

**MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
APRIL 4, 2000**

A meeting of the Fayetteville City Council was held on April 4, 2000 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, Bob Davis, Trent Trumbo, Heather Daniel, Cyrus Young and Kyle Russell; City Attorney Jerry Rose; City Clerk Heather Woodruff; Staff; Press; Audience. Aldermen Ron Austin and Kevin Santos were absent.

CONSENT AGENDA

APPROVAL OF MINUTES

Approval of the minutes of the March 21, 2000 and February 29, 2000 City Council meetings.

SCOTTSDALE INSURANCE

A resolution approving a budget adjustment for \$50,000 to pay the deductible for the claim submitted on the Town Center to Scottsdale Insurance for the deductible for professional liability.

RESOLUTION 42-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK

FAYETTE TREE & TRENCH

A resolution approving a contract with Fayette Tree and Trench in the amount of \$289,416.00 for the Arkansas Research and High Technology Park water and sanitary sewer phase I and a construction contingency of \$28,942.00 (10%).

RESOLUTION 43-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK

BID 00-29

A resolution awarding a construction contract for a new water line at Highway 45 East and Wyman Road to J&L Construction in the amount of \$106,040.00, a construction contract contingency of \$10,000 and approval of a budget adjustment.

RESOLUTION 44-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK

BOTANICAL GARDEN BOARD APPOINTMENTS

A resolution appointing Wade Colwell, PRAB member, Lisa Paschal, Parks and Recreation employee and Yolanda Fields, Community Development Coordinator to the Botanical Garden Board.

RESOLUTION 45-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK

BOND COUNSEL

A resolution approving a letter agreement with Wright, Lindsey, and Jennings LLP of Little Rock, Arkansas to serve as bond counsel for the proposed issuance of library construction and improvement bonds. The cost is not-to-exceed \$35,000, plus disclosure documentation, sale document and continuing disclosure agreement preparation cost not-to-exceed \$5,000, plus out-of-pocket expenses not-to-exceed \$3,500 per series of bonds. These costs will be paid from the bond proceeds. Additionally, to authorize the Budget Manager to execute any budget amendments necessary to implement this bond issue.

RESOLUTION 46-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK

BOND UNDERWRITER

A resolution approving a letter agreement with Stephens, Inc. to serve as the underwriter for the proposed issuance of library construction and improvement bonds. The underwriting fee will not exceed 1.25% of the bond issue. These bond issuance costs will be paid from the bond proceeds. Additionally, to authorize the Budget Manager to execute any budget amendments necessary to implement this bond issue.

RESOLUTION 47-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK

BID 99-22

A resolution authorizing the Mayor to enter into a change order to Ruppel Road Bid No. 99-22 with McClinton-Anchor for the water and sewer improvements including a sewage lift station and approving an agreement for Fayetteville Public Schools to compensate the City for such improvements.

RESOLUTION 48-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK

OFF-STREET PARKING

A resolution approving the renewal of the City's lease of parking lots owned by the Off-Street Parking Development District No. 1.

RESOLUTION 49-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK

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

OLD BUSINESS

SENIOR COMMUNITY CENTER

An ordinance approving a 2 mil tax for one year to fund a Senior Community Center/Services. The ordinance was left on the first reading at the March 21, 2000 meeting.

Mr. Rose read the ordinance.

Mayor Hanna opened the meeting to the Council for comments.

Alderman Daniel stated that she had received a letter from a Washington County resident, and was sure all the Aldermen did also. They were objecting to the tax. This does not include people in the county. She wanted to reassure people that this is strictly applying to the City of Fayetteville.

Mayor Hanna asked if there were any other comments.

Alderman Davis said he talked with Jerry Rose yesterday. Mr. Davis stated he was concerned about the possible property tax proposals that were administered to the ballot which we would be voting on possibly in November of this year. There are two particular resolutions that are out. One of them is 98-268 which talks about the abolishment of the property tax as it currently is and it is talking about requiring the legislation to replace these lost revenues. The other one is 99-001, and is talking about abolishing property taxes which will allow them to also increase sales taxes which will remove the caps on sales taxes and will require three fourths of the legislative approval to add additional taxes. He questioned what would happen if the council passed the millage, advanced the money to the Senior Center, and then the citizens voted to do away with property taxes. How would the city recover their money?

