MINUTES OF A MEETING OF THE FAYETTEVILLE CITY COUNCIL SEPTEMBER 21, 1999

A meeting of the Fayetteville City Council was held on September 21, 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 Reynolds, Austin, Davis, Trumbo, Daniel, Santos, Young, and Russell; City Attorney Jerry Rose; City Clerk Heather Woodruff, Administrative Services Director Kevin Crosson; Public Works Director Charles Venable; City Planner Tim Conklin; Staff; Press; and Audience.

ITEMS DISCUSSED	ACTION TAKEN	
Approval of the Minutes	Approved	
Water / Sewer Relocation Highway 265	Approved	Res. 119-99
Passenger Facility Charge	Approved	Res. 120-99
Greathouse Park Change Order	Failed	
Wastewater Treatment Plant Report	No action	
Cell Tower Site	Approved	Res. 121-99
RZ 98-22 Amendment	Passed	Ord. 4184
VA 99-11	Passed	Ord. 4185
RZA 99-2	Passed	Ord. 4186
RZ 99-26	Left on first reading	
RZA 99-3	Passed	Ord. 4187
RZ 99-27	Left on first reading	
RZ 99-25	Left on second reading	

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Alderman Trumbo requested that the agenda item for the Greathouse Park Change Order be removed from the Consent Agenda and placed under Old Business.

CONSENT AGENDA

WATER / SEWER RELOCATION HWY 265

A resolution approving a construction contract with Basic Construction Co. for Highway 265 widening (Highway 45 to Highway 16) -- Water and Sewer Relocations in the amount of $1,301,170.00; a project contingency in the amount of $130,000 (10%); and a budget adjustment.

RESOLUTION 119-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PASSENGER FACILITY CHARGE

A resolution approving the implementation and collection of a Passenger Facility Charge application #3 from eligible passengers at Drake Field, the amendment of existing applications #1 and #2, and the closure of application #1. The resolution is a Federal Aviation Administration FAR Part 158 requirement for the application process. As with applications #1 and #2, a $3.00 PFC Charge is being requested in application #3. The Airport Board approved this PFC application and amendments at their August meeting.

RESOLUTION 120-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Russell moved to approve the Consent Agenda. Alderman Austin seconded the motion. Upon roll call the motion carried unanimously.

OLD BUSINESS

GREATHOUSE PARK CHANGE ORDER
A resolution to amend the contract with CEI Engineering Associates, Inc. for the purpose of conducting additional analyses to see if there is anyway to avoid major channel improvements to alleviate additional flooding that could be caused by building the park access bridge over Town Branch creek.

Alderman Trumbo had requested the item to be removed from the Consent Agenda. He explained he wanted to discuss the money which had been budgeted for the project. They were going to need additional money to carry out additional studies that the Council was wanting them to do. He thought they had gone the extra mile.

Ms. Connie Edmonston, Parks and Recreation Department Superintendent, explained some of the money was needed to add on alternatives. They had CEI look at the most feasible method for this project. They had looked at the economics and the cost of the project, at the park access and all the other things they had discussed. The request did entail additional meetings which had eaten up all the time they had budgeted. They were paying the engineers by the hour to come to special meetings to help explain the project to other people. They had used a lot of the construction supervision time already in their original contract.

Alderman Trumbo stated he was for this if this was to get the project moving. He was against the change order if it was to fund more studies.

Ms. Edmonston replied some the money was for looking at other alternatives.

Alderman Austin asked if they did not approve the amendment to the contract to increase the funding, what would happen.

Ms. Edmonston answered they would go on with the project as is. They might need some extra funding for the construction supervision at the project for CEI.

Ms. Brenda Theil, Parks and Recreation Advisory Board member, stated it had been the Parks Board's understanding that they were to look at other methods.

Mr. Todd, CEI Engineering, stated the contract amendment as it was presented a series of lump sum items that they would do in priority order. The last two items could not be done without specific authorization from the Parks Department. The analysis would include constructing an ADA ramp. They might be able to reduce the amount of channeling by changing to a more expensive type of construction for the ramp. They might also be able to change the dirt level in the park on the south side and create an overbank relief channel so the trees were higher than the park side. It was a matter of computer modeling if they could do that without destroying their park. If they lowered it too much they would take a lot of land from the park.

Alderman Daniel asked if changing the specifications on the bridge would still depend on them getting ingress and egress from the west side.

