MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
SEPTEMBER 7, 1999

A meeting of the Fayetteville City Council was held on September 7, 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; City Clerk Heather Woodruff; Public Works Director Charles Venable; City Planner Tim Conklin; Administrative Services Director Kevin Crosson; Staff; Press; Audience.

ITEMS	ACTION TAKEN	
Approval of the Minutes	Approved	
Benham Group: Water / Sewer Relocation on Dickson Street	Approved	Res. 111-99
Bid 99-66: Williams Ford Tractor	Approved	Res. 112-99
Destruction of Records	Approved	Res. 113-99
Sycamore / Leverett: Engineering	Approved	Res. 114-99
Sycamore / Leverett: Construction	Approved	Res. 115-99
Rupple Road: McClinton-Anchor Drainage Improvement	Approved	Res. 116-99
Federal Aviation Lease: Office Space for System Support Center	Approved	Res. 117-99
RZ 99-16.10: Mid-Southern / Wedington Dr. & Salem Road	Passed	Ord. 4179
VA 99-9: Clary Development / Wedington Place Addition	Passed	Ord. 4180
VA 99-10: McMahon Brothers / Jordan Lane	Passed	Ord. 4181
Planning Commission Appeal: RZ 99-18, 19, 20, 21, 22, & 23	Failed	
Bid 99-67: Presto Products / Plastic Trash Bags	Approved	Res. 118-99
Oak Grove Vacations: Water / Sewer Easement Vacations	Passed	Ord. 4182
Bid Waiver: 82 HP Tractor	Passed	Ord. 4183
Greathouse Park: Park Bridge	No Action Taken	
Tower Site Lease: Alltel Communciations Cell Tower Lease	Tabled	

MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
SEPTEMBER 7, 1999

A meeting of the Fayetteville City Council was held on September 7, 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; City Clerk Heather Woodruff; Public Works Director Charles Venable; City Planner Tim Conklin; Administrative Services Director Kevin Crosson; Staff; Press; Audience.

All rose to recite the Pledge of Allegiance. Mayor Hanna announced that the Cell Tower Site agenda item had been removed from the Consent Agenda and placed under New Business.

CONSENT AGENDA

APPROVAL OF THE MINUTES
Approval of the minutes from the August 17, 1999 City Council meeting.

BENHAM GROUP
A resolution approving Amendment No. 2 with the Benham Group for inspections services in connection with the water and sewer line relocation work on Dickson Street in the amount of $58,587.00 and a budget adjustment.
RESOLUTION 111-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BID 99-66
A resolution awarding Bid 99-66 to Williams Ford Tractor and Equipment in the amount of $50,499.00 for the purchase of a heavy-duty skid steer with attachments.
RESOLUTION 112-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

DESTRUCTION OF RECORDS
A resolution authorizing the destruction of selected City record originals which have been maintained for the required length of time and which have been microfilmed.
RESOLUTION 113-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SYCAMORE / LEVERETT-ENGINEERING:
A resolution approving a contract with Garver Engineers for engineering services for the bidding and construction phases of the Sycamore / Leverett intersection and drainage improvements in the not-to-exceed amount of $55,050.00.
RESOLUTION 114-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SYCAMORE / LEVERETT- CONSTRUCTION

A resolution approving a construction contract for Bid 99-68, Sycamore / Leverett intersection and drainage improvements to Sweetser Construction in the amount of $552,695.30; a project contingency of $88,270.00; and a budget adjustment of $136,825.00.
RESOLUTION 115-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RUPPLE ROAD

A resolution approving a construction contract with McClinton Anchor for the Rupple Road Street and Drainage Improvements in the amount of $658,900.00 and a project contingency of $98,835.00 (15%). The total amount requested is $757,735.00; and approval of a budget adjustment in the amount of $327,817.00 to increase current available funding from $429,918.00 to $757,735.00.
RESOLUTION 116-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

FEDERAL AVIATION LEASE

A resolution approving a lease with the Federal Aviation Administration for office space for their System Support Center. The lease is for five years with an annual compensation of $25,909.33. This lease replaces their expired lease for 2,205.05 square foot building at a rate of approximately $11.75 per square foot annually. The Airport Board approved this lease at their August 1999 meeting.
RESOLUTION 117-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

OLD BUSINESS

RZ 99-16.10

An ordinance approving 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. The request was left on the second reading at the August 17, 1999 meeting.

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

Alderman Young stated the company he worked for was working on this project so he would be abstaining.

There was no public comment.

Mayor Hanna called for the vote. Upon roll call the motion carried by a vote of 6-1-1, Russell voting nay and Young abstaining.

ORDINANCE 4179 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Mayor Hanna asked the council if they wished to place Cell Tower item which had been removed from the Consent Agenda at the beginning of New Business.

Alderman Russell stated the person he had spoken with was not there yet and suggested they place it at the end of the agenda.

NEW BUSINESS

VA 99-9
An ordinance approving vacation request VA 99-9 submitted by Roger Trotter of Development Consultants, Inc. on behalf of Clary Development Corp. for Lots 1 and 3, Wedington Place Addition. The property is zoned C-2, Thoroughfare Commercial. The request is vacate a 20' utility easement between Lots 1 and 3.

Mr. Rose read the ordinance for the first time.

Alderman Santos stated it was his understanding that the development had been replatted and the easement was no longer needed.

Mr. Conklin replied that was correct.

There was no public comment.

Alderman Daniel 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 Austin moved to suspend the rules and move to the third and final reading. Alderman Young seconded the motion. Upon roll call the motion carried unanimously.

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

Mayor Hanna called for the vote. Upon roll call the motion carried unanimously.

ORDINANCE 4180 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

VA 99-10
An ordinance approving vacation request VA 99-10 submitted by Tim McMahon on behalf of McMahon Brothers Construction Inc. for property located at 1603 Jordan Lane. The property is zoned R-1, Low Density Residential. The request is to vacate the northernmost 2' of the 10' utility easement along the south property line.