Mr. Rose answered it all depends on what you do. The council has not made the decision yet on what they were doing. Tonight you are deciding whether or not to levy the two mils. There are at least two options out there that will be voted on by the people that may abolish the sales tax. So sheer logic tells you that if you pass something tonight that is abolished later, it isn't going to be there.

Alderman Davis stated that construction will be starting in July or August.

Mr. Rose stated again, it depends upon what arrangements the council has with the Senior

Center. He explained the council may wait until the money was in hand from this tax before construction started which would mean they would have to wait until the money is collected and that is not until late next year. Secondly, the council could advance the Senior Center the money. If the council advanced the money and the taxes are not collected they would not be reimbursed. So the city would be permanently out the money.

Alderman Russell answered, unless we levy a different tax.

Mr. Rose said, unless you levy a different tax, but he was not sure and he didn't know of any off hand. He didn't know how you would do that. You might pass a sales tax, he supposed, that was possible for a bonded indebtedness, and that is certainly a possibility, he guessed.

Alderman Russell asked, is income tax, a possibility?

Mr. Rose answered that income tax is allowed under the Arkansas Statutes. He did not know of a city in Arkansas who has ever attempted such a thing.

Alderman Young said he knew what the legislature would probably do. They would say the city has to do it. But based on what Mr. Rose was saying about one of them that would require a legislature to pass to bring up the money to replace it, would there be a possibility the legislature would pass some kind of deal to cover things like this?

Mr. Rose replied it did not appear to him that there were any provisions for the cities to have their own sales tax, but it appeared the legislature could change that later.

Mayor Hanna said he really felt like that if one of these proposals were passed, the state was going to have to pass a sales tax to make up for the loss of the revenue that had been generated from the property tax. And he felt like the state would make a provision in there for any bonded indebtedness that cities or school districts may already have at the time it is passed. Otherwise there would be bonds forfeited all over the state. He thought cities and schools both, and possibility some other improvement districts that he was not aware of. He did not believe that they would let that happen.

Alderman Young said they haven't for seventy-five or one hundred years. Knowing the legislature that is one thing they make sure the bonds are paid off.

Mr. Rose said he had not read the proposals in great depth, but he believed it would not abolish the property tax which is committed towards bonded indebtedness.

Mr. Rose stated nobody has suggested that the Senior Citizen's Center is going to be funded by a bonded indebtedness. So it is not really relevant particularly to that issue.

Alderman Reynolds asked if the Policemen and Firemen's Pension Plan was the only one covered under the millage plan in the City of Fayetteville?

Mr. Rose answered that the only current millage that we had right now was .5 mils for the Fire Retirement and .5 for the Police Retirement.

Alderman Reynolds asked if that would be affected also if they vote this down?

Mr. Rose answered that yes it would be affected.

Alderman Russell said that was one of the main reasons, he thought that the Police and Fire fighters were major opponents of the proposal to abolish property tax in 1998. They abandoned their campaign when it got thrown off of the ballot. But he thought if the council passed this millage, then the senior citizens of Northwest Arkansas will also become major opponents of the proposals to remove property taxes. He thought the more opponents of these proposals, the better. So he thought the council should go ahead and pass the millage.

Alderman Trumbo said he thought it was only prudent that they move forward with this.

Alderman Davis suggested that they leave it on the second reading.

Mayor Hanna asked if there was anyone in the audience that had something they would like to say regarding this tax? If not, he said he thought it was the council's desire to let it go to the third and final reading at the next council meeting which meant it will definitely be voted on at that time. This will give anybody that is opposed to the tax the opportunity to come forward. He thought he had probably heard from one person that was opposed to the tax.

