MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
AUGUST 3, 1999

A meeting of the Fayetteville City Council was held on August 3, 1999 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Mayor Fred Hanna; Aldermen Robert Reynolds, Ron Austin, Bob Davis, Trent Trumbo, Heather Daniel, Kevin Santos, Cyrus Young, and Kyle Russell; City Attorney Jerry Rose; Deputy City Clerk Theresa Johnson; Public Works Director Charles Venable; City Planner Tim Conklin; Administrative Services Director Kevin Crosson; Staff; Press; Audience.

ABSENT: City Clerk Heather Woodruff

ITEMS	ACTION TAKEN	
Approval of the Minutes	Approved	
Wastewater Treatment Plant Study	Approved	Res. 100-99
Dickson Street Property Surveys	Approved	Res. 101-99
Hardin Property Settlement	Approved	Res. 102-99
RZ 98-22: 1798 East Huntsville Road	Approved	Ord. 4175
Fayetteville Town Center Construction Contract	Approved	Res. 103-99
VA 99-8.00: Fletcher Avenue	Withdrawn	
RZA 99-1: 3686 Wilson Hollow Road	Approved	Ord. 4176
Arkansas Highway & Transportation Dept. Reimbursement	Approved	Res. 104-99

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All rose to recite the Pledge of Allegiance. The Mayor announced that the first item under New Business had been withdrawn at the request of the petitioner.

CONSENT AGENDA

APPROVAL OF THE MINUTES

Approval of the minutes from the July 20, 1999 City Council meeting.

WASTEWATER TREATMENT PLANT STUDY

A resolution authorizing the Mayor and City Clerk to execute a contract with Burns & McDonnell for a Plant Capacity Study to be done at the Noland Wastewater Treatment Plant for a not to exceed figure of $32,472.00.

RESOLUTION 100-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

DICKSON STREET PROPERTY SURVEYS

A resolution approving a contract amendment with the Benham Group for property surveys along either side of Dickson Street from College Avenue to Arkansas Avenue, for the purpose of establishing the right of way, in the amount of $31,950; and abstract work for $10,000; for a total contract amendment of $41,950.

RESOLUTION 101-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

HARDIN PROPERTY SETTLEMENT
A resolution approving settlement of City v. Hardin, CIV. 99-561, and payment of just compensation for the taking of real property in the amount of $52,396.50.

RESOLUTION 102-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Cyrus Young moved to approve the Consent Agenda. Bob Davis seconded the motion. Upon roll call, the motion carried unanimously.

OLD BUSINESS:

RZ 98-22
An ordinance approving rezoning request RZ 98-22 submitted by Richard Osborne on behalf of Littlefield Investment Company for property located at 1798 East Huntsville Road. The property is zoned C-1, Neighborhood Commercial, and contains approximately 0.788 acres. The request is to rezone the property to C-2, Thoroughfare Commercial, for the purpose of installing a used car lot. Item was left on second reading at the July 20, 1999 City Council meeting.

City Attorney Jerry Rose read the ordinance for the third time.

Alderman Daniel commented that she had driven by there today and was not in favor of the rezoning because it is next to a residential area, and although it has been vacant for a while she would like to wait for something more attractive than a used car lot to be there.

Alderman Trumbo mentioned that the building there now is dilapidated and run down. His dilemma was whether to keep it as is and wait for someone else to come in who would return it to a pump station and car repair, or to rezone it to C-2 whereby it could be cleaned up for a used car dealership and have a viable, tax-paying business.

Alderman Davis said that, with its present zoning, there were plenty of other commercial uses that could go into a C-1 zoning other than a gas station.

Alderman Reynolds and Alderman Austin both stated that, being aldermen for Ward 1, they had not received any phone calls on this rezoning.

Alderman Santos asked if this rezoning would comply with the City's 2020 Plan.

Tim Conklin, City Planner, replied that the C-2 zoning is not consistent with the 2020 Plan, where it was currently designated as Community Commercial. The Planning Department staff had recommended denial of this petition.

The attorney for the petitioner, Richard Osborne, mentioned that he had looked after this property for four years and had had five inquiries for potential businesses, the only reasonable usage for the site being a used car lot. The others had included: a flea market (which he didn't think would be very attractive for an entry street into Fayetteville), and an appliance repair service (for which they hadn't been able to reach an agreement). He thought this part of town was improving. The proposal the man had made for the used car lot includes upgrading the building and grounds.

Alderman Trumbo asked whether a gas station at that location just hadn't worked, given that they had had Fina come in and clean up the location and put in a nice sign.

Richard Osborne stated that it hadn't worked. Now they have children throwing rocks through the windows and other standard vacant building activities.

Alderman Davis asked how many years the Fina station had been gone.

Richard Osborne replied that it has been between eight and ten years since Fina was there, and over five years since it has been vacant.

Mayor Fred Hanna stated that he thought the last business in there had been a used tire business. He also stated that he had understood that Mr. Littlefield had bought the site with the purpose of putting a convenience store in that location. He wondered if he was keeping the property with the notion of putting a convenience store there one day.

Richard Osborne explained that Mr. Littlefield, who died two years ago, predates convenience stores, that he had started business during World War II, at which time there were no such stores, to Mr. Osborne's knowledge. It was a gas station at the time. Littlefield's company had since decided that a convenience store would not work in that location.

Alderman Davis asked if this put the City in a "watchdog" position that would be difficult to maintain.

Tim Conklin stated that the Bill of Assurance contained wording which clarified that the property would be used for the purpose of a used car lot or other uses allowed in a C-1 zoning, and otherwise would revert back to a C-1 zoning. He had spoken with the City Attorney, who had informed him that it would take a city ordinance to cause such a reversion. Therefore, it would be up to City staff to monitor the location to ensure that it was being used as a car lot; and if at any time, for a period of one year it was not used for that purpose, the City Council would need to pass an ordinance to reenact the C-1 zoning.

