MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL

JUNE 15, 1999

A meeting of the Fayetteville City Council was held on June 15, 1999 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

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

ABSENT: Mayor Fred Hanna

ITEMS	**ACTION TAKEN**	
Approval of minutes	Approved	
Greathouse Park Bridge	Approved	Res. 78-99
Yvonne Richardson Center Expansion	Approved	Res. 79-99
West Fork Water	Approved	Res. 80-99
Bid 99-54	Approved	Res. 81-99
Combs Land Purchase	Approved	Res. 82-99
Dickson St. Imprv. District Commissioners	Approved	Res. 83-99
Underground Utility Exemptions	Passed	Ord. 4169
VA 99-7	Passed	Ord. 4170
Industrial Park West	Removed from agenda	
Ozarks Electric Condemnation	Passed	Ord. 4171
Washington School Gym	Tabled to next meeting	

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ABSENT: Mayor Fred Hanna.

Alderman Trent Trumbo chaired the meeting.

NOMINATING REPORT
Alderman Daniel moved to appoint the following people to Fayetteville citizen committees:

Cable Board:	James Alford, James Bemis, Doug Wright.
Construction Board of Adjustments:	William Butch Green to full term; Thomas Campbell and Stan Johnson to alternate terms.
Environmental Concerns:	Yoshemiah Anderson, Marti Benedict, Karla Bradley and Miriam Kay Lonon to community positions; Bruce Manchon to environmental law position; Philip Maynard to science discipline position; and Chris Parton to local industry position.
Historic District:	S. Benton Bandy and Barbara Jarvis.
Housing Authority:	Patricia A. Watson.
Juvenile Concerns:	Colleen Felton, Regan Glenn, and Keri Kelso for teacher positions; Anderson Braswell and Mathanki Kalapathy for student positions; Rebecca Weaver for parent position; and Detective Robert Hass for juvenile officer position; and Eric Christian for juvenile court representative.
Parks & Recreation Advisory Bd.:	Tom Stockland for Fayetteville Youth Center Board of Directors position.
Planning Commission:	Donald Bunch.
Tree & Landscape Committee:	George Cowen for forestry position; Peter Loris for environmental position; Claudia Rutherford and Jim Wilson for community positions.
Walton Art Center Council:	Linda Gaddy and Marla Hunt.
Walton Art Center Foundation:	Mary Ella Earle.

Alderman Young seconded the nominations. Upon roll call the motion carried unanimously.

CONSENT AGENDA

MINUTES
Approval of the minutes from the June 1, 1999 City Council meeting.

GREATHOUSE PARK BRIDGE
A resolution approving a construction contract with Tomlinson Asphalt to furnish and install a 10' x 75' prefab steel bridge providing the only access to Greathouse Park. Construction will also include excavation of the channel and concrete abutments. The contract amount is $102,313 with a project contingency of $10,000 totaling $112,313 and a budget adjustment.

RESOLUTION 78-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

YVONNE RICHARDSON CENTER EXPANSION
A resolution approving an offer and acceptance to acquire property located at 151 E. Mountain Street for future expansion of the Yvonne Richardson Community Center.

RESOLUTION 79-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

WEST FORK WATER
A resolution authorizing a contract for the wholesale water purchase contract with the City of West Fork.

RESOLUTION 80-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BID 99-54
A resolution approving Bid 99-54 for a breathing air compressor and cascade air storage system for the fire department.

RESOLUTION 81-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

LAND PURCHASE
A resolution authorizing the City to purchase 1.22 acres of unimproved land from Charles T. Combs for $34,500 plus closing costs in association with the extension of Sixth Street from Wood Avenue to East Huntsville Road.

RESOLUTION 82-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

DICKSON STREET IMPROVEMENT DISTRICT COMMISSIONERS
Alderman Trumbo stated that Dickson Street Improvement District had been removed from the Consent Agenda and would be discussed under Old Business.

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

OLD BUSINESS

DICKSON STREET IMPROVEMENT DISTRICT COMMISSIONERS
A resolution confirming the reappointment of two commissioners, Carl Collier and Greg House, to the Dickson Street Improvement District.

Alderman Trumbo stated the topic tonight was only to reappoint the two commissioners. He requested people to refrain from referring to past discussions regarding the Improvement District.

Aldermen Reynolds and Young stated they were property owners in the district and would be abstaining.

Alderman Daniel stated even if they did not reappoint the members they would still be in office.

Alderman Davis stated Mr. Collier had not been removed from the commission during the hearing and Mr. House had the greatest investment in the area. He did not see a need to discuss it further.

Alderman Davis moved to reappoint the two commissioners without discussion from the public. Alderman Austin seconded the motion.

Alderman Russell stated he had asked to remove the item from the Consent Agenda to hear any new issues from the public.