Mr. Joe Alexander said he wanted to express himself as being in opposition to this for three reasons. Number one, property taxes are too high already. Number two, this sounds to him like the kind of thing that would be a real fine thing for a church or any kind of private charitable organization to do but not something for the city government to get involved in. He thought the city government should be involved with maintaining what you would call the critical infrastructure of the city, like streets, water sewer, fire department and things like that, but not for things like this. Number three, it says it is going to be a temporary tax and he said he thought we all knew that it says it is going to be for a year. He said everyone knew and had a good idea of the way temporary taxes turn into permanent taxes. Like for instance during World War II, there would be a temporary tax on your wages to fund the war and it would be repealed as soon as the war was over. He thought it was with us bigger than ever now. So he expected that when the time for this tax to expire somebody will have some nice sounding project that they would like to have some city money for and will propose to extend this tax and give them that money because the people are used to paying it already. So for that reason he would like to ask you all to vote

against that tax. Thank you very much.

The Council thanked Mr. Alexander for his comments.

Mayor Hanna asked if there was anyone else that wanted to make any comments. If not, they would close the discussion on the ordinance. If no one on the Council had any comments they would move on to New Business.

The Senior Community Center was left on the second reading. It will be on the third and final reading at the April 18, 2000 City Council Meeting.

NEW BUSINESS

RZ 00-11.00

An ordinance approved rezoning request RZ 00-11.00 submitted by Ronald G. Woodruff on behalf of the Joyce M. Ogden Family Trust for property located at 2300 Cato Springs Road. The property is zoned R-2, Medium Density Residential and contains approximately 4.02 acres. The request is to rezone to C-2, Thoroughfare Commercial.

Mr. Rose read the ordinance.

Alderman Daniel stated that she thought this was an appropriate zoning for this area. It is on the 20-20 plan and she has not received any objectives from the residents in this area. So she was in favor of this rezoning.

Alderman Davis said it was definitely consistent with the current land use plan in the future and the Planning Commission did pass this 8-0.

Mayor Hanna asked if there was anyone in the audience who would like to speak to this proposed rezoning?

Alderman Trent Trumbo made a motion to suspend the rules and go to the second reading. Alderman Bob Davis seconded the motion. Upon roll call the motion passed unanimously.

Mr. Rose read the ordinance.

RZ 00-11.00 was left on the second reading.

RZ 00-12

An ordinance approving rezoning request RZ 00-12 submitted by George Faucette on behalf of Butterfield Trail Village for property located at the southwest corner of Joyce Blvd and Old

Missouri Road. The property is zoned A-1, Agricultural and contains approximately 6 acres. The request is to rezone to R-O Residential Office.

Mr. Rose read the ordinance.

Alderman Trumbo stated that this was consistent with the zoning out there in that area and Butterfield Trail Village. He had not received any calls on this in opposition.

Alderman Davis said he had not received any calls in opposition and he live really close to this.

Mayor Hanna asked if anyone in the audience would like to address this rezoning?

Alderman Trent Trumbo made a motion to suspend the rules and go to the second reading. Alderman Cyrus Young seconded the motion. Upon roll call the motion passed unanimously.

Mr. Rose read the ordinance.

RZ 00-1².00 was left on the second reading.

TROLLEY PASSENGER BUS

An ordinance approving a bid waiver for the purchase of one used diesel powered passenger bus. This will allow the Mayor to approve for purchase the unit recommended by the Fleet Operations Division, Administrative Services Director, and the Equipment Committee. This unit will be used by City of Fayetteville Trolley Program.

Mr. Rose read the ordinance.

Alderman Daniel thanked the Staff and Equipment Committee for reviewing this which gives her more confidence in these purchases and she is in favor of this because this is not the one who hit her car.

Alderman Reynolds, as Chairman of the Equipment Committee, recommended the purchase of this bus and he would like to hear from Bill Oestreich.

Bill Oestreich, Fleet Operations Superintendent, stated the staff will be recommending purchase of a bus in St. Louis if the ordinance passes. The one we are going to retire was purchased in 1992 and it is still in operation. We are very fortunate to have a reliable broker.

