stated that the neighbors' concerns had been answered but he was interested in seeing if anybody in the audience wished to speak.

Mayor Hanna asked if there was anyone in the audience who would like to address this request for rezoning.

Patricia Stiles introduced herself as Mrs. M. B. Stiles. She said she and her husband were interested in becoming a part of this community and wanted to grasp this opportunity. She said she currently lives in Sherwood, Arkansas but is relocating and they should be here by next summer. She said she and her husband of thirty years, Michael B. Stiles, had graduated from the University of Arkansas about thirty years ago. Their two partners, Cliff and Sally Langford, also graduated from the University of Arkansas about thirty years ago. She said theirs had been a long standing friendship and they all wished to be a part of this community. She said they are public school teachers and very conservative people. Under no circumstances would they consider doing anything morally objectionable on this property. They want a dinner theater where all the people at the Senior Center and churches would feel welcome. They want it to be a wholesome cultural environment. When they bought this property, they were not aware it was zoned two different ways. They have worked with the planning staff and have tried to do everything they were suppose to do to get this property zoned properly for a dinner theater. They want to maintain the integrity of the property and save a beautiful black walnut that sits on the property. In order to do that, the theater would need to be moved over a little onto the property that is now A-1. The rest of that piece would be used for parking. They have every intention of making this something of which the neighbors can be proud.

There being no further public comment, Mayor Hanna turned the discussion back to the Council.

Alderman Santos said that he felt pretty confident this would not be an adult entertainment establishment, but a nice dinner theater and a positive addition to the community.

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

Mr. Rose read the ordinance.

Mayor Hanna asked for any comments. There were none.

Upon roll call the motion carried unanimously.

ORDINANCE 4237 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

VA 00-1
An ordinance approving VA 00-1, Millsap Road Investments Lot 17, submitted by Henry Kelly, Jr. of Millsap Road Investments for property located at 655 Millsap Road Lot 17 of CMN Park Phase I. The property is zoned C-2, Thoroughfare Commercial and contains approximately 2.58

acres. The request is to vacate a portion of an existing water line easement within Lot 17.

Mr. Rose read the ordinance.

In response to a question from Alderman Davis, Tim Conklin stated there is currently an active water line that is partially on Lot 18. They will develop that lot and then relocate that water line. Then they will bring that vacation request back to the Council.

Alderman Davis made a motion to suspend the rules and go to the second reading. Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.

Mr. Rose read the ordinance.

Mayor Hanna asked if anyone in the audience wanted to comment on this ordinance.

Thad Kelly, an architect, stated he was representing the Millsap Road Investments. He would answer any questions that anyone had concerning the property.

Alderman Santos made a motion to suspend the rules and go to the third and final reading. Alderman Daniel seconded the motion. Upon roll call the motion carried unanimously.

Mr. Rose read the ordinance.

Upon roll call the motion carried unanimously.

ORDINANCE 4238 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

AD 99-30.00
A resolution approving AD 99-30 submitted by David Bercaw of Ball and Mourton on behalf of Lenk Development for property located south of Zion Road. The property is zoned R-2, Medium Density Residential and contains approximately 5 acres. The request is to guarantee future construction of Stearns Street with a letter of credit.

Alderman Young stated he would not participate in this discussion and would abstain from voting because the company he works for is doing some work for this owner.

Alderman Daniel stated that she would like to move that this go to the Street Committee for consideration. She has questions about it and feels it is complicated in a number of ways.

Mayor Hanna asked Charles Venable if there would be any problem with doing this and Mr. Venable stated there would be no problem.

Mr. Venable stated he believed Sterns St. was down graded from a collector to a local street when the master street plan was reviewed about six months ago. There was quite a bit of discussion on this when Vantage Square was proposed at that time but he said they will be glad to talk about it again in the Street Committee.

Mayor Hanna asked Tim Conklin if he had anything to add.

