MINUTES OF A MEETING
OF THE
CITY COUNCIL
JANUARY 2, 2002

A meeting of the Fayetteville City Council was held on January 2, 2002, at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain, Fayetteville, Arkansas.

PRESENT: Mayor Coody, Aldermen Thiel, Young, Zurcher, Trumbo, Davis, Santos, Jordan, and Reynolds, Interim City Attorney Kit Williams, City Clerk Heather Woodruff, Staff, Press and Audience.

AWARD PRESENTATION: Marsha Farthing presented the GFOA Certificate of Achievement for Excellence in Financial Reporting.

CONSENT

APPROVAL OF THE MINUTES

CRICKET COMMUNICATIONS: A resolution approving an agreement with Cricket Communications for the lease of tower space on the Township Water Tank. The proposed lease amount is for $1,500.00 per month.

RESOLUTION 1-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PINNACLE FOODS: A resolution certifying local government endorsement of business to participate in the Advantage Arkansas Program, also known as the Arkansas Enterprise Zone Program.

RESOLUTION 2-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Davis moved to approve the Consent Agenda. Alderman Santos seconded. Upon roll call the motion carried unanimously.

Alderman Jordan stated he had received a memo from the City Attorney stating they were to nominate a Vice Mayor every year.

Mr. Williams stated the statute stated the council shall assemble and organize. In their rules of procedure it stated the council shall elect one of its members as vice-mayor. He read, "each council member shall vote by naming his or her choice by voice vote, if there is more than one nominee for the position. A majority of the City Council shall be required for election.

Alderman Reynolds moved to table the item. Alderman Thiel seconded. The motion failed by a vote of 4-4. Zurcher, Trumbo, Santos, and Jordan voting nay.

First roll call: Thiel-Thiel, Young-Davis, Zurcher-Santos, Trumbo-Davis, Davis-Davis, Santos-Santos, Jordan-Santos, and Reynolds-Thiel.

Second roll call: Thiel-Santos, Young-Davis, Zurcher-Santos, Trumbo-Davis, Davis-Davis, Santos-Santos, Jordan-Santos, Reynolds-Davis, Mayor Coody-Santos.

ALDERMAN SANTOS APPOINTED VICE-MAYOR.

OLD BUSINESS

SALE OF MUNICIPALLY OWNED PROPERTY: An ordinance amending Chapter 34, Finance and Revenue, of the Code of Fayetteville to establish a formal process for the sale of municipally owned real property. The ordinance was left on the first reading as amended at the December 18, 2001, meeting.

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

Mr. Williams read the ordinance as amended

Ms. Fran Alexander, an area resident, H.1. The Sale of Industrial, Business, and Technology Park Land. They really needed to say, "Industrial Park, Business Park, and Technology Park." or they needed to put a hyphen between Park and Land."

Mr. Williams stated it was clear to the Council that this related to their Industrial Park, Business Park and Technology Park.

Ms. Alexander replied that was this Council. If the public was reading this they needed to have the words as clearly defined as possible.

Alderman Young stated he was concerned about the business park. If the city happened to own land that was a business, but it was not in a park, it was just one lot. He thought that one single lot should be sold like all the rest of them and not like the Industrial Park.

Mr. Williams stated if they were concerned that it was not clear, they would use "Park" after each one of those.

Alderman Young moved to amend the ordinance by adding "park" after Business, and Industrial. Alderman Zurcher seconded. Upon roll call the motion carried unanimously.

Ms. Alexander stated under Section 1, C. they should add that it was the "city" obtaining the appraisal.
Alderman Zurcher moved to amend the ordinance by adding, "by the city". Alderman Thiel seconded the motion. Upon roll call the motion carried unanimously.

Alderman Zurcher 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. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

ORDINANCE 4358 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ANX 01-5.00: An ordinance approving annexation request ANX 01-5.00 as submitted by Raymond C. Smith on behalf of Gerald and Irene Griscom and Sylvester and Carol Guist for property located east of Double Springs Road and south of Owl Creek Subdivision. The property is in the Planning Area and contains approximately 13.61 acres. The request is to annex into the city. The ordinance was left on the second reading at the December 18, 2001, meeting.

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

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

Alderman Zurcher stated a lot of people felt there was nothing they could do about the westward expansion of Fayetteville. They should stop annexing land out there until they knew they had infrastructure there to support the growth. He would be voting "no" on this and on any other annexation that came before them until they were able to satisfy those issues.