Alderman Austin stated it was his understanding this was an attempt to correct a mistake in the filing of the commissioners' oaths.

Alderman Daniel thought the reason to remove the item from the Consent Agenda was to give people a chance to comment.

Alderman Trumbo suggested hearing comments from the public, but limiting the time to five minutes for each individual.

Aldermen Austin and Davis agreed.

Mr. Lamar Pettus stated the council could not reappoint someone to the commission unless there was an vacancy. He asked if there was a vacancy.

Mr. Rose replied there was not a vacancy. They were trying to remedy an error with an abundance of caution.

Mr. Pettus questioned how the city had received the nominations. He thought if it had been from the commission then they had violated the Freedom of Information Act. He presented copies of a case from 1937, which stated once someone had rejected the office then it was the job of the city council to appoint another person. He did not believe the city council could reappoint the commissioners and if they were going to reappoint, then they needed to go through the normal procedure. He thought he and Mr. Richard Shewmaker were entitled to fair treatment. He thought the city council had violated state law. He thought they might need to go to court.

Alderman Trumbo stated he was under the impression that the two commissioners had gone through the nominating process, but they had not filed their oath of office required by law. This was merely a window dressing to reappoint them.

Mr. Rose stated it was his view that this was the confirmation of a previously made appointment so they could correct the problem of their possibly not filing their oaths of office within the correct amount of time. He felt it was an honest attempt to correct a problem.

Mr. Pettus stated they had complained about Mr. Collier. He suggested they should delay their decision until they could go to court and get a ruling on it.

Mr. Rose replied he thought they needed to make a good faith attempt to correct a mistake, by filing an oath of office after the reappointment. He added there were other ways to accomplish this. If it was the wish to eliminate the two people and to go through the process again, it would be a two-step process. They would have to deny this request, then there would have to be a hearing on whether or not they had filed within the 10 day period. If they determined they had not, then there became a vacancy, then they could open it up for nominations.

Mr. Russell stated this was the first time they had seen the statute. He questioned what "take the oath of office" meant and to file it with the City Clerk. He expressed concern about violating the statute by reappointing them. He questioned the city's choices. He did not want to be in a lawsuit.

Mr. Jack Butt replied there were not provisions for the commission to make nominees. He had spoken with the commissioners individually. He was trying to correct the problem of the filing of the oaths. Mr. Collier had been serving on the commission for over 11 years. They were trying in good faith to correct the problem. He stated there was no clear way to correct the problem. There were several ways to interpret the law. The law stated the oath had to be taken within 10 days, not filed within 10 days. There was not a clear mandate on how to handle these problems. The best shot was to renominate them and let them retake the oath and file it. This was a gray area of the law. He thought renomination should prevail over the technical fine points. He cited one supreme court case to illustrate his point.

Alderman Daniel questioned how the original members were submitted to the council.

Mr. Butt replied it had been his understanding that there had been a nominating process and every interested person had put their name in.

Alderman Russell stated if they were going to declare that there was a vacancy or a reappointment, there may be advertising they had to do. He thought if they reappointed them the city would be sued.

Alderman Trumbo thought this issue would be contested.

Mr. Rose explained if they were to declare that there was a vacancy, the council would have had a hearing and one of the allegations had been that they had not filed their oaths of office on time. With Mr. Collier they had had due process and it had been determined there was not enough evidence to deny Mr. Collier a seat on the commission. With Mr. House there had not been any due process. In Mr. Collier's case the council had determined there was not a vacancy because they had not removed him four weeks ago at the hearing. Mr. House had not had any due process. What they were attempting to do was to reconfirm and reappoint them. He stated they were trying to do the right thing. He asked the council what they wanted to do, if they wanted to declare a vacancy or to reappoint them.

Alderman Austin asked how long the statute of limitations was on a serious crime, noting Mr. Collier had served on the commission for eleven years.

Mr. Pettus suggested the commission meet to talk about these issues. He asked the city to table the issue. He stated the commissioners needed to start having public meetings and talking to the people who paid the taxes.

Mr. Shewmaker complained about the item being placed under Old Business and not New Business on the council agenda. He read the statute on oaths of office. He stated he had sent the video tapes of the hearing to several attorneys asking for their opinion. He questioned why the council had not received legal advice when they had asked for it. He reiterated he and Mr. Pettus had tried to talk with them to settle some of their problems. He thought there was a good chance there would be a lawsuit.

Mr. Rose read the resolution.

Alderman Russell expressed that there were already two vacancies if this law applied to the improvement district.

Alderman Davis added they could look at the other law which would clearly clear Mr. Collier.

Alderman Daniel stated they needed to be legal. She wanted the improvement district to work out their own problems. She wondered if they could sit and talk things out.