Tim Conklin stated that originally when the development was approved they were going to construct Stearns Street. They went back to the Commission a year later and they approved money to escrow for that portion of Stearns Street and then they did request a letter of credit to guarantee that improvement. So the right-a-way is dedicated as part of their final plat for Zion Valley planning development. The issue at hand is whether or not we require them to put up the money in an escrow account or have them guarantee it by way of this letter of credit.

In response to a question from Alderman Davis, Mr. Conklin said it would be the Planning Division's responsibility to ensure that these developers come through with the letter of credit for future years.

Alderman Davis stated that a letter of credit is only good as long as it is renewed and once the expiration date passes there is nothing the City can do to force them to get another one issued.

Tim Conklin said this was correct. He said they do keep up with letters of credit on unfinished improvements on large scale developments and preliminary and final plats, and have a system where they make sure that these letters of credit do not expire.

Alderman Davis said he wants to make sure that the portion of this document that says a new letter of credit will be issued 30 days prior to the expiration of the current letter of credit is enforced.

Tim Conklin said if the Planning Division did not receive a new letter of credit extending that time period an additional year, they would take that letter of credit and go ahead and get the funds and place them into an escrow account.

Alderman Santos said he agreed with Heather's suggestions to let the Street Committee give a recommendation on this item, but wanted to take the opportunity to say that this is another argument we won't have after we have a system of impact fees in place.

Mayor Hanna asked for any other comments. There being none, he asked if the petitioners would like to speak.

David Bercaw, representing Lenk Development said he was present to respond to any questions the Council might have.

Alderman Davis said there appeared to be a gap in time from when this was originally proposed and when the petitioners came back with a discussion of money.

David Bercaw said that the development was originally started by Zion Valley LLC. They were the ones that took the appeal to the Planning Commission where the decision was made for an escrow to be made. Mr. Bercaw's clients, Lenk Development bought the property last year and are proceeding with development. Zion Valley, after the death of the original developer, ceased developing the property and it is Lenk Development that is seeking to have the letter of credit in place rather than having a $75,000 escrow put up for an indefinite period of time. It is their understanding that Stearns Street may or may not be developed within the next five years or so.

In response to a question from Alderman Daniel, Mr. Bercaw said they have already placed $75,000 in escrow pending approval of the letter of credit by the Council so they could go ahead and get approval of the final plat and get started on the development. They have already constructed at the site.

Alderman Daniel asked when he thought that the total project might be completed.

David Bercaw said he did not know this point. He said there would eventually be a hundred units at the project. They have gotten started on the first two.

Charles Venable asked if this would be tied to the construction cost index, so that as the cost goes up the letter of credit will also increase. He also said, if it is okay with Chairman Davis, the Street Committee could meet next Tuesday following agenda session.

Alderman Davis agreed. He asked City Attorney Rose if, in the event that the financials for this particular company began to deteriorate and the bank realized they would have to pull the letter of credit ahead of time, would they be allowed to pull that letter of credit before its expiration.

Jerry Rose stated that by nature it is an irrevocable letter of credit.

Alderman Austin asked if the Street Committee could address the impact this many people would have on Zion Road traffic, and what the long range plan for traffic control would be, such as a traffic light or caution light.

Alderman Daniel agreed they should look at traffic impact.

In response to a question from Mayor Hanna, Jerry Rose said he believed the council had to have a motion and second to table the item.

Alderman Austin made a motion to table the item. Alderman Davis seconded the motion. Upon roll call the motion passed. Alderman Young abstained.

TABLED TO GO TO STREET COMMITTEE.

AIRPORT BOARD

Presentation of the Airport Board's position on Drake Field.

Rick McKinney, Chairman of the Airport Board, said that a suggestion was made by Charles Wallace that the Airport Board create a mission statement or a position paper and bring that to the Council for review and approval. He said Dr. Wallace would address this and he had copies for the Council.