Richard Osborne mentioned that they would honor that, and that they were merely trying to put something in that location, anything being an improvement over what they've had in the past five years.

Alderman Austin mentioned that he thought we should honor the work of the staff on the 2020 plan. But, on the other hand, he felt it was okay to make a change in the process, similar to a builder making a change to a blueprint. He was in favor of granting the request.

Richard Osborne stated that the Planning Commission had approved the rezoning on the condition that the Bill of Assurance be approved also.

Alderman Trumbo reiterated that he was also in favor of granting the request based on the fact that we currently have a vacant, run-down eyesore building there when we could have an ongoing business tax-paying enterprise.

Alderman Russell asked for clarification from the City Attorney, that if we pass this rezoning and another owner buys the property, the conditions would be passed on to the new property owner.

Jerry Rose answered yes.

Alderman Russell asked further, if it was true that there would be no "automatic reverter" back to C-1 if the new property owner wished to use the location for a C-2 usage other than a car lot.

Jerry Rose answered that there would be nothing automatic and that it would have to come back to City Council for an ordinance to be passed to rezone the property back to C-1. However, he mentioned, it would be helpful to have the wording contained in the Bill of Assurance to help pass that ordinance. Also, the documents related to this rezoning would be recorded in the County Clerk's office; therefore, any future property owner would be alerted to the restrictions in usage put upon the property.

Alderman Santos stated that car lots are one of the businesses that benefits from economies of conglomeration, and from being close together, which he thinks is a good thing. Neighborhood commercial zoning is intended to create pockets of commercial opportunities for residents of the neighborhood, to reduce traffic on the other streets. A used car lot is intended to draw traffic from the entire region into this neighborhood. Therefore, the Council would be preventing what the Master Plan had in mind for this area if they rezone this property.

Alderman Trumbo stated that those were all good points, but reminded the Council that there had been a number of complaints about the property as it is.

Richard Osborne concurred that the property is a mess, and he would hate to see what goes on there at night.

Alderman Russell stated that he agreed with Alderman Santos. Although he also agrees that the property is in vast, dire need of help, he does not think that the City government should do spot rezoning for a business to accommodate the most reasonable offer they had gotten. He hoped that they would eventually get a reasonable offer to fix up the property, but he didn't think that they needed a rezoning to accomplish that.

Alderman Austin asked whether there was a car lot on the south side of Huntsville Road, about one mile further east, down by Bob's Market that was also C-2 zoning. Tim Conklin replied yes.

Jerry Rose stated that they were on the third and final reading.

Upon roll call, the vote on the motion was tied: Davis, Daniel, Santos, and Russell voting nay. City Attorney Jerry Rose alerted the Mayor that he could vote as the tie-breaker. The Mayor voted for the motion, stating that the property would be better used as a used car lot than remaining vacant. The motion carried by a vote of 5-4-0.

ORDINANCE 4175 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

FAYETTEVILLE TOWN CENTER

A resolution approving a construction contract for the Fayetteville Town Center with Nabholz Construction Co. for a negotiated bid amount of $7,346,408; contingency amount of $150,000; and approval of Change Order #1 in the amount of $970,162; plus approval of a budget adjustment.

Mayor Fred Hanna mentioned that they had requested the opinion of the Attorney General on this matter and it had been received, and that the City Attorney was satisfied that the Attorney General's opinion allows the Council to do what they had been asking to do, and was probably even more lenient, showing that the City had exercised an overabundance of caution. The vote on $7,346,408 was due tonight to meet the contract deadline with Nabholz Construction. They should then vote on the items that had been put back in.

Alderman Trumbo did not think that approving the contract itself was controversial, as it had been presented to the voters with the sufficient bond postings that were certified. **Alderman Trumbo made a motion to approve the resolution to approve the contract, and then get into the more controversial parts of it. Bob Davis seconded the motion.**

Alderman Russell questioned if they approved the contract, then voted down the extra money, then would the town center be built without those add-ons. Mayor Hanna said yes. Alderman Russell said that he would like to discuss the extra money before approving the contract.

Alderman Daniel complimented the architect, Richard Alderman, who had been very patient and helpful; and the staff, who had really worked hard to make this happen. She also wanted to clarify that at the last A&P Commission, Curtis Shipley in his enthusiasm and optimism had assumed that she would vote for the project, and had not asked for her vote, although he had not intended to cut her out. She then brought out her campaign brochure from the last election, which showed two of her three goals: responsible economic growth and downtown renewal. But, she explained that she had a few problems with this project. Some people had problems with the name "Town Center," although she didn't see it as a problem, because there might not be a word in our vocabulary to describe the structure adequately. The vote for the Town Center bonds occurred on August 5, 1997, almost two years ago. It passed by only 10.86% of the registered voters (30,000+ voters in the City of Fayetteville), and was a very close vote. She reiterated there had been a low voter turnout. She mentioned that we had gotten legal opinion, and Jerry Rose had concurred that we could put City money into it. She would even put much more City money into it ($2-3 million) to make it a really quality building. She had been listening to many people in town, and she was concerned about the following things. She had spoken to a well known chef in the City of Fayetteville, and asked if, in serving a banquet of 1,000 people, with a hot three or four course meal, what he would need. He had answered that he would need a real kitchen: convection ovens (stacked), ranges, steam tables, and so on. He had said it could be a profit-making event if we had real chefs there. The parking, too, is inadequate even though parking downtown is critical. Also, she took a survey using drawings of the back of the town center, asking people from outside of Fayetteville what they thought the building was. They answered: a factory, a school, an incinerator. Another citizen told her that the view to the South and the mountains would be blocked by the building to the people up on the Square. Another major concern she had heard was how the building would be used. It looks like the civic groups who would want to meet there would be on standby behind the top-dollar groups that would want to meet there. If the town center is built, she said that she would be ecstatic, but that it would need to be a high quality building in order to draw in the kind of events we would want.