Mr. Rose read the ordinance for the first time.

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

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

There was no public comment.

Mayor Hanna called for the vote. Upon roll call the ordinance passed unanimously.

ORDINANCE 4181 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PLANNING COMMISSION APPEAL
An appeal regarding the decision of the Planning Commission to deny rezoning requests RZ 99-18, RZ 99-19, RZ 99-20, RZ 99-21, RZ 99-22, and RZ 99-23.

Mr. Rose explained each rezoning was entitled to a separate vote.

Mr. Rose read all the ordinances for the first time.

Alderman Austin stated the last time they had discussed this issue the 2020 Plan had been brought up. He referred to the document and asked for Mr. Rose to explain how the 2020 Plan had been developed.

Mr. Rose explained that when he arrived as City Attorney in 1989, there had been a group that was in the process of developing a 2010 plan for the City. In 1990 or 1991, the City Planner at the time and the City Council decided they wanted something more personalized. From 1991 to 1993 the City was having public hearings on the matter, and it was discussed before the City

Council. There had been numerous hearings before the Planning Commission. There had been a number of drafts of the document that had been changed and amended. There had been a tremendous amount of public input into the document. In 1995 the plan had been passed. The reason the plan had been passed was because there was a statute which allowed them to prepare a planning area map, and the Planning Commission could prepare the plans for all or a portion of an area encompassed by the map. It provided for a land use plan that the Planning Commission could prepare and adopt which should include, but not be limited to: the preservation of open spaces; the preservation of natural and historical features, sites, and monuments; for existing uses to remain without change; the changes proposed for existing uses; and the areas proposed for new development. As to the affect of the City's land use plan, he read: a rezoning decision (which could only be made by the City Council) could not be arbitrary and capricious merely because the rezoning was contrary to the City's land use plan or contrary to the recommendation of the City's plan consultants. A land use plan is merely a broad declaration of policy specifying in a general way the uses to which land in and near the City was now being put in the future. The plan did not contain exact descriptions so that a property owner may ascertain what restrictions are being placed upon his land. It was only one of many considerations in arriving at a rezoning decision. In one case in 1979, the Supreme Court in Arkansas rejected an argument that the City's board rezoning decision had been arbitrary and capricious because it did not follow the recommendations of the City's Planning Commission and staff. It did not follow a comprehensive development plan. It did not follow a transportation study. The court reasoned that the appellant seemed to argue that because the board chose not to follow the recommendation of the various reports, its actions were arbitrary and capricious. However, the Board was not bound by the recommendations. They were only factors to be considered by the Board of Directors in arriving at their decision.

Alderman Austin asked if it were true that in the year 2000 they were up for a major revision.

Mr. Conklin explained in the year 2000 they were required to revisit the plan and to update it. They were not required to make a major revision.

Alderman Daniel thought it was a good idea to respect their plan and to use it. She had read all the material and she respected and agreed with their decision. She did not see the reason for more commercial zoning in that area now, and stated that there was a lot of commercial zoning already in that area. She noted the petitioners had not gone along with the suggestions for a compromise for R-O zoning along Highway 112. She thought that would be a good compromise. She noted that through the entire process the applicant had stuck with wanting C-1 along Highway 112.

Alderman Trumbo noted that four out of the six tracts were close in votes with the exception of the A-1 to I-1 zoning and the A-1 to C-1 zoning, which had had unanimous denial. He noted the 2020 Plan did not take into account all the growth they had been experiencing. He mentioned several developments. He questioned what the Benedicts' property was zoned.

Mr. Conklin answered there was a small portion where the buildings were which was zoned I-1, the rest of the property was zoned A-1.

Alderman Trumbo continued. The applicant was also requesting I-1 zoning on one of the tracts. He asked how that was different and if their rezoning had been before the 2020 Plan.

Mr. Conklin explained the Benedicts' rezoning had been before the 2020 Plan. Iin 1995 the City Council passed a resolution for the staff to update the 2010 Plan, to make the 2020 Plan. At that time it had been determined that they needed to look at their existing commercial areas and the land they had recently rezoned commercial near the mall. They needed to encourage use of the property that was currently zoned commercial. Very little additional commercial land had been shown at that time.

Alderman Santos added it did not mean that the Plan said that was wrong. They already had industrial land there. They had industrial land to the south of there where the City Research and Technology Park was going to go. He noted none of the Planning Commission votes were close. They were all for denial.

Alderman Daniel stated there were some very good reasons for the denial, other than the fact that it did not go with the 2020 Plan.

Alderman Trumbo asked why the Nelms' property was rezoned C-2. Why would the property next to it not be rezoned.

Mr. Conklin explained in 1995 when the City Council passed the resolution for staff to update the 2010 Plan, they had been asked to look at what additional commercial land would be needed in Fayetteville. At that time the City Council passed a policy of focusing the commercial development in the existing areas. During that time, the City Council had rezoned 309 acres of land to be commercial zoning near the mall. When the City Council had done the future land use plan, it had been determined that additional commercial land was not needed in this area. When the staff looked at Nelms Auto Park, they looked at the commercial area that had not been developed at that time. They did not propose changing the existing land use by down-zoning. If they had shown the existing C-2 areas as residential, that would have meant they were adopting a policy that the City Council would down-zone the property. That was not the intent of the 2020 Plan. Its purpose had been to look at the existing commercial zoning they had and what future commercial areas they needed. That was why they had commercial zoning shown on Highway 112. The Nelms' property had been zoned prior to the 2020 Plan.

Alderman Davis noted there was an abundance of commercial land now in the CMN Park. He noted the existing buildings in the area. He did not see any reason to penalize the developer from wanting the highest and best use. He did not believe anyone would place a residential development there. He did not see any reason why they could not go with C-1 along the west side of Highway 112 on Tracts 6 and 1. He thought it might be too early to do anything with the other tracts.

Alderman Trumbo noted there was an arterial street going from the east to the west that would connect to Salem Road and Deane Solomon.