Charles Wallace thanked the Mayor and members of the Council for this opportunity. He passed out a short position statement on the part of the Airport Board that articulates the way they have focused their thinking about the future of Drake Field. The paper begins with an affirmative statement about the value of our airport. He felt it was very important that we keep before our community the fact that Drake Field is a valuable asset in very good condition. The Board feels that what is needed and what they have created is a clear visionary plan with strong leadership and the points that are made in this paper are those that they feel should be included in that. Drake Field can be a very strong and economically viable asset for the community. They have developed a simple plan for marketing the airport that stresses attracting any aircraft owners and any aviation related businesses to Drake Field. A letter was sent to every aircraft owner and every pilot in Washington and Benton County. Close to 75 responses have already been received from the card that was included in that letter. One airplane has already moved to the Field. If we could land some entity that provided the amount of revenue that we lost when the airlines moved, that would be wonderful. But in the meantime we need to move one airplane and one business in at a time and keep the vision of a strong community airport before us. That is the way community airports happen. Dr. Wallace said the Airport Board is here to find out if the Council supports this vision. He said he is very appreciative of the support received from the Mayor in appointing a marketing committee. Dr. Wallace encouraged everyone, including the Airport Board, to lay aside the past. He said what we have is a great opportunity and he hopes the Council and Airport Board will join together in moving ahead. He said the Marketing Committee will be focusing on how many calls should be made, who should be contacted, how they should be contacted and when that should happen. They will have regular reviews of the results of these contacts so that they don't spend time on things that don't work. The Mayor has asked that the Airport Manager spend half of his time marketing the airport. Dr. Wallace feels with this time and a good plan, we will see some results. He hopes to report back in another 60-90 days that the effort has been very successful. With the presentation of this paper, the Board is asking for the Council's support and any direction they would like to give to the Board.

Alderman Daniel said a citizen asked her if Fayetteville really needs a municipal airport. She asked how she should have answered that question.

Charles Wallace said he would have answered it very affirmatively. He would have told the citizen that active airports are a part of the national transportation system. The community airport is a valuable asset and helps bring a number of people here for educational and related purposes and meets many needs of the community.

Alderman Austin said he had been elected chairman of the Arkansas Aviation and Airspace Commission and recently held his first meeting. He said $1,690,000 was freed up from one project, and a little town in Arkansas had on file another project proposal. The staff pulled the proposal, brought it to the Commission's attention and they voted Monday to give that town $1,690,000. Alderman Austin challenged the Airport Board and the Fayetteville Economic Development Department and the Marketing Committee to get some projects on the board so that when money becomes free Fayetteville will have a project to be considered.

Alderman Austin asked Rick McKinney to come back to the microphone and talk about the Airport Board and its membership, how you get on it, how you get off of it and also comment on the fuel tax money he recently heard about.

Rick McKinney stated that you apply to the Airport Board through the City Clerk's Office. Terms are for five years and they rotate so that a term comes open every couple of years. The City Council Nominating Committee interviews applicants for the Airport Board and they make a recommendation to the Council for appointments.

Mr. McKinney said the Aircraft Owners and Pilot Association has been petitioning the Federal Government to release more of the aviation trust fund money to airports in the country and he believes they have been successful. The last allocation he read about was close to $8 billion. With the bulk of it used as a budget balancing item.

After discussion, the Council commended the Airport Board for their work and the new direction they are taking Drake Field.

No Action taken

WASTEWATER IMPROVEMENT PROJECT

BLACK AND VEATCH

A resolution approving the contract with Black and Veatch for engineering services in connection with improvements at the Noland Wastewater Treatment Plant in the amount of $359,720.00.

Mayor Hanna took a moment to remind citizens how important it is fill out and return U.S. Census forms. They are being mailed this month and we are asked to return them by April 1st. Because of the unprecedented growth in this area, this may be the most important census in Fayetteville's history. We need to bring our tax dollars back home to Fayetteville. We would also like to let our U of A students know that they are valued members of our community and that they do count and would ask them to please fill out their forms as Fayetteville residents.

Alderman Santos moved that the Council pass the resolution. Alderman Daniel seconded the motion. Upon roll call the motion passed unanimously.

RESOLUTION 37-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

GARVER ENGINEERS
A resolution approving a contract with Garver Engineers for engineering services in connection with sewer collection system improvements within the White River Basin in the amount of $391,532.00.