Alderman Trumbo stated that those were valid points. Historically, he noted, people don't turn out as much for special elections. He felt that Richard Alderman had been doing a high quality job on this building. What it boils down to was the fact that we didn't have enough money to build it; therefore, did we take $600,000 in money from the City's off-street parking account, and put in an extra $600,000 in City money to put all of the amenities back into the project. Personally, he didn't think the town center would cash flow from conventions and exhibits. But he thought the worst case scenario would be that we would have a nice building on the Square where civic groups could meet; we would be gaining additional parking for the downtown area; we would be using HMR tax money that had been specified either for advertising or for such a purpose and had already accrued $1.1 million that could be used on this project. Hadn't we paid $600,000 for the road to the Genesis building?

Charles Venable answered that he thought it had been less than that, about $400,000.

Alderman Trumbo said that his point was that we spend a lot of money on roads, so percentage-wise for the overall project, he thought we could forego a road or reallocate money that we do have to build a quality project.

Alderman Davis stated that if the town center could do for the downtown area what the Walton Arts Center did for Dickson Street, seeing the investment that had gone into Dickson Street, then this is definitely something that they need to take a look at. His concern was taking money out of the City's General Fund. He wondered if they could legally loan the money to the A&P Commission, paid back without interest.

City Attorney Rose didn't think that would be possible.

Mayor Hanna reminded people that the A&P Commission had worked long and hard for several years on this project, to continue doing the projects they had been doing and still fund the town center, and they had discussed what they would need to do as far as sponsoring ball tournaments, the Air Museum, special events. They had cut down to the bare bone and still felt they could do what they had done in the past. He wanted to answer some questions about the parking. We have 80-90 spaces there now; after putting the parking back in they would have 220 additional spaces in that location. The parking that is there now, you have to park in the sun or rain and walk up the hill to get to the Square. After the construction, you would be able to park in covered parking, walk to an elevator to get to Square level. As for the view, he felt the building would become part of downtown Fayetteville and would be an extension of the Square. He didn't care whether it would be called a town center, exhibit hall, convention hall - the name wouldn't make much difference, the use would. There would be public restrooms on the downtown Square. You would be able to walk around a landscaped area with benches. They would make it easy to get from the old part of the Square gardens to the new part to see the new view to the East. We would let the building be used by civic groups on an as-available basis. He wondered which clubs were wanting to use it.

Alderman Daniel stated that had been a major concern of citizens although she had never asked specifically which clubs they had in mind.

Mayor Hanna reiterated that he wanted to know who they are and how many people they have at their meetings. If they can meet in a living room now, they might not need a big room at a town hall. He mentioned that there were several places for meeting in Fayetteville now: (1) the Clarion Inn – same rates for profit and non-profit groups, rooms at no charge with meals, for $50-125 for room only; (2) the Hilton – same rates for profit and non-profit groups, rooms at no charge with meals; (3) the Ramada Inn – no charge with meals for commercial groups, non-profit groups charged a nominal fee; (4) the Yvonne Richardson Center – no charge; (5) Continuing Education Center – university/community rate for non-profit groups covers only the cost, for-profit groups pay commercial rates; (6) Fayetteville Youth Center / Holcombe School /

Vandergriff School – $35/hour + staff (for cleaning and utilities); (7) Asbell School – $20/hour + staff; (8) University Baptist Church Student Ministries – non-profit groups only, no charge or $10 for clean-up; (9) Central United Methodist Church – non-profit groups, policy is discretionary according to the group; (10) Mount Sequoyah Conference Center – non-profit, mostly larger groups; (11) Public Library – free to all groups during library hours, $10/hour after hours, room capacity 75 people; (12) Ozarks Electric Cooperative – non-profit only, family and community events, $20/use, limited to 3 meetings / year. He wondered who didn't have a place to meet, unless it was Friends For Fayetteville, but he thought there were places for them and there would be a place for them with the building of the Town Center. The building is being paid for by A&P funds for the use of the A&P to attract people from outside of Fayetteville to spend money, pay taxes, patronize our restaurants and other businesses and help pay for it.

Alderman Austin commented that what he felt about Alderman Daniels' survey was something like taking a picture to someone and saying, "You don't like that, do you?" He also felt that when looking at the architectural model (displayed on the floor), the back side of that building was as attractive as any building down there, with the exception of the Old Post Office building. He thought it was an attractive building and functional in its appearance. He thought they should attempt to fulfill the original intent of the public vote of 1997.

Alderman Young asked Kevin Crosson about the $450,000 from the General Fund, and whether any projects would be deleted or postponed because of taking that money.

Kevin Crosson, Administrative Services Director, explained that the money would be coming from the General Fund - Fund Balance. The Fund Balance had accumulated over a number of years.

Alderman Russell said that the Library Board would be asking for money soon, and there was a Senior Center planned. He understood that the A&P Commission had cut their budget to the bare bones, and he did not want to see the City end up in the same position, not being able to fund the projects that they normally did each year, such as Community Access Television.

Kevin Crosson explained that each year when the Council adopts a budget, the expenditure policy of the City states: "...The City will adopt a balanced budget by fund for all funds maintained by the City, in which total anticipated revenues must equal or exceed budgeted expenditures for each fund." Each year when they get into a budget debate, when one group or department doesn't receive as much of an allocation as another, it is because they try to balance the budget on an annual basis against the revenues received each year. This does not include the reserve that has built over a number of years due to the healthy economy of Fayetteville. Another policy the Council adopts is: "Existing reserves shall be used to provide for non-recurring expenditures or emergency expenditures," such as the money needed for the Town Center.