Mr. Todd replied it would still require ingress and egress for park equipment, but not for public access. All their public access would be able to come from the north side. They were only going to look at ADA alternatives for the bridge. They could not have separate but equal access. They could not put the handicapped off to one side. They needed to be co-located.

Alderman Young, referring to the change order, stated that if they found a good solution in the beginning they would not have to do the rest of them.

Mr. Todd replied that Alderman Young was correct. He added that he believed that any alternative they came up with would be more expensive than what they had now. He would be very surprised if they came up with a lower cost solution. He thought they came up with the lowest cost solution the first time.

Alderman Santos did not believe Mr. Todd was correct about the ADA requirements. He noted that at the City Administration Building and at the Bank of Fayetteville neither one had their ADA access together with the general access.

Mr. Venable replied these buildings had been retrofitted and had been grandfathered in.

Alderman Young asked if the City's equipment could go across a breakaway bridge.

Mr. Todd replied if would depend on the bridge. He knew the bridge would be more expensive than a fixed bridge. He added that, the larger the breakaway bridge, the more likelihood there was that the City would need special equipment to put it back in place after a flood. That would need to be a part of their analysis so they would not have to hire an outside contractor to put the bridge back in place.

Alderman Russell commented that the change order was what he had been expecting. He did not believe it was a lot of money.

Ms. Edmonston added that the details of an alternative design had not been included in this change order. There would be design costs necessary to change the bridge.

Mr. Todd explained they would not know what to design until they had evaluated the alternatives.

Alderman Trumbo asked Ms. Edmonston if they needed to consider more options. He thought they had done a good job.

Ms. Edmonston replied she thought they had done a great job. Their engineers had told them from day one that for the amount of money they had to spend on this project, looking at the feasibility of the plan, they had a good design. The neighborhood wanted that bridge. She felt very strongly that they had to provide ADA access for the north side of the park. And that had been expressed by that neighborhood very strongly.

Alderman Russell stated it was his understanding that no one understood the extent of the project until after they had approved the original contract. It was his opinion that they needed to spend the additional money to make sure they had considered all the options.

Alderman Russell moved to approve the change order as presented and recommended by the Parks Board. Alderman Young seconded the motion.

Ms. Fran Alexander, an area resident, stated that she thought that removing this item from the Consent Agenda was detrimental to the process for the citizens. She stated she had counted all the trees and there were over a hundred trees. She urged them to vote for the change order.

Alderman Reynolds state there had been several people walking the neighborhood. Some of the residents had lived there for over 54 years. They had never had anyone refuse to sign the petition. They explained to them that the trees would have to be removed to put the original bridge in. Everyone in the neighborhood wanted the original contract done for the park. He thought they needed to go along with the people who lived there and had to put up with it every day, rather than having people come from other parts of the city and trying to ram something down their throats that they did not want.

Alderman Austin added thirty to forty people in the area had signed the petition. There had not been one person they talked to that was not for the original project. When he had run for City Council in the area, he had gone to those people's houses. They had asked him to represent them on things that were close to them. That park was close to them, it was in their backyard. He tended to listen to those people.

Upon roll call the motion failed by a vote of 4-5-0. Austin, Davis, Trumbo, Reynolds voting nay. Mayor Hanna broke the tie by voting nay.

WASTEWATER TREATMENT PLANT REPORT

A report from Burns and McDonnell on the existing wastewater treatment plant.

Mr. Jerry Sonderegger and Mr. David Hauser of Burns & McDonnell and Dr. James Moore, Professor Emeritus of the University of Arkansas, explained how they planned to proceed with the City. They had worked with the City on the scope of the project and on what needed to be included in the study. The purpose of the study had been to determine how much wastewater could flow through the wastewater plant. They did not evaluate the operation of the plant or the life of the plant. They did not compute the original design. They had not been asked to comment on the design assumptions they had made in 1984. He explained the basic design and function of the plant, and the process and criteria they had used in evaluating the plant. Their recommended average daily flow was 12.6. They had applied this flow rate to the basins to make sure they could handle that flow and still be within the standards. He added the plant was approximately at 91% or 92% of capacity at this point. It was his opinion that the City was correct in preparing to more forward towards relief for this plant.