Alderman Austin asked if someone could place chicken houses on the property as it existed now.

Mr. Conklin responded they could, however there would be a few restrictions in regards to setbacks.

Alderman Trumbo stated he had been in favor of rezoning Tract 6 and 1. He thought that would fit with the property in the area.

Alderman Santos stated he could understand rezoning the property near the highway. The 2020 Plan was a guide to be used by both the City and the developers. The developers should have some faith in the decision that the City made. These rezonings in effect would devalue the other commercial property in the City by creating more of it. They had a process set up where they kept a Planning staff on the payroll. The Planning staff had recommended against it. The Planning Commission had also recommended against it. They were diverting the entire process and making a quick decision by the City Council. He did not think that was right.

Alderman Trumbo argued that each vote was made by an individual and their values.

Alderman Davis added that real estate values were going to be derived by location and not the number of commercial parcels.

Alderman Reynolds stated the Planning Commission had spent hours, weeks, and years put on this. He had spent five years on the Planning Commission. He thought they needed to go with the Planning Commission's decision. They had made the plan to help them with their future. To sit here in an hour and change something that the Planning Commission and Planning Staff had both denied, he thought, would be making a mistake.

Dr. Len Schaper, an area resident and former alderman, stated he was not going to talk about the tremendous surplus of commercial land they had all over town, not just in the north, but on the south part of town. When they had rezoned the Steele Property just south of the mall, it had been projected that it would take over 20 years to develop. They had approximately 30 years worth of commercial land for development. He wanted to talk about the Research and Technology Park.

One of the things they needed to discuss during a rezoning was the compatibility it had with what already existed in that neighborhood. What existed in that neighborhood was the Research and Technology Park. It did not exist on the ground yet, but it existed in the plans the City had spent a lot of money developing.

Mr. Venable stated they would be spending nearly a million and a half dollars in the park.

Dr. Schaper stated the importance of the Technology Park and why was it different from what they already had. Their planning consultant had said there was a potential there to develop a level of quality that did not exist anywhere else in town. It was an opportunity that did not exist anywhere else that they were going to cease by spending this money. They wanted to attract high tech jobs to Fayetteville because they were the kinds of jobs that supply a high salary and primary capital input into their region. The stores generate sales tax, but the Council could not spend money they did not have. They needed people who had disposable income. It was important to have a place like the Research and Development Park, where high tech companies could come and achieve a very high standard of development. The planners had said there were some conflicting uses in the area. They needed to protect the Route 112 frontage from inappropriate development. There were two commercial properties there now which would have to be acquired because they were incompatible with the quality and level of infrastructure of the Research and Technology. In the view of the people who developed the Research and Technology Park, these were eyesores. The money to acquire those properties had been budgeted in the cost of the developing the park. He was worried that if they allowed commercial development in the neighborhood then they would jeopardize the Park's ability to bring in the high tech jobs they needed to elevate Fayetteville. There was a lot of competition for those companies because they demanded the highest standards of quality. He had visited other technology parks around the country. To say that they looked like country clubs was an understatement. They expected and demanded it for their employees. The people who worked there were not going to want apartments, they were going to want single family homes that were close to their work. There was a reason they wanted to keep that area for residential zoning. He thought it would develop as a support area for residents for the Research and Technology Park. He expressed concern over the rezoning because it was speculative and they would have very little control over what would go in. They would have to be very careful of what they allowed in that neighborhood in order to attract the high tech companies. The purpose of the City developing the park was not for the City to compete with the private sector, but to allow a level of development with controls that would establish a level of quality they had not seen the private sector providing. The level of quality was not available in Fayetteville.

Alderman Santos agreed, stating there was a thirty-year supply of commercial property.

Dr. Schaper added the Research and Technology park would be the focus of the village in this part of town. They would need the residential land to go with it. It was not going to develop that soon, but it was going to be needed.

Mayor Hanna asked Dr. Schaper if there were any other parks in this area.

Dr. Schaper replied there were none. They were it for Arkansas. He had been to several parks in other states. They were very attractive and had residential areas near them. People want to live near where they were working.

Ms. Joan Pottinger, representing the Benedicts, explained their property adjoined this property. She addressed the proposed rezoning from the perspective of the soils and their ability to sustain the type of development which was proposed. She referred to the 2020 Plan which addressed soils and their determination of development. She discussed the types of soils in the area and their inability to sustain this type of development.

Mr. Dave Jorgensen, representative of the applicant, stated that they had brought the request before the Planning Commission in May of this year. They had initially been interested in a rezoning along Highway 112. They had brought that before the Planning Commission. The Planning Commission had requested to see the overall plan for rezoning. It was their chance to do a comprehensive rezoning. They had done their best to come up with what the Planning Commission had requested them to do. They had heard a range of suggestions. They had proposed an arterial road through the property. They had proposed I-1 zoning on the south boundary line. On the east boundary line and the southeast corner, they had C-2 zoning, which was not far from Nelms Auto Park. They thought the C-2 request in the southeast corner was reasonable. They were going to buffer it by going to the north with C-1 property. If they went to the west they were going to zone into some residential property. He thought they had a good plan. The Planning Commission had been split on their votes, with the exception of the industrial zoning, for which they had all recommended denial. He agreed it was not the most desirable soil, but he believed that some of the other developments had been on the same type of soil. He added where there was a will there was a way if there was enough money. He asked the Council if they believed this was really residential property. He did not believe it was.