Alderman Trumbo stated that it was similar to the money in the Parking balance which was money accumulated over time to fix up parking lots, but would be used to allocate to the parking of this project, still leaving ample funds to maintain and repair other parking lots.

Alderman Austin stated that the resolution on the floor was to certify the budget on the project in the amount of $7,346,408, which does not include the Off-Street Parking or General Fund money.

Alderman Santos stated that they should vote on the whole package, and throw in the city money and parking money.

Mayor Hanna asked Jerry Rose if they should vote on the other motion first.

Jerry Rose answered that they could make it contingent upon adopting the contract, or make it all into one resolution.

Alderman Reynolds asked Richard Alderman, the project architect, if the building was back to 100% as proposed, or if there were still cuts in it.

Richard Alderman answered that they had put back in all items except those that involved using more land or changes that wouldn't affect the building in any way. There had been a lot of discussion about the quality of the building, even with all of the cuts that had been taken out. It would be mostly made of brick, had an all-tile lobby, with high quality materials and finishes. The back elevation has concrete with brick on it, brick on the stairway and sides. It has a tremendous amount of landscaping, almost doubling the amount of landscaping on the Square. They put a park on the front of the building instead of pushing the building up to the street. Some of the people who criticize the design effort were not in support of the project. They had asked for computer technology in the building, which they had done. There are 14,000 square feet of dividable meeting space, plus three other small meeting areas. The other issue the Council might want to focus on was that there had not been a major construction project in the State of Arkansas or surrounding states that hasn't suffered because the price of construction had gone up. He felt that working with the City had offered a reasonable way to put back in the quality items that everyone wanted.

Several aldermen asked if the elevators, the railing, the automatic doors, the tower on the front and the type of brick wanted had been put back in.

Richard Alderman answered yes.

Alderman Davis asked about the waterproof requirements from Sections 3.1 to 3.5.

Richard Alderman answered that the contractor had suggested using types that they normally use which would result in cheaper costs, but with different brand names or different applications. These resulted in $200,000-300,000 in cost reductions.

Alderman Austin asked if a large and a small conference could be held simultaneously.

Richard Alderman explained that the partitions had been added back into the contract, including up to 3 different sized conferences at the same time, not including the small conference room. The break out room and the break room for the administration could be used for small conferences, allowing 5-6 different things to be going on at once. He said that the convention centers they had done in Hot Springs and Little Rock had used their lobbies as conference areas. Also, the park area out front could also be used as a conference area. The building would have the capabilities of having a small, 5-person meeting to 1,000 person capacity.

Alderman Daniel asked about the leveler.

Richard Alderman answered that it was put back in, as loading dock equipment.

Alderman Santos stated that with the put-backs, we would have a fine civic building. He would like to see this "vertical infrastructure." Historically, before World War II, all over America we built a lot of grand civic structures: court houses, city halls, post offices and schools. Since then, all civic expenditures have been on "horizontal infrastructure": roads, sewer lines, water lines. He would like to see us get back to vertical infrastructure. It would be the kind of public expenditure that would encourage private investment, and ensure that the downtown stays vital. It is using mostly A&P funds for their express purpose. He thought we should vote on it tonight and get started building it.

Alderman Russell asked of the City Attorney or the A&P whether the rental rates will be worked out at a later time.

Jerry Rose stated that the lease with the A&P Commission specifically says that "We recognize that non-profit groups located in the City are to be given a reduced rate, fee or charge for the use of the building. The rates, fees and charges shall be approved by the Fayetteville City Council. Said approval shall not be reasonably withheld."

Alderman Russell said that if we were going to kick-in money from the General Fund, then non-profit groups should be able to use the rooms in the building for a nominal fee, such as $1, because it is a building paid for with public money.

Alderman Davis said that Section 502 of the lease agreement between the A&P and the City talks about that very thing.

Richard Alderman explained that the City Council would be able work on the lease with the A&P, how it is run and how it is set. The fees have not been set yet, but when the construction is finished, then those things will be put together and brought to the Council for approval.

Alderman Trumbo said that there has been a lot of planning on this project by Jim Foster's and David Glasser's groups and others, involving the downtown, Dickson Street and the university.

Alderman Austin asked if they should amend the motion to include the new money.

Jerry Rose answered that they could have two parts to the resolution: Section 1) to adopt the construction contract with Nabholz Construction for $7,346,408 and Section 2) to approve a contingency amount of $150,000; and change order for $970,162; a budget adjustment for improvements listed.

Alderman Santos made a motion to approve such a resolution. Alderman Davis seconded the motion.

Alderman Austin commented that he thought it was a good idea given the insurance by Kevin Crosson that this wouldn't put any items, departments or projects into any kind of jeopardy.

Mayor Hanna asked if they needed to vote on the first motion.

Jerry Rose asked if they wanted to vote on the first motion or withdraw it and vote on the second one.

Alderman Trumbo withdrew his first motion. Alderman Austin withdrew his second to the motion.

Jerry Rose read the resolution again for clarification.

Alderman Santos made a motion to approve the resolution. Alderman Davis seconded the motion.

Alderman Russell explained that the budget adjustment means taking $386,600 from the Off-Street Parking Fund and roughly $450,000 from the General Fund - Fund Balance.

Mayor Hanna opened the discussion up to the public.

Joe Fennel, A&P Commission, assured the Council that the money they were spending on this project would be the best money they would spend as aldermen. He had been working on this project for four years now. They had given the people of Fayetteville ample opportunity to speak up about this project. Before public input, this was not the building or even the location of the original project. They considered this to be money well spent. The $7.3 million figure the A&P Commission had decided upon was because they knew they could afford that amount. They didn't want to cut off many of the projects they consistently fund. They, as A&P Commissioners, ask that the City Council get behind them on this project. They had left some of the wording vague because they didn't know what it would cost to run this building. He asked for their vote of "yes."