Alderman Trumbo stated there had been some question as to whether or not the plant was actually at this capacity level. Their report was showing that they were at approximately 93% of capacity. He added that when this plant had been designed, they had not taken into consideration the explosive growth rate Fayetteville had been experiencing.

Alderman Young asked Mr. Sonderegger if he had seen the original resolution approving the study. The study had not been passed to get a study of what the plant was currently doing. The study had been intended to determine how much flow the plant should be able to treat.

Mr. Sonderegger replied that he had gone by two items in undertaking this study, one being the RFP which stated the need to review the scope of the 201 Facility Plan. He had reviewed all the construction documents and the facility.

Alderman Young asked, based on the 201 Facility Plan, what were their recommendations for the plant.

Mr. Sonderegger replied about 11.4 million gallons per day. The design capacity was a total different term. He could not tell them what CH2M Hill had used as their design standard. He took it to be the average daily flow, which was a general term used in the industry. They had been asked to review the plans. The contract stated they were to perform an engineering evaluation of the hydraulic capacity of the plant and to recommend to the City the capacity rate of design average flow and peak flow. And they had accomplished that.

Alderman Young questioned the statement "conform to construction drawing."

Mr. Sonderegger answered that "conform to construction record" was a term that engineering companies used. When a plant was constructed they would find things that they did not anticipate or a better way to do something or there were change orders to the original design.

The resident engineers in the field keep track of any changes in the log book, noting any changes which were made. At the end of that time those were put onto "conform to construction records" which was a legal term indicating which of the records show how the structure was made. He had not read through the daily logs. They had not been asked to see if the construction records matched the daily log.

Alderman Trumbo thanked Mr. Sonderegger and stated their firm had done an excellent job in fulfilling the contract.

Mr. Rose asked Alderman Young if his contention was that the plant was not constructed the way it was supposed to be. He asked what made him think that it had not been.

Alderman Young stated there had been questions from the public and former workers. He thought it might show up in the daily logs.

Alderman Austin asked what it would cost them to overlay a growth rate chart and a rainfall chart over the flow rate chart to see if the rainfall chart was the same as the peak flow chart.

Mr. Sonderegger replied that he did not know if that information was readily available.

Alderman Austin stated they needed to be dealing with their growth rate and serving their people. They needed to make allowances for infiltration and avoid those things. He was not in favor of spending more money to do more studies. He was satisfied with the work done by these engineers.

Alderman Trumbo stated that Burns and McDonnell had shown them where they were. He asked Mr. Venable if he was satisfied with the report.

Mr. Venable stated he was satisfied and the contract had followed the four items which had been issued in the resolution. Everyone had a chance to review that contract and to improve the contract. He thought they had done a good job.

Alderman Young questioned the permit. They were limited to the volume going to Mudd Creek, but they were not limited to that going to the White River as long as they met the mass loadings.

Mr. Sonderegger replied that was correct. He explained the condition of the permit now, and what was allowed.

Alderman Reynolds explained that when that plant was constructed, the original contract went belly up. The insurance company had to send in contractors to finish the plant. He thought they were really lucky to have twelve years use of a trouble-free plant. They needed to be thankful.

In response to questions, Mr. Sonderegger stated that at his office, when they had completed a project and the design to conform documents had been made, the original design documents were discarded. Sometimes an office engineer did not have a good handle on the conditions they were going to find in the field. There could be rock, bad soil, or any number of things. The original documents only served to confuse the issue after the project has been completed. It was their policy and most engineers' policy, once the project has been constructed to discard the correspondence files and the mark-ups, because they were no longer relevant. The only thing relevant was what had been built.

In response to concerns from aldermen regarding a potential lawsuit, Mr. Rose stated that if there were any design faults in the plant that they were not aware of, there was a thing called *laches and estoppel* which meant if they had not discovered something after this long a period of time, they probably could not go back and sue someone. None of what he had heard tonight would give him reason to believe that the City, by staff or Council decision, had in any way been involved in any wrong doing. He could not chase a phantom.

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 communications equipment and appurtenances (building and antenna).

Alderman Santos stated he had looked at the letter presented to the City Council at the first of the meeting from the residents in the area listing their changes to the contract. He thought some of the requests were reasonable. Some of them were the responsibility of the county. He did not think they needed to agree with some of the items at all.

Alderman Russell thought there were some valid points. He understood that the neighbors wanted assurances.