Mr. Kit Williams, representing Mr. and Mrs. Benedict, noted that the Benedicts had been required to change their zoning of the property in order to place vitamins into bottles. The property had been a restaurant; what they did was sell vitamins. He referred to the 2020 Plan and the soil analysis, noting that the soil was the most restrictive of soils. It was even difficult to construct roads on such soil. He thought it might need to be left as agricultural zoning. He thought that they had made one mistake in the 2020 Plan. They had not put any place in the plan for agricultural because it would be too difficult to develop. The 2020 Plan was a guide. He thought the Council should give support to the staff and Planning Commission. He thought they had plenty of commercial property. He did not believe this was a good place to develop a node. He thought they already had nodes in place, and they worked very well. One of the things they had tried to do in the plans was to avoid strip commercial zoning. He thought in this case they needed to do what had been recommended to them by the Planning Department and the Planning Commission. He noted the property was over a hundred acres. He added they still did not have a new sewer plant. He thought they needed to very careful with any major rezoning that would place an additional stress on the sewer plant.

Alderman Austin recognized that one of the aspects of the Plan was that they could make exceptions. He reserved the right to make a judgment on it according to the law. It was a normal procedure to vote on an exception to the Plan.

Mr. Williams agreed that the developer did have the right to appeal a Planning Commission decision. However, he thought it would be wise to listen to their advisors, unless there had been a clear mistake.

Alderman Young added there had been a rezoning on Wedington and Salem. He had pointed out then that he was voting contrary to the 2020 Land Use Plan. He explained the reason he had done that was because there was a little node out there. He had not been paying attention to that area during the land use plan development. He had looked at it from the point of view that there had been an oversight. This was a different thing than a small change in the land use plan. He felt this was a major change.

Mr. Sam Thornton, an area resident, explained he had lived north of this property for approximately 20 years. His speciality was geotechnical. He had taught at the University for 25 years. He did agree with Mr. Jorgensen in that money could fix the problems. He believed that the Council needed to be looking out for the public interest and not the developer's interest. He asked if it was better for the City that the land be developed in a certain way, because he did not believe it was in the City's best interest to develop it this way.

Mr. Trumbo asked him if it should always stay as A-1 zoning.

Mr. Thornton responded he thought it needed to be some low impact use. He did not believe it needed to be multi-family and it did not need heavy trucks in that area. The current highway needed to be improved. There had been several people killed while walking down the highway while leaving the county fair.

Alderman Daniel noted that the proposed land showed a collector street in the middle of the property. However, in order for it to line up with the Master Street Plan it would have to be at the top of the property.

Mr. Conklin agreed that the collector street shown on the Master Street Plan did connect to West Salem Road. At the time of development, the Planning Commission planned to look at how that street would be connected. In the past they had worked with the developer to make sure that the street did connect, but the street could be adjusted in either direction to accommodate the development.

Alderman Daniel added that the City had to put a lot of money into the park in that area to get it ready to use because of the poor soil conditions.

Mr. Rose advised the Council that they could place all of the ordinance on the second and third readings, then vote on each one separately.

Alderman Santos moved to suspend the rules and move to the second reading on all the ordinances. Alderman Trumbo seconded the motion. Upon roll call the motion carried unanimously.

Alderman Santo moved to suspend the rules and move to the third and final reading on all the ordinances. Alderman Trumbo seconded the motion. Upon roll call the motion carried unanimously.

Mayor Hanna called for the vote. Upon roll call:

RZ 99-18: failed by a vote of 3-5-0, Santos, Young, Russell, Reynolds, and Daniel voted nay.
RZ 99-19: failed by a vote of 0-8-0.
RZ 99-20: failed by a vote of 0-8-0.
RZ 99-21: failed by a vote of 0-8-0.
RZ 99-22: failed by a vote of 0-8-0.
RZ 99-23: failed by a vote of 3-5-0, Santos, Young, Russell, Reynolds, and Daniel voted nay.

BID 99-67
A resolution awarding Bid 99-67 to the lowest bidder, Presto Products Co., for the purchase of plastic trash bags to be used in our volume-based sanitation rate program in the amount of $165,935 and a budget adjustment in the amount of $34,945.

Mr. Willie Newman, Waste Reduction Coordinator of the Solid Waste Division, explained the volume based sanitation rates had been approved last fall. There had been a mandate by the Four-County Solid Waste Management District that compelled all membership communities to have a volume-based sanitation rate program in place by January 1, 2003.

Alderman Trumbo thought that was important for people to know because a lot of people thought that the City had just thought this up.

Mr. Newman added the staff was trying to anticipate the implementation of this mandate. This rate structure would be very similar to other utilities. It would be based on the amount of service the consumer used. The more they used the more they paid. The current flat rate was $9.25 per month. They did not have any plans to increase that rate. They had decided to distribute 104 bags per household, which was an average of two bags per week. They were not limited to the number of bags they wanted to use each week. Once their allotment had been used, they would have to purchase additional bags from the Environmental Concerns Committee. The first year plan would be to implement the new rates and to gather data. They had planned on doing a City-wide waste audit this spring. They were also requesting an updated rate study. This will cause people who use more to pay more. The second thing this program would do would be to reduce the volume of trash by encouraging recycling. The citizens had done a great job recently in recycling. On an average day they were collecting 11.5 tons of recycling program. The Four-County Solid Waste could enforce the implementation in three ways: they would not be eligible for grant funding, or for a DEQ Permit, and the Four-County operations could take over the operations of the City. He explained that the districts were organized by county and every municipality with a population over 5,000 was required to belong to a district.

Alderman Trumbo asked if there were other cities in our district that had implemented this program. Mr. Newman stated Eureka Springs had implemented it for the past four years. Springdale offered an option with a limit. Rogers only had an option for senior citizens.

Alderman Reynolds asked about the smaller towns which did not have these services, such as Farmington. Mr. Newman replied they collected privately. He was not sure if the small private haulers were offering curbside recycling in the rural area. If the town had a population over 5,000 people, they would have to implement a volume-based program, and it would affect the private sector.

Alderman Trumbo expressed concern about the limitations on the amount of trash.

Alderman Russell stated he would like to look at dropping the base rate after a couple of years and having options for residents based on their personal use.

In response to questions, Mr. Newman stated there was a fifty-pound weight limit on the bags. The trash workers had to be able to pick up the bags. He stated they would need the support of the governing body for when people called because their trash had not been picked up because they did not have the right bags.