Alderman Trumbo clarified that with the bond repayment over 18 years, and with the money from the HMR tax that the A&P collects, that they would still be able to fund the baseball and basketball tournaments, First Night, and other projects.

Joe Fennel answered by asking which projects in the City that they *didn't* fund. He mentioned that there was a lot of money out there to help people. He wanted to put his tax money into a building that would return revenues rather than take money.

Jeff Erf, area resident, stated for the record that he wasn't opposed to this project. What he was concerned about was the process and the funding, not the concept. He asked what the net number of parking spaces we would get out of this project.

Mayor Hanna answered 130 extra.

Alderman Trumbo explained that the other 90 would still be available at nighttime.

Alderman Russell explained that 220 would be made, but only 130 would be available in the daytime.

Jeff Erf asked how much money the City had put into the project up until this date. He had calculated $150,000 for the site; $120,000 for the lease; $20,000 for the trolley.

Mayor Hanna said that the only money that they had put in so far is the money to buy the additional part of the parking lot. The lease on the land hadn't started yet, so no money had been spent on that yet.

Jeff Erf asked if there was anything else on the town center that would require more City money.

Kevin Crosson replied the landscaping was the one thing they thought would be more effective with their in-house crew, and incorporate the design with what was already on the Square.

Richard Alderman added that all the planters, dirt and everything was in there.

Jeff Erf asked if the town center would have a liquor license.

Alderman Santos asked if people would be able to serve alcohol in the town center.

Mr. Rose replied it was a general rule that civic centers did not serve any alcohol. However, with weddings and receptions there would be cash bars. It had been allowed with the Walton Arts Center and the University of Arkansas, because of special temporary licences obtained from the ABC to serve alcohol for specific events. He assured that there would not be a permanent bar at the town center and the City would not have a liquor licence, but private individuals may obtain a special ABC license for a particular event and time.

Mr. Jim Bemis, an area resident, mentioned that he had sent a packet of information to the City Council. In response to questions asked by the mayor on who would be using the facility, he stated that the people that would be using the facility were the same people, who for 50-75% of the time the Council was expecting the money, and were the same people that used the facilities in Springdale, at the family center. The town center could be used for the neighborhood preparedness meetings and for government meetings. He asked that the Council look at what the City would get for the money they put into it.

Mr. Fred Vorsanger, a former Fayetteville mayor, spoke of having served 6 years on the Council and 3 years on the A&P Commission. He stated this was what the City needs now. He wanted to congratulate the Council on how nice the building was going to be, that it was a dream come true for all of them. He asked each of the aldermen to vote for what was best for the City, not what was best for each individual alderman.

Mr. Kent Hirsch, a Springdale attorney, stated that he had no emotional attachment to the town center one way or another. The problem was with finding money to build it. One example of a similar situation was a lawsuit against the City of Rector, Arkansas, following World War II. Rector was a town which wanted electricity and had voted for a $65,000 bond issue, but it wasn't enough to build the electrical facilities needed. So the City of Rector decided to put in additional City money to fund the electricity. Someone sued the City and it was then taken to the Arkansas Supreme Court, which ruled that they could not spend more money than had been specified on the ballot; money couldn't be taken from other sources. He had read the ballot for the town center, which designated $6.95 million for the town center with parking. The problem was that at this point it was very difficult to construct a town center with the amount of money listed on the ballot, after the $500,000 cost for issuing the bonds. He felt it was a good project and thought there were two options for proceeding. One, to build it for the amount of money that had been voted on. The other was to resubmit the project to the voters again for the amount that was needed, but with some options to spend City or A&P money. The way the ballot was written stated that the town center would be built for $6.95 million. He said it had been ten years since he had come down here and suggested that the City not pass an incinerator tax. He was not opposed to the project. The problem was the funding and the language on the ballot.

Alderman Davis asked whom he represented.

Kent Hirsch stated that he was with an affiliation of lawyers, including Bob Brandon, Dale Evans, and perhaps Lamar Pettus. There were three parties that had approached them whose names he was not able to give at this point. He thought it was likely this would be challenged in court. He did not have the benefit of the Attorney General's opinion, although it was not binding, but felt that the Rector case was right on its point.

Alderman Trumbo replied these were all good, valid points and felt that he, personally, had confidence in Mr. Rose's legal ability to represent them. He thought they had gone through the proper procedures and they had relied on their legal counsel and opinions that had been rendered.

Alderman Santos asked which year was the Rector case.

Kent Hirsch answered 1949.

Alderman Daniel stated she had heard of this concern today and stated she would like to see it go back to the voters to get more money to beef up the project, and extra money in case the town center did not make money for a while. She did not feel right making a decision herself.

Alderman Santos thought they should take their City Attorney's advice and back-up opinion of the Attorney General.

Mr. Rose stated they had asked the Attorney General a specific question on whether or not the City Council could legally appropriate funds to the town center project. He quoted: "If the appropriation is made following negotiations with the apparent responsible low bidder (which was exactly what they had done), then he believed the additional funding would, as a general matter, be authorized." He did not know how to insulate the City from litigation. It was a tedious, divisive and unhealthy thing for this city. He tried very hard to avoid it. The city had asked their Bond Counsel, Ann Parker, whether or not it could be done. She stated the election was held to authorize the pledging of the hotel and restaurant tax to repay the bonds and to authorize the funds for the project. The ballot title did not address the issue of a source of any funds to be used to supplement the hotel and restaurant tax. There was nothing in the ballot title to limit the use of additional funds for the project. The use of City general funds for community meeting rooms, for instance, does not result in any illegal pledging of general revenue for bond debt. They were not supplementing bond or bond money. They were buying very specific things. It was his opinion that the City general fund money could be used for any purpose for which city funds may be used, for any public purpose. He thought that the town center could be built, but at some future time the Council could revise it. He thought they were making it as legal as he could make it. He would be pleased to sit down with Mr. Hirsch or any attorney in town to go over the Rector case. His surmise was that we probably would not be able to reach agreement except through litigation.