Alderman Austin moved that the Council pass the resolution. Alderman Davis seconded the motion. Upon roll call the motion passed unanimously.

RESOLUTION 38-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MCGOODWIN, WILLIAMS AND YATES
A resolution approving the contract with McGoodwin, Williams and Yates for engineering services in connection with the new west side wastewater treatment plant in the amount of $955,302, and approval of a budget adjustment.

Alderman Young said he thought he remembered someone in the Water & Sewer Committee Meeting mentioning that the City is considering utilizing the State's revolving loan fund for this project because the interest rate is so low. He asked how that would work. Would there still be a vote of the people to authorize this loan .

Don Bunn answered that he thought there would be a vote to specifically authorize utilizing the State's funds. There would, of course, be a vote if we decide to go with the sales tax.

Alderman Austin wondered if the issue was not approved by the public, in addition to not getting to spend the extra money raised, would the City have to eat some of the money that has already been spent.

Don Bunn answered affirmatively.

Alderman Santos suggested they go with the recommendation of the staff and moved that the resolution be passed.

Alderman Young asked Carl Yates, from McGoodwin, Williams and Yates if they were going to do the preliminary work for the $955,000.

Carl Yates said that was correct.

Alderman Santos moved the Council pass the resolution. Alderman Daniel seconded the motion.

Mayor Hanna asked if there was anyone else who would to address this issue.

Jeff Erf said he had been reading the paper about how the Cityis going to pay for this waste treatment plant. He wondered if the City is going to look at impact fees or sewage or assistant development charges for this. He thought the public should be involved in deciding how this plant would be paid for.

Alderman Santos stated that he thought the RFP for the impact fee study would have six public meetings scheduled with the consultants. The McGoodwin, Williams and Yates contract also has public involvement. They will have three public meetings, a public officials workshop, education of the public in general, public opinion surveys, and work on the City's web page.

Vic Biondi stated that he lived in Johnson, Arkansas but uses Fayetteville water and sewer and the Fayetteville schools. He says he smells Mud Creek where he lives. He says from the information he has gathered, there is 12.3 million gallons of treated waste water that comes down Mud Creek. He said to come over after a rain sometime and smell how bad it is and see all the trash that comes down it.

Alderman Daniel asked if the Staff could address some of Mr. Biondi's concerns.

Charles Venable stated he thought the maximum treated wastewater released was 6.2 million gallons. Both the Illinois Basin and the White River Basin will be addressed in all of the studies that are going to be done. He said the effluent coming out into Mud Creek is probably better than any of the water that comes in there. The trash certainly doesn't come out of the treatment plant. He said our effluent now is in great shape. He said they will look at all this.

Alderman Austin asked who does have the responsibility for keeping trash and debris from the water ways that we use.

Charles Venable stated that right now he thought it was the people who live along there. He said within the next three years they are going to have to start taking the storm water run off and looking at everything that goes in. Some things will be done but primarily the people will have to try to keep the trash out.

Alderman Santos said the way he understood it, the East plant is going to discharge their effluent into the White River and the West plant is going to discharge all of its effluent into the Illinois River. Would there still be effluent in Mud Creek?

Charles Venable said there might possibly still be some discharge into Mud Creek from the White River. They will have to wait to see how the permits work out.

Alderman Austin asked if it would then improve Mr Biondi's problem.

Mayor Hanna said he didn't think that odor was coming from the waste water treatment plant. He didn't know where it was coming from. It is something that has been picked up as non-pollutant. He said it could be chicken houses runoff or something washing in off of the lawns in the area. But he was sure that studies will show it is not coming from the plant.

Upon roll call the motion passed unanimously.

RESOLUTION 39-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SAGE HOUSE/ CHILDREN'S HOUSE

A resolution approving a lease agreement with EOA for real property to be used by Sage House. Alderman Austin said that this project began about four months ago when the Sage House people called him looking for a place for Sage House. He stated he supported this 100%.

Alderman Austin moved to approve the resolution.

Mr. Rose read the resolution.

Mayor Hanna stated that this was property on Deane Solomon Road.