Alderman Russell moved to approve the resolution. Alderman Daniel seconded the motion. Upon roll call the motion carried by a vote of 7-1-0. Alderman Austin voted nay.

RESOLUTION 118-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

OAK GROVE VACATION:
An ordinance approving the vacation of three 1988 water/sewer easements across Lots 1, 5, and 6 all in Block 4 of Drake's Replat of Block 4 of Gates Subdivision of Oak Grove Addition. The vacated easements will be replaced with new easements associated with the actual line location.

Mr. Rose read the ordinance for the first time.

Mayor Hanna explained the City had an easement, but the line had not been put in the easement. This would correct the problem.

Alderman Davis 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.

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 carried unanimously.

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

Mayor Hanna called for the vote. Upon roll call the ordinance passed unanimously.

ORDINANCE 4182 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BID WAVIER
An ordinance approving a bid waiver to purchase one "Test Release" diesel-powered 4-wheel drive 82 HP tractor with full new unit factory supported warranty provided. This will allow the Mayor to approve for purchase the unit recommended by the Fleet Operations Division, Park Maintenance Division, and the Equipment Committee. This unit will be utilized by the City of Fayetteville Parks Maintenance Division.

Mr. Rose read the ordinance for the first time.

Alderman Trumbo stated this equipment would be a great help to the Parks Department.

Alderman Reynolds clarified it was an 82 HP Tractor.

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.

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

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

Mayor Hanna called for the vote. Upon roll call the ordinance passed unanimously.

ORDINANCE 4183 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

GREATHOUSE PARK BRIDGE
Discussion and possible action regarding the Greathouse Park Bridge and the tree removal required due to flood prevention for its construction.

Alderman Santos stated there had been a lot of complaints of the channelizing of the creek and removal of the trees which was necessary for the bridge. He want to make sure the Parks Department had looked at every option. One of the options he had considered was a prescriptive easement to the property. They had been accessing the park through the Levi Strauss property for more than seven years. He thought they would have a prescriptive easement. He suggested they try and acquire an easement for that. The argument made by the Parks Department had been that the parking lot was not located at that point. He thought they could still have people park on the north side of the park and provide handicapped access and mower access without having to channelize the creek or build a bridge.

Mayor Hanna asked if that would solve the problem of getting the children from the neighborhood across the creek.

Alderman Santos replied they could use the handicapped and mower access or they could climb across the creek like they did now.

Alderman Russell stated they needed to be clear on what they were required to do and what they were choosing to do. If they constructed anything in the flood plain, then the FEMA regulation stated they could not do anything that would raise the level to that of the 100-year flood. He asked if they were required to make all of the park accessible to the handicapped or if it was a choice.

Ms. Brenda Thiel, Parks Board Chairman, read a prepared statement that she had sent to all the Council members. In regards to children entering the park, they had always entered the park across a sewer drain pipe or through the creek. If they did not have a bridge there, they would continue to enter the park that way. Generally, there was water in the creek, and it was often dangerous for them to cross the creek. It was not a safe entrance into the park. If they could gain access through the Levi Strauss property, they would use their parking lot.

Alderman Davis asked if they were to take an easement from the Levi Strauss property could they make the City pay for the easement.

Mr. Rose stated he did not believe the City had prescriptive easements. One of the elements of a prescriptive easement was that it could not be a permissive use. It had to be hostile and open. He did not believe this was a hostile situation.

Mr. Venable added the City was still allowed to use it to get their equipment in. The Levi Strauss property was currently for sale. The problem was that there was not much room between the building and creek. They would need more than the footage existing there to have handicapped access. Then they would have to fence the property off. They had talked with the owners before, and the current owner had the property for sale. There were currently two gates there.

Mayor Hanna stated the owners had been kind enough to allow them to use the access for years. He would never consider forcing them to give the City the easement.

Ms. Thiel explained the tree removal did not affect the trees between the sewer pipe and the Levis Strauss property or around the back of the park. It did not encompass the entire stream bed. There would still be a lot left. The Parks Board was convinced the replanting would look good. Many of the residents that wanted to be at the meeting could not be here because they had to work or they could not get out. The neighborhood people needed access to the park. The owners of the Levi Strauss property were not going to give the Parks Department their parking lot.

Alderman Trumbo stated it had been his understanding, based on the deed from the Greathouse Family, that the land could only be used for a municipal park or the land was to go to the heir.

Ms. Thiel confirmed that the property would revert back to the heirs if it was not used as a park. She added there were a lot of trees in the park. They would have to remove several trees, but they were working with the engineers to save as many trees as necessary.

Alderman Trumbo pointed out this was the only park in the area. They should make it accessible and utilize it to its full extent.

Ms. Thiel agreed this was the only park in the area and the children needed a park and deserved a bridge. They had considered other bridges, but for a low water bridge to be accessible it would have to have a 3:12 slope which would require it to begin outside the park's property all the way into the center of the park and it would have water in it. Everyone now had observed the creek with only two or three inches of water. Normally there was a lot of water running through the creek. There were a lot of times they could not get into the park. She herself did not use the pipe to get into the park.

Mayor Hanna stated he had received a letter from a man who practiced there with his Little League ball team. Some of the parents would allow the boys to cross the pipe.

Alderman Reynolds stated he was an elected official for the neighborhood. He had walked the neighborhood. The people there wanted the park and they wanted it to be handicapped accessible. He added there had been a lot of meetings down there that he and Alderman Austin had not been invited to. People need to talk to the neighbors. They did not need people in different wards telling them what they wanted or needed. They needed to be their own boss down there and they should get what they wanted. The people who live there wanted the park accessible and they wanted the creek channeled to stop some of the flooding problems.

Alderman Santos commented they were not discussing any possiblility of stopping any flooding problems. They were just trying not to make it worse. He did not believe they were seriously considering access from the west for handicapped accessibility.

Alderman Reynolds replied he did not believe they could make kids walk two blocks around from the parking lot to get into the park from the west side.

