

**MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
AUGUST 17, 1999**

A meeting of the Fayetteville City Council was held on August 17, 1999 at 6:30 p.m. in Room 326 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Mayor Hanna; Aldermen Reynolds, Austin, Davis, Daniel, Santos, Young, Russell; City Planner Tim Conklin; Public Works Director Charles Venable; Administrative Services Director Kevin Crosson; City Attorney Jerry Rose; City Clerk Heather Woodruff; Staff; Press, and Audience.

ABSENT: Alderman Trumbo

ITEMS DISCUSSED

Approval of minutes
Mt. Olive Water Association
Detention Center
Family Violence Shelter
Shelter Rehabilitation
Hwy 265 Utility Relocation
Rezoning RZ 99-16.10
Rezoning RZ 99-17.00
Amber Drive Street Name Change
Dickson Street Water and Sewer Relocations
Cell Tower Ordinance

ACTION TAKEN

Minutes approved
Approved Res. 105-99
Approved Res. 106-99
Approved Res. 107-99
Approved Res. 108-99
Approved Res. 109-99
Left on second reading
Passed Ord. 4177
Failed
Approved Res. 110-99
Left on second reading

**MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
AUGUST 17,1999**

A meeting of the Fayetteville City Council was held on August 17, 1999 at 6:30 p.m. in Room 326 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Mayor Hanna; Aldermen Reynolds, Austin, Davis, Daniel, Santos, Young, Russell; City Planner Tim Conklin; Public Works Director Charles Venable; Administrative Services Director Kevin Crosson; City Attorney Jerry Rose; City Clerk Heather Woodruff; Staff; Press, and Audience.

ABSENT: Alderman Trumbo

PROCLAMATION

Alderman Daniel introduced Brenda Thiel, Wanda Stephens and Berta Sykes. They presented the Women's Equality Day proclamation, read by Brenda Thiel. declaring August 26, 1999 as Women's Equality Day in Fayetteville.

CONSENT AGENDA

APPROVAL OF THE MINUTES

Approval of the minutes of the August 3, 1999 City Council meeting.

MT. OLIVE WATER ASSOCIATION

A resolution authorizing the City to grant a water line permanent and temporary construction easement (0.455 acres) to Mt. Olive Water Association for the construction and operation of a water line along the East Boundary of Lake Wilson.

RESOLUTION 105-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK

DETENTION CENTER

A resolution authorizing the Mayor and City Clerk to convey 186 square feet of City property to Washington County, Arkansas as outlined by the footprint of the Washington County Detention Center on City-owned property west of Mill Avenue.

RESOLUTION 106-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK

FAMILY VIOLENCE SHELTER

A resolution approving a contract with Foster Witsell Evans and Rasco for architectural services in conjunction with construction of a Shelter and offices for the Project for Victims of Family Violence. Compensation for architectural services and engineering costs is \$51,900 with a project contingency of \$5,190 for a total cost of \$57,090.

RESOLUTION 107-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK**SEWER REHABILITATION**

A resolution approving change orders to the sewer rehabilitation construction contracts for a net reduction of \$27,623.44. Cost changes include:

- a. Insituform, TexArk, for an increase of \$69,370.50
- b. Jones Brothers, Inc. for a reduction of \$75,495.30
- c. T-G Excavating, for a reduction of \$21,498.64

RESOLUTION 108-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK**HIGHWAY 265 UTILITY RELOCATION**

A resolution approving the Highway-Utility Construction / Relocation agreement with the Arkansas State Highway and Transportation Department for water and sewer relocations and adjustments on Highway 265 (between Highways 45 and 16.) Per the agreement, \$1,465,759.34 (51.44%) of the actual cost of the eligible portions will be reimbursable to the City by the Highway Department.

RESOLUTION 109-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

OLD BUSINESS

No old business.

NEW BUSINESS**RZ 99-16.10**

An ordinance approving the rezoning request RZ 99-16.10 submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-O, Residential Office, and contains approximately 5.2 acres. The request is to rezone the property to C-1, Neighborhood

Commercial.