Alderman Austin asked if Exhibit A was the description of the property?

Alderman Davis answered yes it was. It was across from the Razorback Golf Course.

Alderman Daniel said it was on the same side of the street. She asked what the terrain was like out there? Is it part of that wetlands system or anything?

Charles Venable answered that it was fairly flat out there and that it was not a part of the wetlands. There is a little pond there but basically it is a pretty nice tract of land.

Mayor Hanna said they were looking at a different tract of land than they were originally out by the United Way on 265.

In response to questions Tim Conklin stated that in regards to Sage House that would require rezoning and that will have to come before the Commission since that is a multi family housing and the Children's House will have to come to the Planning Commission as a conditional use.

Alderman Daniel asked what they were leasing this for? How much are we charging them?

Charles Venable said that had not been determined yet. He explained Children's House needed needed property in order to get the grant. This is just allows us, Jerry, to enter into an agreement for lease the details had not worked out on anything.

Jerry Rose said that lease will come back before the council. This is just an intent and a commitment on your part to enter into such a lease.

Mayor Hanna said that allows the Children's House to go after their funding. He thought that the people in that area need to be notified.

Alderman Santos said he thought that they would amble opportunity to comment during the lease meetings, the rezoning meetings, the large scale meetings and there will be plenty of meetings, and if we can go ahead and express our intent with this tonight.

Alderman Austin moved to pass this resolution. Alderman Santos seconded the motion. Upon roll call the motion passed unanimously.

RESOLUTION 40-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Daniel asked what will become of the old Children's House and who will actually own it?

Charles Venable said that had not been discussed. He thought it would become our property.

Mayor Hanna stated that there were several items that were not on the Agenda here. The City Attorney has drawn up for approving an agreement with Moss & Barnett to represent us in our telecommunications franchise.

TELECOMMUNICATIONS ATTORNEY

Jerry Rose, stated he had introduced the items at the Agenda Meeting, Mayor and Councilmen. He felt the need to have some expert advice in negotiating the cable television franchise with Cox Communications and in developing a telecommunications ordinance it is interesting that from the time he drafted this resolution until tonight he has two new requests for applications from telecommunications providers on his desk that want to know information about how they can get a telecommunications franchise and lay some fiber optic cable in Fayetteville. It is certainly timely. And finally, he wanted to review and update of all of our utility ordinances. It is fast becoming that a franchise it appears in Arkansas, and across the United States, is becoming nothing more or less than a rental of our rights of ways within the City of Fayetteville. In that regard, there are different percentages required or allowed under different laws and he thinks these need to be reviewed. The Committee has selected a law firm in Minneapolis, MN. They are called Moss & Barnett. Our representative will be Brian Groggan. They are a firm which specializes in telecommunications and specially the cable TV franchise field. They have negotiated contracts with Cox Cable; with TCA Cable; with Warner Cable. They have assisted other cities in that regard. They largely represent municipalities rather than the cable providers themselves. They represented the City of Sturgess, Kentucky which won't mean much to you and probably shouldn't, but Sturgess, Kentucky is one of the few cities in the United States that chose to reject their cable TV provider and failed to provide them with a franchise. As you might imagine, they lawsuit and sued. That lawsuit was taken all the way up through the Federal Circuit Court of Appeals and Brian Groggan was the attorney that worked on that and negotiated that on behalf of Sturgess, Kentucky. He said he trusts that we will not end up in any kind of a lawsuit but it certainly is nice to have that kind of authority behind you in dealing in that kind of confidence you have in the ability of these folks. The contract he is authorized to negotiate as a result of that selection is before you. It is a contract for an amount not to exceed $30,000.00 for all of which he has mentioned to you. He thinks it is a very wise and reasonable expenditure of funds on your behalf for the hundreds of thousands of dollars that these franchises very much bring into our City.

Alderman Young questioned why the item was not on the agenda.

Jerry Rose answered it was brought to your attention at the Agenda meeting. Again, you do whatever you want do.

Alderman Austin asked if two weeks delay would be a problem.