Mayor Hanna thought they needed to consider the resolution approving the agreement. The other things were suggestions. They had spoken with the person who had written the letter a couple of times. He thought they would try and do what was right for the neighbors in the area. At the present time they did not have any plans to do anything. Each plan they would do would be brought back before the council.

Alderman Davis agreed that they did not need to try and solve every problem tonight.

Alderman Russell stated some of the requests on the letter had to do with the current agreement which was on the table, such as approving the lease without satisfying some of these items which seemed amendable to everyone.

Mr. Jim Smith, General Manager for Alltel in western Arkansas, stated he did not know what the residents wanted, but he was willing to consider them.

Mayor Hanna stated this was rather late. If they were not satisfied with the resolution as they had it drawn up, then the aldermen could vote against it.

Alderman Santos moved to approve the resolution. Alderman Reynolds seconded the motion.

Mr. Jeff Erf, an area resident, questioned the dollar amount of the lease and how that amount was arrived at.

Mr. Smith answered that amount was the standard amount offered in a co-location. One thousand dollars was pretty much the standard cost across the board.

Mr. Erf stated the early draft of the cell tower ordinance required an independent appraisal. He asked if the City was comfortable with taking Alltel's word about the growing rate. He asked if they had negotiated the price.

Ms. Alyssa Coffield, Alltel, stated she handled all the site acquisitions for the central market, including Fayetteville. They were currently co-located on another one of the City's water tanks, which they had negotiated several years ago. They had doubled that rental payment and upped their amount. They used field agents and a site acquisition company to negotiate most of their contracts for them. She noted this contract had gone through several months of negotiations with the City and this was what they had agreed upon.

Mr. Erf noted the contract tied the City to the lease for ten years. He questioned whether that was what the City wanted to do since the technology was changing so fast.

Alderman Davis replied the time period was for two five-year periods. If the antenna is abandoned, they would have to remove it. Most contracts were based on five years with the option to renew.

Ms. Colleen Gaston, 3270 Rom Orchard Road, had written the letter to which they had referred earlier. She explained that Alltel did not submit their rendition of the site until yesterday. She asked how they could have reached a conclusion any more quickly than they had. She thought there were some legitimate concerns about the agreement.

Alderman Austin stated the City wanted to do the right thing. They were not under any obligation to make a contract with county residents, but they wanted to do the right thing. Most of her requests fell into the category of doing the right thing.

Alderman Russell thought the residents wanted assurances in writing because of what had happened in the past. He thought they needed to make a special effort on the front end to the neighbors that could not vote them out.

Mayor Hanna stated this was the time to vote on the agreement, not the time to change the agreement. The City would try and work to protect the residents in the area.

Ms. Gaston stated there had been only two weeks since this had been brought to the public's attention.

Ms. Coffield stated some of Ms. Gaston's concerns were valid about the exhibits. She explained the exhibit would be provided within 180 days after the complete execution of the contract. She had supplied the accurate legal description to Mr. Don Bunn, Assistant Public Works Director, along with the drawings and construction plans.

Ms. Gaston stated as a practice of good business they should see what they were getting before they signed a lease.

Mr. Smith stated they wanted to do what was right for the residents. He also lived in town.

Alderman Trumbo noted that Alltel had a better site located.

Mr. Smith replied there was some compromise. They did have another site located. They could have already built on that site. They had decided to wait because they felt this was a better solution for everyone involved.

Alderman Davis stated he had spoken with four people in the area and they had all told him to go ahead and vote for the lease. He had not seen any other opposition to the antenna.

Alderman Santos added that Alltel has shown a good faith effort for co-location, which was in the ordinance.

Mr. Smith added they had capacity issues in that area now.

Alderman Austin stated he would be voting for the resolution, with the understanding and the expectation that the City would do what they said they were going to do.

Upon roll call the resolution passed by a vote of 5-3-0. Russell, Trumbo, and Santos voted nay.

RESOLUTION 121-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZ 98-22
An ordinance approving an amendment to the Bill of Assurance of RZ 98-22 submitted by Richard Osborne on behalf of Littlefield Investment Company and successor owner Clem Johnson for property located at 1798 E. Huntsville Road. Ordinance 4175 rezoned this property from C-1, Neighborhood Commercial to C-2, Thoroughfare Commercial. This request is for an amendment to the Bill of Assurance to allow automobile restoration and repair in addition to used car sales.