Alderman Santos thought they would walk two blocks around to go through the fun way -- through the creek bed.

Alderman Austin asked how long the Parks Board had worked on the project and what kind of meetings they had held.

Ms. Thiel stated she had been working on the Parks Board for two years and they had been working on this project since the bridge had washed away. They had been looking for a solution for over five years for the kids to have a safe way to get into the park. There had been a lot of obstacles, such as the expense of trying to buy the right-of-way through all the house or the right-of-way through Levi Strauss. The property had not been for sale. They had been approached and asked if they would like to sell the City right-of-way. They had replied no.

Alderman Austin stated there was no question that they had gone through all the procedures and had had the opportunity for public input.

Alderman Russell agreed it had gone through the proper procedures, but they had not realized the magnitude of the tree removal. He thought at first it had sounded very reasonable, but now that they knew all the information they needed to revisit it.

Alderman Austin established the fact that they had gone through the proper procedure.

Ms. Thiel stated that all of their meetings were open to the public. She added they had seen the letters which had been written to the Parks Department from children requesting a bridge. They had trusted the staff to explore the different types of bridges. Any bridge which was put in there would require something to done with the channel. It had been her understanding that the width of the bridge was not a large factor. It was the fact that it was a rigid bridge.

Ms. Terry Easton, an area resident, asked if an environmental study had been completed to determine the impact of the project downstream. Was there a rendering available for the public that showed how the finished project would look. Were there other bridge options which would meet their needs without damaging the corridor. Were there permits from the Corp of Engineers and DEQ that were required. Had they considered giving up the park site since it was in the flood way. Could they clean up the corridor without removing the embankment. Could the Ozark Regional Land Trust be of assistance. And would continuing to use the existing easement be a viable solution.

Ms. Kim Rogers of the Parks Department stated the Levi Strauss property had been for sale for four million dollars and the owner of the property was unwilling to continue to let the easement be used because it might impede the sale of the property.

A representative for Friends for Fayetteville had contacted the property owner who had faxed the Parks Department a letter expressing a willingness to provide easements. She thought there might be options which had not been addressed.

Alderman Trumbo replied he did not have time to micro-manage every little project that came through the City. He had a lot of respect for the Parks staff and Board. They had gone through the proper procedures and he believed there had been a great deal of time and effort put into this project.

Mayor Hanna explained the condition of the previous bridge. He had looked at the alternatives. He stated that the people in that area deserved to have a good park. He thought the City had used due diligence in this project. He thought they were blowing the entire issue up into a bigger problem than it really was. That creek ran a long way. The beavers had killed more big trees along the creek than they would take down to build the bridge. No one had been out there killing beavers. That was nature. He thought people were more important to them. One of these days the entire creek bank would have to cleared out and a better drainage structure made, just like they had had to do in Springdale and Rogers to handle all the runoff they had from all the development. The existing sewer pipe was underwater during major rains. It was a big problem. It bothered the staff and Board when they worked on something for such a long period of time, then to have someone come in and on one week's notice start pointing out all the things they could have done differently. They all had 20/20 hindsight.

Alderman Russell stated they did not have to go ahead if something could have been done differently.

Ms. Easton asked if they had considered any break-away bridges which might be an option.

Alderman Santos thought the letter from the property owner was a good idea. They had three weeks that they had to wait for a permit so they would not have any problems with the contractor. He thought they should explore other options.

Mr. Venable questioned the access Mr. Santos was considering. There was only 18 feet between the building and their fence.

Alderman Santos stated there would have to be one handicapped parking space.

Mr. Venable replied there was not a parking place there.

Mr. Crosson stated they had explored the option of the easement when he had been the Public Works Director. At that time, the property owner had told them that they would not allow them to have permanent access.

Mr. Venable added the fax letter was not saying they could have permanent handicapped access. He added no one from the City had spoken to them in regards to this fax.

Ms. Connie Edmonston, Parks Department Superintendent, stated she had a documented conversation between Kim Rogers and the property owner in April of 1998. She had also talked with them about an easement. The owner had not been interested in granting an easement. She had tried to talk with the owner after receiving the fax, but had not been able to. She added there had been two faxes. She was concerned about what had been told to Mr. Towers, the property owner. She still had several questions. She was convinced the proposed bridge was what the people wanted. She did not believe people would use the west access.

Alderman Trumbo added even if the easement was given for free, he was still in favor of the bridge exactly as it was drawn.

Ms. Paula Marinoni, an area resident, expressed concern about the use of the HMR tax to purchase more greenspace. She expressed concern about having to fight the Parks Board to save their parks.

Mr. Mark Curtis, an area resident, presented photos of the trees and the shade that the existing trees provided. He stated they had had a bridge at one time, but it had washed away. He expressed concern about losing all of their shade. He questioned who would want to use the park without shade.

Alderman Santos suggested replacing it with a bridge that was not handicapped accessible and provided access from the west side.

Mr. David Todd, CEI Engineering, stated there were three large trees that he thought they might be able to save by adjusting the slope and bank. He was going to try a few more flood models to see if they could save a few more trees. The City had originally asked them to design a bridge for them. They had discovered it was cheaper to purchase a prefabricated bridge. During the flood plain calculations, it was discovered that the flood was raised a couple of inches by placing this obstruction in the middle of the channel. To give the magnitude of the depth of the channel, the average was approximately twelve feet deep. The flood would go approximately six feet above the bank, which would be above the Council chambers. If they were to improve the channel then the next affect would be zero. They had tried to keep the creek as crooked as it is now. They had taken out most of the trees that were in the creek. It was not going to look like a natural creek. It was going to look more like a ditch. They had done their best to keep it as close to what it is now. It was not going to look the same.

Alderman Austin asked if he would recommend that the City keep the banks clean or if they should allow some underbrush.

Mr. Todd replied the Corp of Engineers had come in several years ago and had dredged the creek. If they were to go out there now they could not see any evidence of them being there. They could let some brush grow and the grasses get tall. This would be more easily maintained. The calculations allowed for some of that to occur.