Alderman Santos stated they needed to hurry with their impact fees so that they stopped subsidizing growth, but this was growth that they did not need to stop. It was in their General Land Use Plan as residential development. They have known for several years that was what they expected out there and they were working towards supplying the infrastructure. The only real problem seems to be the way they were paying for the infrastructure. He was not ready to start blanket voting "no" against all annexations, but they needed to do something about the way they were paying for new development.

Mr. Huge Earnest, Urban Development Director, stated they have asked for a final copy of the impact fees related to the water and waste water. The consultant will hold a discussion on February 6, with the Commission, Council and others so that they could open a long discussion on merits and problems associated with impact fees. It was no secret that the discussion will be lengthy and comprehensive.

Alderman Davis stated it was his understanding that the stakeholders will have the opportunity to go through this written proposal.

Mr. Earnest stated that they have had the basic report before them for several months. They will be meeting earlier that day on the 6th to discuss not only water and wastewater, but also the ongoing discussion on impact fees for streets. This demanded a lot of discussion.

Alderman Santos stated the Planning Commission had voted unanimously to pass this and it was recommended by the staff. The item was consistent with the Land Use Plan. He thought that this one was okay, but they might not vote in any more annexations until they got their impact fee ordinance in place.

Alderman Thiel stated she felt that the rezoning coming up was more critical than this annexation. Mr. Geary Lowery, an area resident, stated he concurred with Alderman Santos. Currently, they were expanding exponentially. They did not have the city services to grow at the rate they were growing. They were having problems meeting their sewer capacity and they were having problems with their growth. Impact fees impacted the people who bought the new homes. The people where they were building, but they also impacted the developers to the point to where they were cautious about building outside the city limits and they try to stay within the city limits. Until they learned to manage and control their growth, they were going to find it getting away from them. They needed impact fees. They needed to make the developers responsible and to put their infrastructure within the city before expanding into the growth area.

Alderman Thiel stated most of this development was within the city limits. She thought the infrastructure for this was already out there. This was only bringing in a small portion that was not already in the city limits.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 6-2. Zurcher and Jordan voting nay.

ORDINANCE 4359 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 01-24.00: An ordinance approving rezoning request RZN 01-24.00 as submitted by Raymond C. Smith on behalf of Conley and Virginia Worley, Gerald and Irene Griscom and Sylvester and Carol Guist for property located east of Double Springs Road and south of Owl Creek Subdivision. The property is zoned A-1, Agricultural and contains approximately 41.90 acres. The request is to rezone to R-1, Low Density Residential. The ordinance was left on the second reading at the December 18, 2001, meeting.

Alderman Trumbo moved to suspend the rules and move to the third reading. Alderman Davis seconded. Upon roll call the motion carried unanimously.
Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 6-2-0. Zurcher and Jordan voting nay.

ORDINANCE 4360 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 01-27.00: An ordinance approving rezoning request RZN 01-27.00 as submitted by Raymond

C. Smith on behalf of Conley and Virginia Worley, Gerald and Irene Griscom and Sylvester and Carol Guist for property located east of Double Springs Road and south of Owl Creek Subdivision. The property is zoned A-1, Agricultural and contains approximately 8.74 acres. The request is to rezone to RMF-6, Low Density Multi-Family Residential. The ordinance was left on the second reading at the December 18, 2001, meeting.

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

Mr. Williams read the ordinance for the third time.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 6-2. Zurcher and Jordan voting nay.

ORDINANCE 4361 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 01-26.00: An ordinance approving rezoning request RZN 01-26.00 as submitted by Dave Jorgensen of Jorgensen and Associates on behalf of Tom and Louise Sager and Paul and Bernice Guisinger for property located west of Shiloh Drive and north of Porter Road. The property is zoned A-1, Agricultural and contains approximately 12.08 acres. The request is to rezone to C-2, Thoroughfare Commercial. The ordinance was left on the second reading at the December 18, 2001, meeting.

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

Mr. Williams read the ordinance.

Alderman Thiel stated this was along 540 and in the Overlay District.

In response to questions, Mr. Conklin stated C-2 allowed restaurants, hotels, car sells, etc. They had amended their code to require that mini-storage units were a conditional use. He and his staff did not recommend C-2 for storage units. The city had developed design standards for all commercial development throughout Fayetteville. There were a lot of controls. The Planning Commission did a tremendous job of insuring quality development.
Alderman Santos stated it was consistent with the Land Use Plan. Where else would they have Thoroughfare Commercial if they did not have it along the biggest highway in town. This was appropriate for this area.