Mayor Hanna said that the one they bought in 1992 is also used. Bill found them at real good prices too. It certainly has been worth it.

Alderman Kyle Russell made a motion to suspend the rules and go to the second reading. Alderman Cyrus Young seconded the motion. Upon roll call the motion passed unanimously.

Mr. Rose read the ordinance.

Alderman Bob Davis made a motion to suspend the rules and go to the third and final reading. Alderman Robert Reynolds seconded the motion. Upon roll call the motion passed unanimously.

Mr. Rose read the ordinance.

Upon roll call the ordinance passed unanimously.

ORDINANCE 4239 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

YOUTH CENTER BUS

An ordinance approving a bid waiver for the purchase of one used diesel powered forward control passenger bus. This will allow the Mayor to approve for purchase the unit recommended by the Fleet Operations Division, Youth Center Director, and the Equipment Committee. This unit will be used by the City of Fayetteville Youth Center.

Mr. Rose read the ordinance.

Bill Oestreich stated that they had found one in Kentucky for \$39,500.

Alderman Trumbo said just for the general knowledge of the students that are here, and some people watching, this seems like real boring stuff that they are doing, but this is to keep the Government honest because if you find a better piece of machinery or automobile for less price in competitive bids, that is why they do this.

Alderman Reynolds, as Chairman of the Equipment Committee, wanted to thank Bill Oestreich for all of his hard work in finding these pieces of equipment at the price he found them. He did a great job.

Alderman Kyle Russell made a motion to suspend the rules and go to the second reading. Alderman Robert Reynolds seconded the motion. Upon roll call the motion passed unanimously.

Mr. Rose read the ordinance.

Alderman Cyrus Young made a motion to suspend the rules and go to the third and final reading. Alderman Heather Daniel seconded the motion. Upon roll call the motion passed unanimously.

Mr. Rose read the ordinance.

Upon roll call the ordinance passed.

ORDINANCE 4240 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MOWING MACHINE

An ordinance approving a bid waiver for the purchase of one used Hustler diesel powered mowing machine from Williams Ford 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, Parks Maintenance Division, and the Equipment Committee. This unit will be utilized by the City of Fayetteville Parks Maintenance Division.

Mr. Rose read the ordinance.

Alderman Bob Davis made a motion to suspend the rules and go to the second reading. Alderman Heather Daniel seconded the motion. Upon roll call the motion passed unanimously.

Mr. Rose read the ordinance.

Alderman Trent Trumbo made a motion to suspend the rules and go to the third and final reading. Alderman Robert Reynolds seconded the motion. Upon roll call the motion passed unanimously.

Mr. Rose read the ordinance.

Upon roll call the ordinance passed.

ORDINANCE 4241 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BAUM STADIUM FIREWORKS

An ordinance allowing the University of Arkansas to use Fireworks for the singular occasion of the celebration of the fourth anniversary of the opening of the Baum Baseball Stadium.

Mr. Rose read the ordinance.

Alderman Trent Trumbo made a motion to suspend the rules and go to the second reading. Alderman Heather Daniel seconded the motion. Upon roll call the motion passed unanimously.

Mr. Rose read the ordinance.

Alderman Trent Trumbo made a motion to suspend the rules and go to the third and final reading. Alderman Heather Daniel seconded the motion. Upon roll call the motion passed unanimously.

Mr. Rose read the ordinance.

Upon roll call the ordinance passed.

ORDINANCE 4242 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

TOWN CENTER FUND

A resolution approving a budget adjustment transfer to the Town Center Fund from the Sales Tax Capital Improvements fund in the amount of \$450,247 and repealing that portion of Resolution 103-99 which approved such an amount to be transferred from the General Fund.