Alderman Trumbo did not believe they would ever get along because of all the personal attacks. The city attorney's advice had been to reappoint them. He felt the issue would go to court anyway.

Aldlerman Russell asked Mr. Rose if they were to reappoint them to the commission if it would survive a court challenge.

Mr. Rose replied he thought it was legally defensible.

Upon roll call the motion carried by a vote of 4-1-2, Daniel voting nay, Reynolds and Young abstaining.

RESOLUTION 83-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

UNDERGROUND UTILITY EXEMPTIONS
An ordinance amending Section 166.13 of the Code of Fayetteville allowing exemptions to the Underground Utility requirements.

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.

In response to questions, Alderman Austin explained during the ordinance review meetings, the utility companies had explained currently they were having to set poles off the site. They were wanting to be able to set poles on the site to go underground.

Mr. Conklin, City Planner, explained the process of review and the changes made to the ordinance. Existing lines 12KV and above will be overhead. They will be allowed to remain above ground. There has been a problem in the past due to the cost in relocating them underground. The new KV lines will go underground.

Mr. Venable, Public Works Director, stated all new developments had underground utilities. The problem they had run into was existing lines.

Mr. Conklin stated the placement of the pole would be discussed during the approval process for the best location.

Alderman Austin 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.

Alderman Trumbo called for the vote. Upon roll call the motion carried unanimously.

ORDINANCE 4169 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

VA 99-7
An ordinance for vacation request VA 99-7 as submitted by Rob Sharp, Architect on behalf of MTM of El Dorado LLC for property located at 1586 Amber Drive. The property is zoned R-1, Low Density Residential. The request is to vacate a portion of a 20' utility easement within Charleston Place subdivision.

Mr. Rose read the ordinance for the first time.

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

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

Alderman Trumbo called for the vote. Upon roll call the motion carried unanimously.

ORDINANCE 4170 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

INDUSTRIAL PARK - WEST
A resolution approving an offer and acceptance for property located in the Industrial Park, as negotiated by the Fayetteville Chamber of Commerce.

Item was removed from the agenda by request of the Chamber of Commerce.

OZARKS ELECTRIC CONDEMNATION
An ordinance authorizing the City Attorney to seek possession of certain land owned by Ozarks Electric Cooperative Corporation located on Highway 16 West in the City of Fayetteville, Arkansas by the Power of Eminent Domain, in association with the required easements for the Highway 16 West Water and Sewer Relocations.

Mr. Rose read the ordinance for the first time.

Mr. Venable stated they had been working with Ozarks Electric. They did not have any objections to the condemnation, they were not agreeing on the price.

Alderman Russell 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 Russell seconded the motion. Upon roll call the motion carried unanimously.

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

Alderman Trumbo called for the vote. Upon roll call the motion carried unanimously.

ORDINANCE 4171 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

WASHINGTON SCHOOL GYM
Discussion of additional funding for a brick facade for the Washington School gymnasium.

Alderman Trumbo explained the issue at hand was the architectural integrity of the facility. He explained the city had been asked by Assistant Superintendent Roy Karr to help fund the additional cost of the brick to have the fit into the historical district.

Mr. Venable stated the estimate was nearly $200,000.

Alderman Young explained the project had not been out to bid, but they had hired a professional estimater to estimate the cost of the brick facade.

Alderman Davis noted the gym would also be used by the Fayetteville Youth Center.

Alderman Trumbo thought they should find the money to build the right so it would be there for a long time.

Alderman Russell asked if the city had the money for funding this project.

Mr. Steve Davis, Budget and Research Coordinator for the City of Fayetteville, stated currently the city had $225,000 budget for the Washington School Gym. There was a working balance of $86,000. The city was running tight on other projects. If they were to fund this they would have to review other projects which were funded and unfunded. The city did not have the $200,000 in unobligated funds.

Alderman Davis suggested having the school fund half of the additional cost. He suggested waiting until the school board had met and agreed to fund half of this.

Alderman Reynold stated he would like the gym to be compatible with the surrounding neighborhood and to split the cost with the school board.

Alderman Young moved to table the item until the next meeting. Alderman Austin seconded the motion.

Mr. Tim De Noble, an area resident, stressed the importance of having a building architecturally compatible with other buildings in the area.

Ms. Judith Levine, an area resident, expressed her excitement in having a gymnasium. She noted the recent improvements to the existing building. She also stressed the importance of having a compatible gymnasium.

Ms. Kendall Curry, an area resident, stressed the importance of the kids having a gym. She expressed concern about the gym not begin built because of the cost.

Alderman Young withdrew his motion.

Alderman Trumbo asked Mr. Greenwood, School Board representative, if he would ask the school board to see if they were willing to half the cost of the brick facade.

The discussion would be continued at the next meeting in July.

The meeting adjourned at 8:10 p.m.