Ms. Patricia Roberts stated they kept moving Fayetteville further west. People moved out because they did not want to live in Fayetteville.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 6-2. Zurcher and Jordan voting nay.

ORDINANCE 4362 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 01-28.00: An ordinance approving rezoning request RZN 01-28.00 as submitted by Dave Jorgensen of Jorgensen and Associates on behalf of Tom and Louise Sager and Paul and Bernice Guisinger for property located west of Shiloh Drive and north of Porter Road. The property is zoned A-1, Agricultural and contains approximately 11.68 acres. The request is to rezone to R-2, Medium Density Residential. The ordinance was left on the second reading at the December 18, 2001, meeting.

In response to questions, Mr. Jorgensen stated he had not seen the plan and did not know the number of units proposed for the development. He added, they had Tree Preservation and Storm detention that they had to do. There were parking requirements and various other things. To give them an idea the Shiloh Project is to the south of Cambridge Apartments. That one had fifteen units per acre. It was zoned R-2. Corner Stone Apartments were approximately fourteen units per acre. Very seldom could they get twenty-four units per acre because of the other requirements that they had to do.

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

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 6-2. Zurcher and Jordan voting nay.

ORDINANCE 4363 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

MOTOR VEHICULAR RACEWAYS: An ordinance to regulate motor vehicular raceways.

Mr. Williams read the ordinance.

Alderman Thiel stated this ordinance would not shut down the race track. It will not regulate the sound level at the race track, which regularly exceeds what their current noise ordinance allowed. This ordinance will only require the track to operate from noon until 10:00 p.m. allowing ample time to run races. The races will not be allowed more than one weekend a night a week. She thought they would make some amendments to this ordinance. Under Section 2.a. it should be changed to read, "racing season which shall be within the months of March through October." They might also consider allowing them to start at 10:00 a.m. to 10:00 p.m. that would give them a full twelve hours. Under Section 2.v. it reads, "up to three additional special racing events per year may be authorized by City Council resolution." She would not be opposed to them dropping the "by City Council resolution". In other words, they can have three additional special races per year. Under Section 2, she would like to add to Item D, "Make up sessions for regularly scheduled races canceled because of rain or other weather conditions shall be held during the following week and shall only be allowed to operate during the period of 10:00 a.m. to 10:00 p.m." Constituents had been concerned about make up times being on the weekend because that gave them no day during the weekend to have any kind of activity in their home. She thought make up races should be during the week.

Mr. Williams stated in Section A they were allowed to operate once a week if they were rained out. So if they have not raced because of rain, then they have not used up their one day per week.

Alderman Davis stated in that case they would have two races during one week.

Mr. Williams stated he sent this draft ordinance to Mr. Evans who represented the owner of the race track. In his letter he asked for the racing manager to inform them of the racing calendar for the year 2002. He had not heard anything from them.

Alderman Reynolds stated they represented a large ward. They had to represent the population. They were supporting those people. He hoped the owner or the operator would agree to start early and to close this at 10:00 p.m. which would avoid a lot of problems.

Ms. Crystal Ramsey, an area resident, stated the Council's Rules of Order and Procedure stated that "no member of the City Council with a direct or indirect personal or financial interest on any item before the City Council shall participate in the discussion of or the voting on such matters." One alderman lived directly across the street and she felt that was a personal interest. She presented a petition. A lot of people that she had spoken with did not agree with this. A lot of people had not been asked to sign the original petition.

Ms. Judy Berry, an area resident, stated she and her husband owned the race track. She wanted to let them know that it was not their intent to bother anyone. It was their intent to have a place for families and children to enjoy themselves. NASCAR was very popular in the world. It was tracks like theirs that makes NASCAR. She preferred to be in bed by 10:00 p.m. which was their intent. It did not always happen that way. It was their intent to be out by 10:00. They will be out by 10:00 if it was at all possible. As a good neighbor she would have expected someone to come to her if there had been a problem, but that did not happen.