Mr. Rose read the ordinance for the first time.

Alderman Daniels agreed with staff. She felt they had a lot of commercial zoning available. She thought they needed to move toward infill with commercial zoning in the area.

Alderman Austin questioned the type of business Mid-South Enterprises was.

Mr. Carlisle, attorney for the owner of Mid-South (Sam Rogers), had developed property for over 30 years in this area. He explained they had made an application for C-2 zoning. They had amended their application to comply with what was now being recommended by the Planning Commission. They had tried to zone the property in order for it to provide services of every kind that was not available on Wedington Drive at the present time. Wedington Drive is one of the places the City had with residential area that did not have any of the services that were available on Highways 71 or 62. They were trying to make those services available. Knowing the history of Sam Rogers, if he said he was going to develop, he was going to develop it.

Alderman Davis stated there were no commercial areas in this location except for the C-2, which was east of Salem at this point. There was a lot of housing in this area and the city was going to continue to grow west. He thought this was something that would benefit the people out west. He was for the rezoning.

Alderman Daniel stated she had received a lot of calls from the people in the Salem area. They were very concerned that people were taking advantage of them because the land was cheaper out there. There had been some development which had devalued the property. There was no guarantee of the quality that was going to go in there.

Alderman Reynolds stated he was in favor of the C-1 zoning because the people he had spoken to did not want C-2 zoning. He noted they had done everything the Planning Commission had asked them to do. He thought they should support them.

Alderman Russell asked City Planner Tim Conklin if the property east of the subject property followed the 2020 Plan. Mr. Conklin replied that the land was planned to be commercial.

Alderman Santos thought with all the residential growth out there, a commercial C-1 zoning was appropriate zoning for this area. They were supposed to provide services for commercial services for neighborhoods to keep people from having to drive. The Planning Commission had approved the rezoning 6-2-0. He thought it would be the proper thing to do with the property.

Alderman Daniel thought it would be a good idea to leave the rezoning on the first reading

because it was a significant rezoning.

Mayor Hanna recalled in the 1980s when they were working on their twenty year plan. It had been recommended to set aside 500 acres in that area for commercial property to possibly have a second mall. They were going to have to have commercial property to service the area. He thought the rezoning was very appropriate.

Mr. Conklin stated the Planning Department had not received an opposition to the rezoning.

Alderman Austin moved to suspend the rules and move to the second reading. Alderman Reynolds seconded the motion. Upon roll call the motion carried by a vote of 6-0-1. Young abstained.

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 Santos seconded the motion. Upon roll call the motion failed by a vote of 4-2-1. Daniel and Russell voted nay; Young abstained.

Mr. Rose stated the ordinance would remain on the second reading. It required a 2/3 vote to move to the third and final reading.

RZ 99-17

An ordinance approving rezoning request RZ 99-17 submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-2, Medium Density Residential, and contains approximately 4.77 acres. The request is to rezone the property to R-O Residential Office.

Mr. Rose read the ordinance for the first time.

Alderman Russell moved to suspend the rules and move to the second reading. Alderman Reynolds seconded the motion. Upon roll call the motion carried by a vote of 6-0-1. Young abstained.

Mr. Rose read the ordinance for the second time.

Alderman Santos moved to suspend the rules and move to the third and final reading. Alderman Davis seconded the motion. Upon roll call the motion carried by a vote of 6-0-1. Young abstained.

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

Mayor Hanna called for the vote. Upon roll call the motion carried by a vote of 6-0-1. Young abstained.

ORDINANCE 4177 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

AMBER DRIVE

A resolution approving the changing of the name of Hackberry Street to Amber Drive, to make Amber the continuous street name running east and west through the Charleston Place P.U.D.