Mr. Lamar Pettus, an area attorney, stated that the Rector case had been cited in a 1998 Supreme Court decision. He stated the citizens had the right to redress a remedy, and they had a right to be represented. He wanted to address the accumulation of over one million dollars in the A&P Commission budget. He thought they could have spent that money toward reducing the debt on the Continuing Education Center. They had extended those bonds. In fact, this program being adopted would force us to pay interest only until 2004, whereas the City's taxpayers would pay off the Continuing Education Center, which was the first convention hall / town center built. They still own the parking garage over there. There is a city report stating that two or three years ago there was $400,000 that was needed for repairs to the parking garage at the CEC, which still had not been done. However, he had voted against this project; he had not mounted a campaign against the town center; he had not paid his money to advertise to get the people to say no, although he wished he had, seeing that the vote was as close as it was. The citizens said to spend $6.95 million on this project, the A&P Commission said they would kick in another $1 million. He had asked at a previous Council meeting what would happen if it ran over budget. Some of the Councilmen had said that they would resubmit it for a vote of the citizens. If the Councilmen would do that, he would not waste his time and energy in mounting a campaign against this. If only 10% of the people voted to spend our money this way and the other 90% sat at home, that was fine with him. But the citizens wanted the City to do exactly what they had voted for them to do. He submitted to Jerry Rose that even though they had had all kinds of bond counsels' opinions and Attorney General's opinions on the subject of the incinerator, and all kind of attorneys' opinions and Attorney General's opinions before the contract with the Fayetteville School District to build public schools. He felt that the Council needed to do more than hide behind the opinions of the City Attorney and Attorney General; perhaps they needed to wait two weeks and decide that issue. The City of Fayetteville ten years ago had rushed in and signed that contract and committed the City to build the incinerator, resulting in a lawsuit. Also, we have $1.1 million from the A&P Commission held in our checking account earning 2-3% interest, to then be paying 8-9% interest on the bonds for the Continuing Education Center, we will have paid through the HMR tax for 20+ years on the CEC building and not have paid it off yet. When we have paid it off in 2004 we will give it to the University of Arkansas and not keep it for the citizens of Fayetteville. Don't tell the citizens that we have accumulated all of these funds from out-of-towners when it has been paid by the citizens who eat at local restaurants. Now the Council want to take $400-600,000 out of our coffers for the land, etc. The Off-Street Parking Commission did take the position that they didn't want any parking deleted in this project. The project had been represented at every civic organization in town as having 250 parking spaces, and now will have only a net of 100 spaces, 130 at night. If lawyers decide to represent citizens, don't condemn the lawyers, because citizens have the right to go to court and question the Council's judgment. The citizens have on two straight challenges to the City proven the City

Council incorrect, with all of the City's bond counsels and Attorney General's opinions. Perhaps we need to slow down and reassess the project. Perhaps it will cost us $200,000 more, but it will solve some legal issues and problems for the City. Perhaps we will go in with a declaratory adjustment action before we vote and see if the judge will tell us what we can do.

Alderman Austin asked if it was Mr. Pettus's contention that we could not add funds to the project to enhance it during the process, at what point could the City make additions, renovations, and adjustments.

Lamar Pettus stated it would be at the point at which it was built and completed and have done what the citizens said could be done. He did not know whether the Council could spend $6.95 or $7.95 million. He thought it was clear that they could spend $6.95 million plus the $1.1 million that the A&P was willing to pay.

Bruce Gunn, area resident, stated that he appreciated all the hard work that had gone into this project. Two years ago, he had helped lead a successful ballot initiative campaign for this project. He admired the City for having taken a stand for investment in the community. Although roads were important for the community, this project could bring money back into the community. The horse had been beat dead on the benefits of the town center. But having put two years into this project, they had not rushed into it. He did not think it good of the City to bow down to challenges made to the City. He hoped they would vote yes on this project with all of the additions to make it a quality project.

Mayor Hanna pointed out that they had been very careful in getting to this project. If they had rushed into it, the bids would have come in considerably lower. He wanted to do things right, and didn't feel personally that they were breaking any laws. The opinions they had gotten were valid, even though they might have to be reconciled in court.

Alderman Daniel stated that they had worked for two years on this project, but it had only been a few months since they had gotten the bids on it. This was the critical issue, how to pay for it.

Alderman Young and Alderman Russell clarified that the bid would expire if they did not vote on the project tonight.

Richard Alderman clarified that the bids were good for only 90 days. In the climate of everyone having plenty of work to do, he thought it would be difficult to ask Nabholz to extend their bid longer than 90 days.

Alderman Davis asked if they should reword the motion in order to protect the City.

Alderman Young asked if it was $6.95 or $7.95 million, and how they could reword the resolution to clarify that.

Jerry Rose said it was impossible to be clever, so what had been done was to enter into a base contract of $7.350 million to build a town center. That figure takes the amount of money the City had certified for the project (agreed upon by Kevin Crosson). Cash and investments from the bonds total $6,475,570; cash and investments from the A&P total $1.1 million. Investment earnings or interest money are $125,000. This all comes to $7,600,000, precisely what the Council had told the public they would be spending on the town center. In addition to that, in Section 2 of the resolution, the Council would add additional parking and other items. In his mind that would be additions to a facility that they had contracted for. The Attorney General and Bond Counsel had agreed with that, although Lamar Pettus and Kent Hirsch had disagreed. Short of a declaratory judgment he didn't know what else to do other than what they had already done.