Ms. Retia Hempton, an area resident, stated she was concerned that they were in front of the City Council again. They needed to share the sound space. The noise was trespassing on their property. They were trying to come up with a fair way of sharing that space. She thought the ordinance needed to designate the weekend day that the track operated. One of the problems that they have had in the past was that agreements have been made with owners of the track, then the property would change hands and they had to start over again. If the ordinance did not specify the day the track was going to run, then the days could vary and the people who lived within sound distance needed to be able to plan. As it was they all knew that they could not plan on using their backyards, deck or outside spaces on Saturday night because that was the night the track normally ran. They just planned things for other nights. They should also designate the make up days. If nothing was designated then people were in danger of having their evening messed up. People needed reliability. They needed to know ahead of time when that was going to be. If it was possible to reduce the level of noise, then those changes should be implemented.

Alderman Davis asked if she was aware of the track being there when she bought her home.

Ms. Hempton stated she was not. They bought their home in the winter.

Ms. Pat Roberts, an area resident, stated she lived only two streets from the track and she nor her neighbors were not asked to sign the petition. She did not believe the track had depreciated her property. She believed that only a certain economic class had been asked to sign the petition and if they were bothered by it.

Ms. Beth Miller, an area resident, stated she had never called Mr. Berry because she was under the understanding that there was already an ordinance in affect and that ordinance had been ignored since it had been put into affect thirty years ago. She asked that they consider the young children during the make up days.

Mr. Berry, property owner, stated the petition that they had passed around had approximately one hundred and fifty signatures. He had twelve hundred signatures in favor of the race track. Ms. Miller's husband grew up next to the race track. They chose to build a home closer to the race track. He stated they should get out of the county business and get back to the city's business. They had taken a lot of time discussing this. This was not just a game. This was a business. There was profit and loss.

In response to questions, Mr. Williams stated our Rules of Order and Procedure, Section G, Code of Ethics, talked about ethics. "Council members shall refrain from making use of special knowledge or information before it was made available to the general public. There was also another section, which was a very broad section under Duties and Privileges of Aldermen at City Council Meetings, Personal Interest, "No member of the City Council with a direct or indirect financial or personal interest shall participate in the discussion or voting of such matters.' Financial he understood. Personal interest, he did not exactly understand what that meant. There were many items that came up that aldermen were interested in. Alderman Zurcher was interested in annexations and problems like that. They had many aldermen who had personal interests in issues or they would not be aldermen. He was not sure what that meant. He suggested the council look at that and define what they meant. He stated ethical rules almost always had to do with money. That certainly was prevented.

Alderman Young stated the courts have left it to the political process, meaning that the individual makes that decision. If the public did not like what they did, then they could vote them out of office. That was basically what the courts have decided.

Mr. Mike Baker, lessee of Thunder Valley Speedway, stated he had put everyone on a strict muffler rule for this next year. They were going to start at 6:00 p.m. He has had this track before in 1998 and 1999. They never went to 11:00 p.m. They will be as early as they can be done. He has already scheduled five two nights shows for this season. There will never be a race down there on a Sunday night. There will be no practice during the week. They had to make up the rain nights. It took two night shows at this track in order to make it during the season. They could not do it on a Saturday night only. They were going to start at 6:00 and will be done by 10:00 unless the ambulance had to leave. If they had to wait for an ambulance this would take time away from them. The noise was a big issue to him. He was trying to get it quieted down.

Mr. Williams asked Mr. Baker to contact him to work on the ordinance.

Alderman Santos stated an agreement sounded better to him, than an ordinance.

Alderman Thiel stated the problem with the old lawsuit was that it did not continue. There was no continuity.

Ms. Berry stated this track had been there for thirty years. They wanted to work out something fair for everyone.

Mr. Geary Lowery, an area resident, stated they needed to look at the big picture. He suggested a binding arbitration on this and make this a record of the court, so that the binding arbitration would have the affect of law.

Alderman Santos stated he thought this was a private nuisance issue. He thought the ordinance was a bad idea to extend their powers beyond city limits. The statute that Kit had found allowed them to enforce all their ordinances a mile outside city limits.

Mr. Williams stated the only thing that they could do was to abate an ordinance. They could not extend their other ordinances beyond city limits, except for some planning ordinances. The other thing to keep in mind was that the city did have proper standing to file a suit. This ordinance can be much easier to enforce than a court order. This ordinance would apply to any motor vehicle raceway.

ORDINANCE WAS LEFT ON THE FIRST READING.

CABLE RATE INCREASE: A resolution expressing the City Council's opposition to the proposed 75% rate increase for basic cable television services proposed by Cox Communications, Inc.