Mayor Hanna stated he had received a call from Ms. Cunningham, a resident on Hackberry, who had been a long time resident there. He had gone over this with staff. He explained when the first entrance off Mission had been named Amber Drive. When the street went in there were two or three possible directions the street could have gone.

Alderman Daniel stated she had driven through the area. She thought it was a matter of practicality. Hackberry was very short compared to Amber Drive.

Alderman Davis explained the residents along Hackberry had been there for over twenty years. Neither of the two residents on Hackberry wanted the street name changed because of all the things they would have to change. The only people the name change would affect as far as 911 would be those two residences. They would like for the council to vote this down because of their longevity on that street.

Alderman Daniel stated she was thinking about making a motion where the name change would not go into affect for one year to give the residents time to make the changes.

Alderman Santos expressed concern about emergency vehicles being misled by street names.

Mayor Hanna explained when someone has lived at an address for over 20 years or more, a lot of people you would not normally hear from every year would have the address.

Alderman Russell agreed that it was an inconvenience, but compared it with the safety of the residents. What bothered him was that the plat of the subdivision had been conditionally approved on the street name change. He questioned if the developer could explain the convenience to the residents. He read a letter from one of the area residents.

Alderman Santos thought the letter was more of an opposition to the subdivision rather than the street name change.

Mr. Venable stated he had looked at the complaints listed in the letter. There were a couple of trees down. They could not tell if they were on her property or not, but they would have them removed as soon as they could. They did have a drain that came across the yard and went into the street. With it there was supposed to be a swell cut which would run back into the ditch. The sidewalk would have to be worked out with the drainage. All these things they would make sure were done as they finish the development. They had not been aware of the problems until they received this letter.

Alderman Austin expressed concern that the impact of this development was on the longtime residents rather than the developer. They were not gaining anything other than the expense and inconvenience of changing their address and some adverse living conditions. He thought the developer could compensate for their inconvenience.

Alderman Daniel asked if the residents had been notified.

Mr. Conklin replied the residents had been notified of the preliminary plat back in 1997 when it was approved. He had looked in the file and the Cunninghams were on the notification list. In regards to the street connection, Amber Drive, the right-of-way was stubbed out and the Hackberry Street had been stubbed out for a future street connection. The Planning Commission had wanted the two streets to connect the two. They had required the developer to connect the two streets together, which was the reason they had one street with two names.

Mayor Hanna added when the two developments had been started they did not know how they would be configured.

Alderman Young stated this is one of those subdivisions that had been there a while. He thought the only danger in a 911 situation would be to those two residences. Most people would assume that it was Amber Drive. He asked if the development had a final plat yet.

Mr. Conklin replied the final plat had been approved in June of this year. The name of the street on the plat was Amber Drive. That was a recommendation made in 1997 by the City's 911 coordinator to have Amber Drive as the name of the street.

Alderman Young asked since the approval of the final plat had been based on the approval of the street name change, how was the final plat approved already.

Mr. Rose stated the final plat had been approved according to staff comments. One of the staff comments was, "a street name change needs to be presented to the City Council in order to change the short section of Hackberry to Amber Drive. This requires the applicant to submit a letter requesting the change and the staff will process the agenda request."

Alderman Santos moved to change the short section of Hackberry to be Amber to make a continuous street through from Winwood to Old Wire Road. Alderman Russell seconded the motion.

Alderman Daniel proposed an amendment to wait one year before changing the street name. Alderman Young seconded the motion. Upon roll call the amendment failed by a vote of 3-4-0.

Mayor Hanna called for the vote on the resolution. Upon roll call the motion failed by a vote of 4-4-0. Reynolds, Austin, Davis, and Hanna voted nay.

DICKSON STREET WATER AND SEWER RELOCATION

A resolution approving the award of a contract to relocate certain water and sewer lines on Dickson Street, and to construct a new 12-inch water line for additional fire protection and general improvement of the water system.

Alderman Davis asked if this would be completed by Thanksgiving.

Mr. Venable replied part of it would be. It depended on the contractor and the weather.