Alderman Trumbo didn't know what more due diligence they could exercise, saying that they had done all they could do as City officials, given that some people liked to sue.

Alderman Davis reiterated that they could be sued no matter what position they took.

Alderman Young stated that in the beginning he had asked for real cost estimates to try to avoid a lawsuit. He felt that part of the problem was trying to fit the project to a certain amount of money, the amount of income from the bonds. He hadn't said a whole lot because it had been an A&P project, but there would be more bond issues, such as for the sewer plant, which could have significant cost overruns, into the millions of dollars, if the real cost estimates weren't made properly. **Alderman Young moved to amend the motion to pull the transfer of Off-Street Parking funds and transfer of General Fund funds out of the previous motion, to return to their original motion, and bring the amount back to what had been on the ballot issue. The motion died for lack of a second.**

Alderman Davis asked Jerry Rose what was the best way of doing this.

Jerry Rose described again the motion that had been put on the floor. He didn't think it was wise to pass two separate motions, because legally you would end up at the same point.

Alderman Young stated that he had wanted do away with the additional change orders altogether.

Jerry Rose answered that they could certainly do that as well, and build a quality town center for $7.350 million.

Richard Alderman suggested that they keep the contract they have, plus add some things back in there, to make it $7.650 million, so that they have the additional items in there.

Alderman Young said that his motion was based on taking out the two transfers, which would bring the amount back to $7.650 million.

Richard Alderman stated that if you take those out it would bring the figure to $7.35 million, but he would suggest making it $7.65 million in this motion.

Kevin Crosson stated that Lamar Pettus had suggested that the ballot issue had designated $6.95 million.

Alderman Davis stated Mr. Pettus had also remarked that the A&P would put forth $1.1 million.

Alderman Reynolds said that he was not in favor of building a big box on the Square, and that they had been working on this project for four to five years. If anyone wanted to sue, then let them get after it.

Alderman Russell stated that there was a line between what was acceptable and unacceptable. He wished they could build a $15 million town center and have it all brick. Perhaps they could not afford that, even though it was not the architect's or the A&P's fault. His own line of acceptability laid within the $950,000 they had been talking about. He would be happy to have this building downtown with the additions. But he was not comfortable with taking the money out and with the resulting building they would have. He agreed with Alderman Reynolds on taking our chances in court.

Alderman Santos asked that they clearly state that the additional money would be for additions to the already-built town center.

Kevin Crosson reiterated that these changes were not add-ons, but would be built at the same time as the rest of the construction contract, and that would be the difference.

Alderman Austin stated that the motion included the add-ons.

Jerry Rose reiterated that they were making a motion to enter a base contract of $7,350,408 and a contingency amount of $450,000. That base contract will build us a town center. In addition, we are approving change orders in the amount of $970,162 and a budget adjustment for additions to the town center as attached as Exhibit B to this document.

Upon roll call, the motion passed with a vote of 6-2, Daniel and Young voting nay.

RESOLUTION 103-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS:

VA 99-8.00
An ordinance approving vacation request VA 99-8.00 submitted by Laura Kelly of Rob Sharp Architect on behalf of East Avenue Investment Group, LLC for property located between blocks 4 and 5 of Harrison's Addition. The property is zoned R-2, Medium Density Residential. The request is to vacate an unconstructed section of Fletcher Avenue between Center Street and the point where Fletcher Avenue's asphalt surface curves east from the platted right of way.

ITEM WITHDRAWN FROM AGENDA AT THE REQUEST OF THE PETITIONER.

RZA 99-1
An ordinance approving annexation request RZA 99-1 submitted by John Burrow on behalf of Karen Hanna for property located at 3686 Wilson Hollow Road. The property is in the planning growth area and contains approximately 4.54 acres. The request is to annex the subject property into the City of Fayetteville.

Jerry Rose read the ordinance for the first time.

John Burrow stated that there was no intended change in usage. They simply wanted to move the city limit boundary line 300 feet to the East so that she can access city water and solid waste services. The city limit boundary line currently runs through her property. Her property is zoned A-1.

Alderman Davis stated that the Planning Commission and Planning Department both recommended that this annexation be done.

Tim Conklin stated that this annexation would bring 2.36 acres directly to the north of the boundary line into the city limits.

Alderman Davis moved to suspend the rules and go to the second reading. The motion was seconded by Alderman Reynolds. Upon roll call, the motion passed unanimously.

Jerry Rose read the ordinance for the second time.

Alderman Davis moved to suspend the rules and go to the second reading. The motion was seconded by Alderman Trumbo. Upon roll call, the motion passed unanimously.

Jerry Rose read the ordinance for the third time.

Mayor Hanna asked for any further comments, then asked for the roll call. **Upon roll call, the motion passed unanimously.**

ORDINANCE 4176 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ARKANSAS HIGHWAY & TRANSPORTATION DEPARTMENT REIMBURSEMENT
A resolution approving the repayment of the Arkansas State Highway and Transportation Department federal aid enhancement funds reimbursed for the design of the St. Paul Rail Trail and Errol Street Trail since the St. Paul Trail will not be constructed and the Errol Street Trail has been changed. Also approval of a budget adjustment to fund this request.

Alderman Reynolds stated that at the agenda session he had asked for a letter from the railroad to find out when they were planning to put the railroad back. He thought they were going to miss out on having a good trail.

Alderman Santos suggested that they wait until they heard from Chuck Rutherford, Sidewalk and Trails Coordinator, to see if all the money had been accounted for and if they could do any better.