Mr. Rose addressed the Mayor regarding the resolution that is before you. He said he had explained it on a number of occasions. The idea behind this is that the city has been successful at every attempt that we have made to get a summary judgement from the court. The court has previously granted summary judgements on the issues and has stated that we may in deed spend funds above the \$6,900,000 bond issue for the Town Center project. The court has stated that we may use general funds. The court has stated that we may use A&P financing to the tune of a million dollars that the A&P has given us. The court has already ruled that we may utilize off street parking funds for the Town Center. The court has stated that we are not in violation of any constitutional prohibition of spending more money than we have in our yearly revenues for the project. The only thing that the court has failed to grant a summary judgement on is the issue of whether or not the city may expend their portion that they received from the county sales tax from the project. The judge has not ruled against us on this. She has just simply refused to grant the summary judgement that we asked for and has set a trial date for this issue in July. She has also given some other hearing dates that will provide for class certification. But at the last hearing that we had the judge stated that if we wished to spend some other money other than your portion of the county sales tax for this, it would make this entire issue moot, nonsensical to proceed and we would simply go on and spend money if we could find it from the sources that have already been approved. The resolution that is in front of you simply authorizes us to use \$450,247.00 from the city sales tax. We are going to, as he understands it, simply take what money we get from city sales tax from the state and have that go directly, without going into any

fund at all, into the Town Center Project. Now obviously when you passed, what you are doing, you are repealing a portion of the resolution you passed, which included the transfer to the Town Center fund from the general fund an amount of \$450,247.00. Obviously when you passed that you weren't thinking about what funds were inside that general fund. It is like a big stew, a lot of money goes into that general fund and part of it is city sales tax, part of it is county sales tax, part of it is franchises, part of it is licenses. It is very hard to say. We are doing our best to do that and this is an attempt to make, as the judge gave us the option of doing, of making that issue move by only spending city sales tax. That is what this resolution accomplishes. I think this is a wise thing to do.

Alderman Russell stated, in his opinion that this would allow us to do what we want to do and won't cost the taxpayers any more money, and it should bring the litigation to a swifter end.

Mr. Rose said he thought all of that was accurate and that this is not a decision in which he only advised you of your counsel. Also, Woody Bassett and himself have concurred on this and they are at an agreement that this is the wisest thing for the city to do.

Alderman Trumbo thanked Mr. Rose for his work.

Alderman Kyle Russell made a motion to pass the resolution. Alderman Trent Trumbo seconded the motion.

Mayor Hanna asked if there was anyone in the audience who would like to address this issue. If not, show that the resolution passed.

Upon roll call the resolution passed unanimously.

RESOLUTION 51-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ARKANSAS ATHLETES OUTREACH

A resolution authorizing granting \$10,000 a year for two years to Arkansas Athletes Outreach, Inc.

Mayor Hanna gave a little background regarding this issue. A little over three years ago the Council decided to help fund Arkansas Athletes Outreach for three years, \$10,000 a year for interns and took it before the Juvenile Concerns Committee. It is tied in with our desire to try to help our juvenile problems in this city. At the time we were having a lot of talk about gang activity and graffiti, and things like that. He did not think that Arkansas Athletes Outreach wanted to take full credit for this but those things have certainly abated to some extent. We haven't done away with all of our problems, obviously, and never will, but he thought that

several of our organizations working together in this city have certainly done a good job of working with juveniles. He thought that Brad Friess had a presentation of the program.

Alderman Russell said that this had come through the Juvenile Concerns Committee already. In the March meeting and every member of the committee that was present, including Alderman Austin, who is absent tonight, this request passed at the Juvenile Concerns Committee unanimously. At this meeting they brought materials, which he reviewed, and a short video presentation. He believes that this is a good positive program for the kids. He has only gotten positive input from the school staff and the parents from the last three years. And their request is for us to contribute \$10,000 a year for two years to the Arkansas Athletes Outreach. For the next two years they are shifting their program from what is currently targeted toward 4th and 6th graders, it is now going to be 6th and 7th graders in the new middle schools. The programs are developed each year with the aid of the school principals at the schools where they give presentations. Yes, as you said, there are three members of the Arkansas Athletes Outreach staff here tonight to respond to any questions that you might have.

Mayor Hanna said it was pointed out originally when we did some research into this that if we can keep one teenager at the age of 13 from getting involved in our Juvenile Court system, we would save the city and the county the \$10,000 with just one student that we made a difference on. He guessed that all of you know the problems that we do have with our detention center and the over crowding, and so forth. It behooves us to try to keep as many young people interested in other things as we can.