Alderman Austin asked him to comment on the possibilities of the break-away bridge.

Mr. Todd stated he was not familiar with it. He did know that the engineer that had designed this project had worked for the Forest Service for approximately ten years. It was his understanding that that type of bridge was used by them. He would be happy to research it to see if it was feasible. He noted every two or so years this creek did come up out of its banks. He thought there was a fifty percent chance that the creek would come out of its bank every year. They did not want something they had to replace every two years.

Alderman Santos asked him to look at that alternative, and at the alternative of taking out the handicapped accessibility and maintenance access requirements. He thought it would be easier on everyone if they had renderings showing how this would look with all of the replantings.

Alderman Young asked if they had applied for permits.

Mr. Todd stated the Corp of Engineers had jurisdiction over the waters of the United States. There were two permits. One for wetlands and one for the protection of water. They stated a permit was required. They were in the process of getting the permit. He thought it would take a minimum of three weeks to get the permit possibly longer.

Mr. Gary Galbraith, Ozark Regional Land Trust, explained they were a conservation group. They would like to see the property stay a park. They felt it was the best use for the piece of land. The park had very poor access now. Any changes would impact the environment. He suggested the City look carefully at whatever options they had and take into account some of the issues that had been brought up.

Mr. Bill Ackerman, Parks Board, stated they had worked on this project for more than two years. He had been on the Board for five years. They tried to serve all quadrants of the City. This quadrant of the City had suffered for a long time. They had not had the funding. The Board had a responsibility to serve the people. They had to make a decision on whether or not to serve the citizens in this area who had waited for so long. They had an impossible situation. They did not create the problem. They had not had the funds. Had it not been for the HMR tax they still would not have the funds needed to do these projects. They had properties now that they needed to improve. They now had a large enough staff to get projects done. As citizens of the community they needed to address the needs of the people they were trying to serve. In his opinion this was a short term inconvenience for a long term gain. They needed to build a bridge. The possibility for an easement was open ended. It had not been an option in the past. He was not sure that it was a long term solution for what they were trying to do to access their own park. It would not be convenient for the constituents in the ward. He did not believe the community would ever use it. In his opinion they were wasting their time in not solving the problem of building a bridge in one of their own parks. He added they worked with the professionals. They had tried to turn over every possible rock in this project. He thought they could reengineer and redesign, but it was only money and they were not going to get there if they did not go ahead and build a project that would serve the people in that community.

Alderman Santos stated the goal was not to build a bridge, the goal was provide recreation while preserving a natural resource.

Ms. Carol Tarvin, Green Party of Arkansas, stated she did not live in Fayetteville, but had lived in that area. They were concerned about the preservation of the environment and grass roots democracy and social justice issues. She asked them not to rush into something. She felt openmindedness was a spiritual principle.

NO ACTION WAS TAKEN.

CELL TOWER SITE:
A resolution approving an agreement with MSA Limited Partnership (Alltel Communications) for lease of tower space on the Gulley Road Water Tank for the purpose of installing radio communication equipment and appurtenances (building and antenna).

Alderman Trumbo stated he had requested this be removed from the Consent Agenda because he had received several calls about it. He explained there was a water tower on Highway 45 outside the City limits. They had needed it for water pressure. There had been no plans for cells towers, but now they were considering a lease to Alltel Communications.

Alderman Daniel stated she had seen the drawing for the tower and it was not what she had thought at all.

Ms. Alyssa Colefield, Alltel Communications, stated the application they were discussing was any sort of a free-standing antenna. There were attaching antennas to the top of the structure. The antenna was called a metowave application. Each antenna was 4' by 6', and there would only be three attached – one per face like a triangle.

Mayor Hanna asked if they would be constructing a building on the ground near the water tower.

Ms. Colefield replied they would be putting a prefabricated equipment shelter on the north side near the base of the tower. It was a 12' x 28' shelter. It would be air-conditioned which was not any louder than any normal residential unit. She stated they had addressed most of the environmental concerns. They had been working with the City since February. The existing tower was not high enough or far enough south for their needs. They were trying to offload some existing towers with capacity problems.

Alderman Trumbo noted the people leasing the other tower were getting $1,600 per month.

Ms. Colefield stated they had an acquisition agent. She thought that fee was over what they were accustomed to paying. The owners of the tower would be able to generate money from leasing part of their tower to other companies. They would not have that opportunity leasing the water tower.

Alderman Trumbo stated the only thing the City had to do with the tower location was the fact that it was their water tank. It was located in the county. Alltel would have to go to the county for approval of the tower.

Ms. Colleen Gaston, an area resident, presented a petition with signatures of people who were opposed to the City approving the lease agreement. The signatures had been collected this afternoon. The people out there were concerned. Their concern had started with the construction of the water tower. There had not been any public notice or opportunity for public input on that project, which was in violation of a state statute which required public notification and required it to go through the County Planning Commission. This should have been considered by the county as a large scale development. They had asked that the City commit that there would not be further development on the property. At that time a number of people had been told that there would not be other plans for further development. She commented on how unclear the agreement was. The lease referred to four exhibits. None of those exhibits were attached to the document presented to the City Council. There was no legal description of the easement. There was no description of the notification. She questioned how they could comment of the lease if it was not complete. How could they recommend the lease to be signed when those attachments were not there because they did not know what they were getting or bargaining for. She added some of the structures for cell towers made quite a bit of noise. She questioned if they could further degrade the vista with these cell towers. She thought they would also require additional lighting. She recommended that the City Council not approve the lease at this time. She would like to see a commitment that there would not be anything further done to the property or added to the tower. She recommended that they get a better description that would be made available to the public and that there would be further opportunity for the public on the agreement.

Alderman Trumbo asked why a lot of the attachments were not in the agenda packet.

Mr. Venable replied there were 180 days from the execution of the contract. The legal description would be the top of the tank.