Alderman Zurcher stated if they were talking about a rate increase on the second tier of the cable he would not want to challenge it. They had to subscribe to cable for basic service. What he saw Cox Communications doing was trying to make more money. They were forcing the people to buy more channels. He felt the seventy-six percentage price increase was unreasonable. The individuals who subscribe to only the basic tier are not being provided a choice and have not requested the additional channels. What he would like to see happen would be for Cox Communications to respond to the citizens' rights to have a basic tier and then provide a very basic tier. It they had to take a few of the channels off and leaving the price the same or a reasonable raise in the rate would be fine. If people wanted more cable they were going to buy more cable. He recommended that they pass this or challenge this.

Alderman Thiel stated she agreed with Randy that this was not fair. They just added channels that probably people did not even want. However, many people on the basic tier were on there because they wanted the Government Channel and CAT and local news station. She suggested getting the

PEG station on a low signal transmitter. People had the right to see their government in action.

In response to questions, Mr. Earnest stated the Telecommunications Board had three meetings on this. They had decided that it was not in the city's best interest to pursue this at this time.

Alderman Young stated if they were looking at it from the money stand point, then they were probably right. But, if they looked at the larger issue of the whole relationship between the City of Fayetteville and the cable company, and if they did an audit, it would put them on notice that the city is interested and concerned about this. He has watched this from way back. It seemed that the city felt that they could not do anything. If they did an audit at the very least it would give a base line on future audits. They may be able to justify the first increase, but then when they come back a few years from now with another rate increase, they may not be able to justify it. Based on numbers generated from the first audit, if they did not have an audit now, they would not have a base line for future audits.

Alderman Santos stated he would like to see Cox Communications agree to a lower tier of basic channels. Cut it down to the six must carry channels and then throw in the two or three PEG channels. That would be a basic bottom user tier to get. These added channels, four of the seven were shopping channels that pay the cable company to be on there. ESPN looked like the only real addition that they were getting for doubling the bill.

Alderman Davis stated he would like Hugh to get with Cox Communications and see if they could get ABC, NBC, CBS, the government channel and CAT for one price, the lower basic rate. He would like to see them do that.
Mr. Earnest stated he would try that and in the next couple of weeks he would make a report at a Council meeting.

Alderman Jordan asked if they could get the figures on what Cox Communications made a year in this city and how it would increase with the rate increase.

Mr. Marvin Hilton stated the city was paid five percent on the gross revenue. This year it was approximately $378,000. That was really all they knew.

Alderman Young stated that information would come out in an audit.

Alderman Jordan stated they needed an audit and then an explanation on why it was going to be raised seventy-six percent on the low income people in this city.

Mr. Hilton stated they did an audit in 1994 and they paid $4,000 for that audit. There had been nothing found that was not justified.

Alderman Young stated he thought the city needed to go on record that they were going to be watching. They may be able to justify all their cost increases this time around.

Alderman Zurcher stated Cox Communications used their right-of-way to run their cable that was the only reason that they had a say.

Mr. Williams stated the city charged them five percent for using their right-of-way.

Mr. David LaRue, Telecommunications Board, stated he could not speak how the board has voted as a whole. Recently, it has been proposed that they suggest to them they spend approximately $10,000 in fact finding funds to determine the viability of regulating basic cable. It was hard to justify such a large expenditure on a small percentage of the cable subscribers. Only the basic tier can be regulated.

Mr. Geary Lowery, an area resident, stated one of the things that they may not have realized that there were a lot of areas in town where they could not pick up the local channels. People looked to the local channels to get warning and local information. He supported the idea of doing an audit. Mr. Ferguson stated he worked for the cable company when they first started here. As soon as it was deregulated the customers got inflated prices on every thing that they did. It was business. He thought that the Council should put some teeth in this and ask to see the figures. No inflated figures.

Alderman Thiel stated they would only be doing an audit on the basic tier. She did not know what that would show them.

Mr. Williams stated he thought six thousand dollars would give them a basic audit so they would know what to do at that point. If they had any case at all and wanted to proceed to the FCC they would be looking at more money.

Mr. Earnest stated he would see if they could get a more basic tier. The Cox Communications contract and the appeal of the basic rates were not necessarily tied together.

Alderman Zurcher moved to table the item. Alderman Santos seconded. Upon roll call the motion carried unanimously.

RESOLUTION WAS TABLED UNTIL THE NEXT MEETING.

Meeting Adjourned at 7:45 PM