Mr. Rose read the ordinance for the first time.

Mayor Hanna stated the only neighbors that had contacted him had been concerned about the restoration and repair. The owner had promised to screen the area.

Alderman Reynolds stated he also had received phone calls. All of them had been for the approval of this project. All of them wanted to make sure that if something did happen to this business that the property would revert back to C-1.

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

Mr. Rose read the ordinance for the second time.

Alderman Young moved to amend the ordinance to add the wording "classic." Alderman Austin seconded the motion. Upon roll call the motion carried unanimously.

Mr. Conklin did not believe the owner would object to the addition.

Alderman Santos moved to suspend the rules and move to the third and final reading. Alderman Austin seconded the motion.

Alderman Russell added the Bill of Assurance was only a gesture of good faith. Anyone who bought the property could do what ever they wanted to. The City had to be the watch dog.

Mr. Erf, an area resident, encouraged to Council to vote against the ordinance. The use specified was out of character for the neighborhood.

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

Upon roll call the motion carried unanimously.

ORDINANCE 4184 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

VA 99-11

An ordinance approving vacation request VA 99-11 as submitted by Curtis and Kathryn Coleman for property located at 2922 Whippoorwill Lane. The property is zoned R-1, Low Density Residential, and contains approximately .29 acres. The request is to vacate a portion of a 20-foot utility easement along the north property line.

Mr. Rose read the ordinance for the first time.

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

Mr. Rose read the ordinance for the second time.

Alderman Santos moved to suspend the rules and move to the third and final reading. Alderman Austin 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 4185 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZA 99-2

An ordinance approving annexation request RZA 99-2 as submitted by Michele Harrington on behalf of Valerie M. Zamberletti for property on County Road 92 (Zion Road). The property is in the planning growth area and contains approximately 34.72 acres. The request is to annex the subject property into the City of Fayetteville.

Mr. Rose read the ordinance for the first time.

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

Alderman Young asked Ms. Harrington if her client recognized and understood that because of the sewer capacity problem that they were not guaranteed sewer hook-up.

Ms. Harrington replied they were.

ORDINANCE 4186 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZ 99-26
An ordinance approving rezoning request RZ 99-26 as submitted by Michele Harrington on behalf of Valerie M. Zamberletti for property located on County Road 92 (Zion Road). The property is in the planning growth area and contains approximately 34.72 acres. The request is to rezone from A-1, Agricultural, to R-1, Low Density Residential.

Alderman Austin moved to suspend the rules and move to the second reading. Alderman Reynolds seconded the motion. Upon roll call the motion failed by a vote of 4-4-0. Young, Russell, Daniel, and Santos voted nay.

THE ITEM WAS LEFT ON THE FIRST READING.

RZA 99-3
An ordinance approving annexation request RZA 99-3 as submitted by Michele Harrington on behalf of John DeWeese and Mike Schmidt for property located west of Double Springs Road. The property is in the planning growth area and contains approximately 47.98 acres. The request is to annex the subject property into the City of Fayetteville.

Mr. Rose read the ordinance for the first time.

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

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

Alderman Young asked Ms. Harrington if her client was aware of the sewer capacity problem and they could not be guaranteed sewer hook-up.

Ms. Harrington replied yes.

Alderman Santos added that although this looked like urban sprawl, this guaranteed that the development would be up to standard and not be substandard development at the edge of the City.

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

ORDINANCE 4187 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZ 99-27
An ordinance approving rezoning request RZ 99-27 as submitted by Michele Harrington on behalf of John DeWeese and Mike Schmidt for property west of Double Springs Road. The property contains approximately 47.98 acres. The request is to rezone from A-1, Agricultural, to R-1, Low Density Residential.

Mr. Rose read the ordinance for the first time.

THE ITEM WAS LEFT ON THE FIRST READING.

RZ 99-25
An ordinance approving rezoning request RZ 99-25 as submitted by Dave Jorgensen of Jorgensen and Associates on behalf of Butch Robertson for property located west of Rupple Road and east of Meadowlands Subdivision. The property is zoned A-1, Agricultural, and contains 17.40 acres. The request is rezone the property to R-1.5, Moderate Density Residential.

Mr. Rose read the ordinance for the first time.

Alderman Daniel 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.

THE ITEM WAS LEFT ON THE SECOND READING.

Meeting adjourned at 8:45 p.m.