Ms. Alyssa Colefield explained there was a caveat that they would put the legal description that was available to them when they were negotiating. Once the lease agreement was signed they would go in and attach the exact legal for only what they were leasing and the site plan.

Alderman Austin commented that the City Council decision was whether or not they wanted to enter into a business agreement. The County had to approve of the location.

Ms. Colefield stated they would not apply for approval from the County until they had an agreement with the City or a landowner.

Ms. Gaston stated it was her understanding that with the new Washington County cell ordinance, since this was going onto an existing structure, there would basically be no opportunity for public comment during the County process.

Mr. Scott Jones, an area resident, stated he was opposed to the water tower. He had tried to accept the tower because people needed water. The tower was approximately 75 yards from his front door. He noted all the antennae that had been added to the water tower on Mt. Sequoyah and now there were also cell towers next to it.

Mr. Bunn, Assistant Public Works Director, stated the City had acquired enough property so depending on the growth in the area. At some future date that they could consider another water tower up there. They had the room. But it was not within the next five years.

Anglea Laren, an area resident, stated she was disappointed in the City. They had moved out to the County and the City had followed them. She asked the Council to think about the affect of adding three more ugly structures out there that would put more light in the woods.

Susan Hoye, an area resident, stated the water tower was ugly. She had added the planted trees around the area. She was wondering if she would live long enough to see the trees cover the water tower. She asked the Council not to add insult to injury by putting more on the top of the tower.

Dr. Darrell Ginger, an area resident, reiterated that there had not been any notification for the water tower. He did not protest the water tower because it would benefit the City as a whole. But to add a tower to the top of this would make it uglier. It devalued his property. He objected to the towers. The City had extended itself out into the County. This area was still in the growth area. He thought this was a violation of trust for $1000 per month. He thought they should leave well enough alone. He objected to any further structures. He did not believe it would add very much to the City coffers.

Alderman Austin did not know what the County ordinance said. But he thought Alltel could locate a tower out there in the County if they did not locate on the tower. He asked Dr. Ginger if he would prefer a structure on the water tower or would he like a separate structure. He did not want to offend anyone in the area. He questioned if they were solving the problem by not signing the lease.

Dr. Ginger stated the people in the County were objecting to the unsightly eyesores just like the people in the City. He thought they were intruding themselves onto City property which was located in the County. He questioned what these towers were doing to his property values. He added that even though there was a water tower next to him, he still had problems with his water supply. He personally requested that they not add another structure on top of the tower to mar the skyline.

In response to comments from the public, Ms. Colefield stated the antennae would not require any additional lighting. The water tower did not even require additional lighting. The City had voluntarily added the lighting to the tower. The only reason they would have a generator on the property would be for an emergency. They did not keep a backup generator there. Generators would only be permitted in an emergency case.

Alderman Daniel asked if their lease request was turned down, what would they do.

Ms. Colefield stated their alternative would be to look for another site. They were originally going to do that. A moratorium had been issued in both the City and County. They had to get real creative. This was not the best option for them, in the spirit of co-location and the fact that they were trying to co-locate to different sectors and to minimize additional towers in the area. This was their option they were proposing. They had designed it to go onto this water tank. If they had to locate another tower it would be a little further to the north. There would only be one light on the shelter to light the entrance to the building. They typically painted the antennae the same color as the tank.

Alderman Santos explained in the spirit of the ordinance they were trying to encourage co-locations so they would not have to have another tower built. He thought the people who lived in this area would prefer to have the antennae on the tower rather than have a tower constructed. He thought it was preferable to have the addition to the tower rather than have another 150-foot tower constructed. He stated they were trying to have fewer towers built. If they did not approve the lease they were encouraging more towers to be constructed in the area.

Ms. Gaston stated generally co-location was preferable, however, when they were usually talking about co-location they were talking about structures that had gone through some sort of process, which was not the case here. She was skeptical of any landowners in the area that would be willing to lease any land for a tower to be constructed. She thought it would be very difficult for a communications company to find a lease in the vicinity of the existing tower. She thought they could say that they preferred that there would be nothing additional added to the water tower. She did not believe another tower would be located there and if it did, it would have to go through a hearing process even though it would be minimal at the County level, which would allow for some sort of public input.

Alderman Davis cautioned that one of her neighbors, for $12,000, would let them put up a tower. The City was looking at putting up antennae on top of the water tower.

Alderman Austin stated he was willing to vote for her request to be a good neighbor. This was a business decision. In his eyes, he was not willing to offend those people for a thousand dollars a month. It was the County issue whether or not it met their ordinances.

Alderman Santos stated the spirit of the City's ordinance was to encourage co-location.

Alderman Davis replied the City had never notified these people of the water tower. If they had told these people that nothing else would be put on this tower, then they needed to keep their word.

Alderman Trumbo stated he was willing to vote against the resolution, because of the mistakes that had been made, but he wanted everyone to know that there would probably be a tower somewhere out there. He thought it would be better on top of the tank. But the lease money could be a lot of money to some land owner.

Ms. Gaston stated she did not know what the best answer was, but the information they had been provided was inadequate. They had been given some oral representation of what Alltel was going to do, but they did not have that in writing. And the public had not had an opportunity to look at it. She thought they needed to ask for additional information. She thought the City should make them show their plans. How many cell towers did they need. Where are the best location for those. They had the opportunity to control the situation somewhat. She was not convinced that there needed to be an additional tower.

Alderman Young thought they should wait two weeks to give them time to think about it and to notify more people.

Ms. Colefield stated they were not trying to come into their neighborhood. They were trying to work in the spirit of co-location. They were trying to do what the ordinances were directing them to do.

Alderman Davis and Trumbo requested the additional information be included.

Ms. Colefield stated it could be provided without a problem.

Ms. Gaston asked if they did not approve this, then what would the alternative be. Why did they need another location. She thought they might be positioning against other companies.

Alderman Trumbo moved to table the resolution. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

Meeting adjourned at 11:05 p.m.