Charles Venable stated that there probably wasn't any hurry, but they didn't have any choice about giving the money back. He had authorized the money to be put up in 1993. AHTD had written them a letter in 1997 explaining that if we didn't spend the money, they would have to take it back. There had been a lot of meetings and had had a lot of opposition to the trail. They would still have the right-of-ways that had been determined. If the rail goes in, the right-of-ways could still be used for a trail.

Alderman Santos asked whether $88,000 was the total they had paid the Melburger Firm for all the design work they did.

Charles Venable stated they had paid $109,000 for all of the trail work; none of that has gone into any contract using federal money. The only money that has been authorized has been for the abandoned rail and some bicycle trails. They ended the contract after they had paid him $109,000.

Alderman Santos asked if this amount had been paid for their designs.

Charles Venable remarked that some of this money had gone to the firm that did appraisals. The $87,000 represents 80% of the money they had already spent on these projects. We were in the process of hiring a negotiator when the decision was made that the rail would probably go back in.

Alderman Austin stated that this was a good faith response to having gotten the money in the beginning, and that we had followed the contract they had set out, and we would keep approximately $525,000.

Charles Venable stated that hopefully they will let us keep the money which was from the 1991 Federal Aid Highway Act. They had written us in 1997 and informed us that if we didn't use the money within a year they would take it back. We started giving monthly reports and they allowed us to keep the money as we began to make progress. We had asked if we could use the money on other projects and it appeared that they would allow us to do that on the trails in the northern and eastern parts of the city, such as the extension along Joyce Avenue, the trail along CMN Business Park, and the extension of the Gulley Park Trail. Most of those we have the right-of-ways for.

Alderman Santos said we should go ahead and spend that money.

Charles Venable said that we would, but first we had to pay this money back.

Alderman Reynolds asked where the mistake was made on the project. Had we decided that we would put a trail on someone else's property and hadn't asked the railroad if they were going to put the rail back in.

Mayor Hanna stated that was wrong. When it all started, Burlington Railroad had abandoned that rail line and pulled it up out to the Business Park because nobody was using it at the time. They've come up with an idea called the Intermodal Transportation Area, encompassing Bentonville, Springdale, Rogers and Fayetteville, for which we can get Fayetteville funds and put the railroad back in. Other areas have that and we don't. There's more involved to it because we had been having trouble with people buying some of the land back and getting complaints about that particular trail, for the use it would get in that area of town. If we don't reimburse AHTD for the funds we have spent for design, then we wouldn't be able to spend the remaining money for other trails.

Alderman Austin asked if they could use the money for existing sidewalks and trails.

Alderman Santos said they had to use the money for exactly what they had requested of the Highway Department, which included bicycle trails and lanes.

Charles Venable said that they would not provide funding for the stripings and the signs. The City had applied for that before.

Alderman Austin thought that they should do this because it was the right thing to do and would help us to use more money for other projects.

Charles Venable stated that we had received notice today that in October there will be some more requests for enhancement projects. They turned our last one down because we hadn't done this one.

Alderman Austin moved to approve the resolution. Alderman Davis seconded the motion.

Alderman Daniel stated that she was the Chair of the Sidewalk and Trails Committee, and she has gotten upset a few times. She would really like to see everyone work together to get something accomplished. She wanted to work with the Planning Commission and make them aware of the proposed trail system. We had passed a resolution to rename a street connected to this Raven Trail (Errol Street Trail) and the name of the street, Farr Lane, would go back to its initial name, Errol Street, if the trail did not go in. She would like a report from Dave Jurgens, Water and Sewer Superintendent, who was supposed to get in there and move the water lines to the other side of the trail, which had been what had fouled up this trail.

Charles Venable stated that they were working on that but he didn't know where they were on it. The money could be spent on the trail but not on the plan. They still hadn't received the right-of-way on the Raven Trail.

Alderman Russell asked whether the plan was still to build the trail.

Charles Venable stated that they were still going to build the trail, only on the opposite side of the street, shifting to the south side.

Alderman Daniel asked whether the City would have to pay for that trail.

Charles Venable answered that they would be able to use federal aid, but would have to pay for the consulting work on it. He hoped that we would get the right-of-way and get the trail going.

Alderman Daniel thought that the rain had kept them from getting work done on this.

Alderman Davis commented on the high grass in the area, and the snakes, and mentioned that it was Mr. Keenan's responsibility to have it mowed.

Alderman Russell thought we should press on with the trail, and asked if it was a sure thing that the railroad was going back in.

Mayor Hanna said there was a committee working on it. The Arkansas-Missouri Railroad couldn't afford to put it back in themselves, so they would be receiving federal help on it.

Alderman Young asked if the Industrial Park people were wanting the railroad.

Mayor Hanna stated there were at least three manufacturers there that would like to have it.

Alderman Santos stated that he would hate to lose the Raven Trail because he had seen it as a public investment that would encourage private investment. He suggested making a bicycle trail on Razorback Road from Sixth Street to Hwy. 540 Bypass, keeping the investment in the same area and attract more students to live in that area.

Charles Venable said part of that could be incorporated when they widen that part of the road from 15th Street to Sixth Street, or when they put in sidewalks along South Street.

Alderman Austin asked if they were going to do this with money from the item tonight.

Alderman Santos said this was just a matter of putting back in money on the south side because they were reimbursing with money from the south side.

Mayor Hanna stated that all they were paying back were the plans because they were not able to construct it, but there was a possibility of putting a trail along the railroad. But they would still need to pay AHTD the money back first.

Alderman Austin moved to approve the resolution. Alderman Davis seconded the motion. Upon roll call, the motion passed with a vote of 8-0-0.

RESOLUTION 104-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Meeting adjourned at 9:00 p.m.