Alderman Davis said he asked his daughter, who was able to enjoy some of the benefits at her elementary school last year, tonight before he came to the meeting, what she thought of it. She said it was a very worth while program. She said not only do they participate with the students by reading books, they also put on skits and afterwards they discuss the skits with the kids, and reward the kids for good behavior. He thinks it is also a good program.

Mayor Hanna asked if there were any questions for the staff from AAO.

Alderman Daniel said she had done some figuring on this and the city three years ago voted to fund this organization to the tune of \$30,000 and this time it is for two years, which will be \$20,000. She really votes against a recommendation of a committee, but she feels like they have invested in the group and they have gotten established. She did talk to some elementary teachers, and it is a good program, no doubt. She has some testimonies here that she found when she sat down here tonight. But she would like to see this group look for other sources of funding, maybe PTA's, or seek other contributions. For example the city could put in 2-4 blocks of sidewalks for this amount of money and we desperately need sidewalks to protect our pedestrians and school children. It is not that she questions the program, she knows that it is good, but she is going to vote against using our city funds for this. There is so many good non-profits. Where do we

stop?

Alderman Trumbo asked Brad Friess a couple of questions. You know that it is a great program, great people, you do wonderful things for the city. Of the \$10,000 a year that we contribute, what is your total budget a year? Do you know?

Brad Friess stated that over the next years to fund this all in Northwest Arkansas, it will be about \$180,000.

Alderman Trumbo asked how much he received in a year in private donations and how have those increased in the three years since you have started the program?

Brad Friess said that private donations are a majority.

Alderman Trumbo asked if it was about a \$170,000?

Brad Friess answered at least.

Alderman Trumbo asked Brad if he had seen very incremental increases in people once they find out that you are real and the benefits?

Brad Friess said in fact, to address Ms. Daniel's concern about seeking other funding sources, we have done exactly that. One of the things we were commissioned to do with this program was to be a pilot program for the past three years to develop and extend it into other communities. So we have had to, and in doing that, Fayetteville's portion of money will only go to fund he Fayetteville programs in our schools. But they now have had to seek funding in the Springdale and Rogers communities as well. They are supporting it and have very much seen what this council has done with the city and school administration in Fayetteville and looked at it as a model program. They have seen the success of it and now are asking us to come and bring it to their communities.

Alderman Trumbo asked Brad to remind him because he might be mistaken, because it has been a while, wasn't there a match with the AmeriCorp Group or program or something, with the money that we put in? Was there a match coming from the Federal Government or State?

Brad Friess stated they had tried to establish that. The problem with that was with the AmeriCorp which said you had to have a minimum of 5-10 interns and they just didn't think that as they researched it more, and more came in, they thought that would be cost prohibited when the program only required really two. We made a petition to AmeriCorp to try and say a lot of these AmeriCorp things were in urban communities where they are much bigger and they tried to tell them they had a town of 50,000. They would not lower the amount for us.

Mayor Hanna asked if most of their workers were volunteer University athletes, isn't that right?

Brad Friess said that all of the volunteers are University athletes except for those that help for the personnel cost to develop the program.

Mayor Hanna said that we have a real advantage over the city that doesn't have a university like we do.

Brad Friess said they had almost 40 different volunteers from the University working in this program in this year alone.

Mayor Hanna said he had talked with some of them and they were doing a good job.

Alderman Reynolds stated that our Juvenile Detention Center was full to capacity. Our juvenile judge is at capacity with problems and he thought that this would be a cheap price to spend on our kids and he is going to support it.

Mayor Hanna asked if anybody else had any questions for Brad? Are there any motions?

Alderman Bob Davis made a motion to approve the resolution. Alderman Robert Reynolds seconded the motion. The resolution passed with a vote of 5-1 with Alderman Daniel voting nay.

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RESOLUTION 50-~~99~~ AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Meeting adjourned at 7:25 p.m.