Jerry Rose said that he has Brian Groggan flying out here on the 5th of April.

The Council answered it was the day after the meeting.

Jerry Rose said if they wanted to that and take that risk. Again, we need to start as soon as we possibly can with negotiations with Cox Cable and get that off dead center.

Alderman Davis said the committee felt very comfortable with these people. And we gave Jerry the opportunity to negotiate. We gave him the bottom limit and the top limit, and lo and behold, he came real close to the bottom limit. We should applaud him on that and he thinks Jerry needs this thing to go through tonight.

Alderman Daniel asked if this went to the Cable Board?

Mayor Hanna told her it was the Selection Committee.

Alderman Davis said he would like for them to go ahead and vote on it to night because he did mention it at the Agenda Session. In fact we had the final selection right before the Agenda meeting that same Tuesday. So it is something at least we all knew about. Yes, I agree we need to keep the public informed of everything we do. But I think that this is probably a special situation with the gentleman coming out the following day after the next Council Meeting.

Alderman Austin said he was going to move that they suspend the rules and approve the resolution enabling the City Attorney to engage Moss & Barnett concerning legal representation, etc, etc, as presented.

Alderman Santos said he would like to ask in the future that we set the agenda at the Agenda Session.

Jerry Rose stated that he knew that and he appreciated that and again, if you don't want to do it, don't do it by all means. But let me just say this, I think it is more a clerical error that is was not on your agenda than it was not presenting it you at your Agenda Session. It was presented. The Clerk is not here tonight and I don't know why she didn't put it on there. But it should have been on there and certainly everybody had notice and thought it was going to be. That is not true of the next item he was going to present to you, but it is true of this one. Again, you do what you want to do, you control your agenda, and he was not there to dissuade you from that.

Alderman Austin said that Jerry did have your hands tied and he did make a note in his tentative agenda that it was presented, and he thought that was what they were going to see in the Agenda, so that is why he feels the way he does.

Alderman Austin moved to suspend the rules and approve the resolution. Alderman Daniel seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 41-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