Alderman Young stated the only concern he had was for the people on Dickson Street. Contractors were normally used to working in a field. He noted the bid was high, because it was located in the old section of town and that they had to take into consideration the merchants along Dickson Street.

Mr. Venable added there would be some inconvenience, but the traffic would still be moving. This was the first phase of renovating the area.

Mr. Bunn explained the bid did not include construction management. They would bring to the next meeting of the City Council a contract for construction management for his job which would speed up the project.

Alderman Young moved to approve the resolution. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 110-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CELL TOWER ORDINANCE

An ordinance establishing criteria to assess and reduce visual and land use impacts associated

with the development of wireless communication facilities in the City of Fayetteville, Arkansas.

Mr. Rose read the ordinance for the first time.

Alderman Austin stated the recommendation had come from the Ordinance Review Committee. He commended Bob Davis, Jerry Rose and Tim Conklin for their hard and detailed work on the ordinance. They had worked with the representatives of the carriers to bring it to them.

Alderman Young questioned page 6, Section C.1.B, regarding the location of existing towers.

Alderman Austin answered they had changed "existing towers" to "original tower," in order to capture the height of the original tower and not allow the height of the tower to grow each time they added a co-locator.

Alderman Russell questioned the "efforts to demonstrate their efforts to co-locate". He asked if they were asked to locate on an existing structure that was not necessarily a tower.

Alderman Santos stated they were encouraging co-locations by allowing administrative approval by co-location and by avoiding the conditional use process.

Alderman Russell questioned the termination of the conditional use. He questioned what "City" meant, the Mayor or Staff.

Mr. Rose replied it could be who they wanted. He suggested it would be whoever granted the conditional use. In this case it would be the Planning Commission.

Alderman Russell moved to substitute the word "Planning Commission" for the word "City" in Section 9, B. Alderman Young seconded the motion. Upon roll call the motion unanimously.

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

Mr. Rose read the ordinance for the second time.

Mr. Hunter Stewart, Real Estate Manager for Southwestern Bell Wireless, stated he had attended all but the very last session on the ordinance. There had been input from the staff, industry, and community. He stated everyone had worked well together. He questioned one section which referenced the use of publicly owned structures. He asked if that included undeveloped property, and if it would be exempt from the conditional use process as they would do with a private land owner.

Mr. Rose replied it would be the same process.

Mr. Stewart questioned the use of existing vegetation in certain areas where it would not be compatible with the surroundings, whether variances would be allowed.

Alderman Davis replied he would be allowed to apply for a variance.

Mr. Stewart asked what the typical notification distance would be for a commercial development within the City of Fayetteville.

Mr. Conklin replied it was the adjoining property owners.

Mr. Stewart felt he was being discriminated against in the sense he had to advertise and provide photographs. They were isolating them as an industry by requiring them to do those things and not requiring the same of a developer of a shopping center. Why would they ask them to do 500 feet and not a developer.

Alderman Davis replied it was his understanding that the maximum of anything of this nature was 500 feet.

Mr. Conklin clarified they had certain conditional uses which did have a notification area of 500 feet. He gave examples of a dance hall or a sexually-oriented business.

Mr. Stewart was offended that he had been lumped with something that had been perceived to be negative. He asked the council to reconsider the distance of notification.

Alderman Davis replied with the revenue that they made from cell towers and cellular communications, having to notify people within 500 feet should not cost them that much.

Alderman Santos noted the ordinance required certified mail for adjoining property owners and regular mail for the remaining property owners within the 500 feet area.

Alderman Davis stated people wanted to be notified. A lot of people had felt that they had not been notified. He thought this would be one way which would solve the problem. This way they would have to go across the street. At one time they were planning a quarter of a mile notification.

Alderman Young added part of the reasoning for the extended notification area was the fact that the tower was so high. He added if a residential lot was 100 feet wider then five more people would be notified. He lived in the central part of the city and five hundred feet there would not mean that many additional notifications would be required.

Alderman Russell stated the towers did affect people further away, at least visually, than a shopping center would. It was the nature of the structure and not the industry. The purpose of the ordinance was to regulate the visual affects.

Alderman Davis stated they had to decide if they wanted more structures or fewer structures. Because of that they had increased the height from 80 to 150 feet.

Mr. Stewart conceded that it had been a give and take process.

Alderman Young added they could always come back and change the ordinances.

Alderman Russell commented that he had been looking at the map in a fairly dense area, and had determined that they were looking at approximately 50 people that would need to be notified.

Alderman Santos added they were not planning on passing the ordinance tonight. They were planning a special meeting to give another week for public comment. There would be a special council meeting before the agenda session next Tuesday.

Mr. Jeff Erf, area resident, stated that he would like to leave the notification distance at 500 feet or even more. The towers affected the scenic vista and other people. It was his understanding that the city would, with their GIS system, help find the property owners.

Mr. Bob Sigafos, a property owner near St. John's Lutheran Church, asked how the residents would be protected by this ordinance.

Mr. Conklin answered that the current ordinance that they had was a conditional use process. Those who had been involved in the St. John's Lutheran Church had used a process where they had held a public hearing. During that time they took public input and then the Planning Commission made a decision. This ordinance offered additional safe guards; they now had a safe zone for the tower to be set back from residential dwelling units, and requirements for screening and noise control. If the tower is not maintained they would have the ability to require it to be maintained or removed if it were abandoned. It also encouraged co-location. The incentive was administrative approval. It encouraged the providers to come to the city, and survey the existing structures and towers within the city to determine if they could co-locate. The providers in this community had been working really well together and they have been co-locating their facilities on each other's towers in Fayetteville. This ordinance provided incentives for the cell providers to look at existing structures and towers to co-locate. It also increased the distance from dwelling units.

Mr. Sigafos asked if they could come into a residential neighborhood.

Alderman Davis replied that they could and the only way they could defeat that was for the people in the neighborhood to come out in protest.

Mr. Sigafoos replied it had been a circus and cost the citizens time. He wanted to see something in the ordinance that would protect the residential neighborhoods.

Alderman Davis replied legally they were not allowed to do that according to the communication laws.

Alderman Austin added one thing they were forgetting about was the height of the tower which would give them that much buffer. Distance was protection.

Alderman Davis explained even though the ordinance allowed a 150-foot tower, the Planning Commission did not have to approve a 150-foot tower. Legally they could not restrict them completely. The only way to restrict them would be through a tier system which allowed different heights for different zoning districts. However they had not been able to work a system out.

Alderman Russell asked Mr. Sigafoos what he meant by having something in the ordinance that protected the residential neighborhoods by insuring that the heights were shorter or a band.

Mr. Sigafoos preferred not to have them in residential neighborhoods at all but to primarily locate them in commercial neighborhoods. The towers stuck out like a sore thumb in residential neighborhoods.

Alderman Austin found that during these meetings these providers only go where they are asked to go. The traffic determined where they were to go. When people asked for the service they were providing the service by going into the neighborhood. The more densely the cell towers become packed, the closer they had to get to the people.

Mr. Sigafoos stated that most people were busy which led the council to believe that no one cared. But he thought the residents were interested. They wanted to be protected.

To clarify for Ms. Daniel, Mr. Conklin stated that they required the applicant to go to the county assessment records and provide them with a list of the property owners and place them on mailing labels. The staff then mailed the notifications.

Alderman Russell asked if a large apartment complex were within the 500 feet would they only have to notify the landlord or each individual apartment.

Mr. Conklin replied that was correct. It was the property owner that was notified.

Mr. Bobby Farrell, 2413 Twin Oaks Court, stated he worked for the telephone company. He was glad an ordinance could be worked out. He thought the cell phone users would support the cell towers.

A special City Council meeting will be held before the next agenda session for the cell tower ordinance.

Meeting adjourned at 7:30 p.m.