We had a hearing on the City's motion for summary judgement last Wednesday, March 15th. At that March 15th meeting summary judgement hearing, Judge Gunn had two issues before her on our motion. One was the issue of whether or not the County sales tax could be used, the City's portion of the County sales tax, could be used for the Town Center project. The second issue was whether or not the City was in violation of the Arkansas Constitution's provision of having its yearly contracts exceed its yearly revenue. The Judge ruled in favor of the City of Fayetteville on the latter issue and found us not to be in violation of the Arkansas Constitution's prohibitions of revenues exceeding contracts. The Judge did, however, fail to grant and refused to grant our summary judgement motion on the issue of County sales tax being used for the Town Center project. Let me review with you where that leaves us. The Judge has ruled by way of summary judgement that it is alright for the City to use more than bond money for the construction of the Town Center project. The Judge has ruled that the A & P million dollars that was given to us by the A & P Commission for the Town Center project may be used for the Town Center. The Judge has ruled that the parking revenue fund monies that we have appropriated may be used for the Town Center project and the Court city's sale tax may be used for the Town Center project. That leaves us with only outstanding issue that the Judge has ruled against us on by way of summary judgement and that is not to say that she is not going to eventually rule in our favor, she hasn't decided that yet, but she will not rule on summary judgement which is a very narrow issue. You must go undisputed facts and the law must be clearly in your favor for her to grant a summary judgement. So we are left with only one issue. The Judge went on to say at that hearing the following: if the City does not intend to pursue the appropriations from the County Turnback Funds, from the County sales tax,. And if they decide to that the question is moot??? So it appears to what the Judge has done has told us that if we spend money, other money, other than County sales tax money on this project, that issue is then moot as to the use of that county money. If you will recall you didn't really appropriate county sales tax or city sales tax or whatever. We did a budget adjustment back when we passed Ordinance 103.99. That is the one that gave a resolution to increase the amount of money that we were putting into the Town Center and put City funds with it. You just said we are going to use parking funds and we are going to use general funds. Your general fund is composed of part of the City sales tax monies, which the Judge has okayed and that is how she got to that. She did not get there directly, she examined part of the general fund. And the City portion of the county sales tax which also in that general fund. Okay. So what is before you is to approve a budget transfer to revoke that portion of that resolution 103.99 which approved an amount to be transferred from the general fund. So we are no longer going to take any money from the general fund and the $450,000 that you were going to take from the general fund is now going to come directly from the City's sales tax. Something that she has already approved as being alright to spend for the Town Center project. We are no longer going to spend any money which is even mildly tainted by the County sales tax. We are going to spend City sales tax dollars and City sales tax dollars only for the $450,000 contribution for the Town Center. That is what is before you a resolution approving a budget transfer to the Town Center fund from the sales tax capital improvement fund, that is City sales tax dollars, in the amount of $450,247 and repealing that portion of resolution 103.99 which approved that such amount or that amount to be transferred from the general fund. Woody Bassett looked at it. I looked at it. James Graves looked at it. Everyone that is legal representative for the City on this case believes that this a wonderful opportunity for the City to make moot the question of county sales tax. What happens if you don't? Well, if you don't do this, the Judge sets a trial date. She has set a date for class certification for some time in April. So you will have to go through the whole process of certifying class or attempting to certifying class. There will be class notices. There will be opportunities to opt out and then some of that time some 60-90 days after that you will have hearing on this matter. This is a way to shorten things and make meaningless the argument of whether or not county sales tax dollars may be used for the Town Center. There is no need to argue over it. Do you have to do it tonight? No you don't. But the sooner you do it the better because until you do it and I can submit it to the Judge as to what you have done, everybody has to go on assuming that you haven't done anything which means the other side and our side has to start preparing now for this class certification here. It just appeared logical to us for you to pass it tonight since you have already done in Resolution 103.99; you have already said you are going to spend $450,000 and at that time you didn't even know where it was coming from, it was just general fund money. So it didn't appear to be a very big decision to us because it looked like one you had already made, and that is why I am bringing it to you tonight. I am bringing it to you at its earliest possible time to cut down on attorney time.

Alderman Daniel said it makes sense to her but how does this affect the budget. I see Steve Davis back there. How is this going to affect the projects that we have scheduled?

Alderman Santos said that what they were doing was accepting the fact that the county sales tax needs to be used for services and we are not going to contest whether a building is a service or not.

Steve Davis said at this point they are projecting that they will have enough money, more than enough money in City sales tax revenues to cover this $450,000 budget transfer without impacting a project.

Alderman Austin said we are taking money from one pocket instead of the other pocket.

Alderman Santos asked if this will effectively end the Town Center lawsuit. All they will have to appear are summary judgements which are real long shots?

Jerry Rose said taking the Judge at her word as to what she said, once we submit this to her and she declares this issue to be moved there are no more remaining issues to be tried in this case and the case is ready for appeal. There will be no need for class certification.

Alderman Santos asked if all they can appeal is summary judgements?

Jerry Rose answered yes.

Alderman Austin said that this is not a controversial issue and it is something that could save us money.

Alderman Young suggested that the safest way to do this is to wait two weeks and pass it on the

Consent Agenda so they won't have any excuse to get up there and challenge what we need to do here because that is one of their contentions.

Alderman Santos agreed with Alderman Young.

Alderman Davis said to remove the second and tell the attorneys not to do anything for two weeks.

The Council felt that this was the best way to handle this issue and cover all the procedures required.

Mayor Hanna said it would go on the Consent Agenda for next meeting. Are there any other announcements or business?

Alderman Austin said the make up celebration of Bernice Young Jones is going to be held on the 31st of March, Friday evening, 7:00 p.m. and he would like to encourage individuals and the public to express your thanks by sending notes, banners, letters to Bernice Young Jones Day, P. O. Box 2035, Springdale, Arkansas 72765.

Alderman Davis reminded that there would be a Street Committee Meeting following the Agenda Session on Tuesday.

Alderman Daniel reminded everyone to fill out your census form.

Meeting Adjourned at 8:20 p.m.