

**MINUTES OF A MEETING
OF THE
CITY COUNCIL
JULY 30, 2002**

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

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

WATER SERVICE AREA: A resolution to modify the existing exclusive water service area line between Fayetteville and Springdale to transfer approximately 340 acres in the City of Johnson into Springdale's service area. The item was tabled at the July 16, 2002 meeting.

Mr. Woody Bassett stated there were a lot of good reasons why this resolution should be passed. They felt it would be a win win situation for everyone.

Mr. Boettcher stated they had received a response from Springdale. They stated they would work with them on creating territories as it best suites the municipality. Renee Langston called him on Monday and was willing to met this week. He thought they needed to study this with the utility maps. He thought it would be a time consuming process and not something that they could do in a week.

Alderman Young asked how soon the process would get started.

Mr. Boettcher stated it would be as the need arose or if there was a specific time line that the council would like to see them meet.

Alderman Young stated he would like to see them get together immediately so that this did not happen again.

Mr. Boettcher stated they would meet in the future and decided what was best, so they would know in advance.

Alderman Marr stated it made more sense for a person to receive their water and sewer bill from the same person. He also thought it would be very costly for the city to extend their water lines to this area.

Alderman Marr moved to approve the resolution to modify the existing water service line as shown. Alderman Reynolds seconded. Upon roll call the motion carried unanimously.

RESOLUTION 117-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

IMPACT FEE STUDY: Duncan Associate's presentation of the Final Impact Fee Study: Wastewater, Water, and Roads, including update of the existing Parkland Dedication and Fee-in-Lieu requirements.

Mr. Conklin introduced Jim Duncan and Eric Damon Kelly. They were here to present the final study for the impact fees. The study included roads, water, and wastewater. It also included an update to their existing parkland dedication.

Mr. Duncan presented their final impact fee study. An impact fee was a one time charge. Up front charge on development to pay for the cost of certain facilities and services. It was not reoccurring and it was not a tax. An impact fee if it deemed to be anything like a tax is ruled illegal. It is assessed only on new development. Existing development did not pay an impact fee. The two different times they were assessed was building permits or water meter. Water and sewer were normally assessed when they hooked up water meter. All other types of impact fees where normally assessed at building permit. There were a few that were assessed at plating subdivision stages. An impact fee had to be calculated based upon studies and had to reflect the actual cost of growth. Impact fees had to be used for capital improvements. They could not be used for operations or maintenance or administrative fees.

Fayetteville's population was expected to double in the next twenty two years. There were approximately 580 unites per year. They had a growth that merited looking at impact fees. The history of this project, feasibility had been completed in April of 2001. They had completed a draft of a waste water study in October of 2001. They did a draft of a road and park study that was delivered in January 2002. They did a final impact fees that was presented in April of 2002. The council now needed to decide on whether or not to proceed with any of the adoptions of any of the impact fees and the appropriate ordinances to implement them. He presented a summary of the study.

Alderman Davis asked if there was an existing subdivision which was only fifty percent full, would someone building a new house have to pay the fee.

Mr. Duncan stated the park fee was only applicable at subdivision.

Mr. Kelly, Duncan and Associates stated water and waste water would be a policy issue. An infill development near down town, the typical methodology was to assume that the existing infrastructure was built to serve something on that lot at some time. They would never propose to charge for that. When they got into a new subdivision on the edge of town that when through subdivision approval before impact fees were adopted, but not all of the houses were built, then there was a policy issue on how they wanted to treat it.

Alderman Davis stated most of their development already have their water and sewer. They were going to have storm drainage, curb and gutter and their street lay out. They were just waiting for the person to come in and build their home on the lot.

Mr. Kelly stated the impact fees were not to pay for those things that were laid into the development. They were to pay for the expansion of their plants and water system, the major lines that connect to the plant and the expansion of the sewer treatment plant and the sewer lines. They could not double charge. They could not charge the developer to lay the lines and charge him a fee. The fees were calculated on the basis of the system wide facilities.

Alderman Young questioned if a subdivision had been approved and half of the houses were built, but only half were occupied. Would new people moving in be assessed fees?

Mr. Kelly stated fees were normally assessed at the time of hook up or at the time of the issuance of the building permit.

In response to questions, Mr. Duncan stated if there was a subdivision in process and not totally developed, if they wanted not to charge them they did not have to, it was policy. They would need to be consistent. The roads within the subdivision was not being calculated into the fee. All this fee was for arterials that got them to the subdivision. Developers were still responsible for building roads within the subdivision. It seemed to him that most of the council's concerns were transitional concerns. Their park fee in lieu was already there, it was just a modest increase. If they wanted to phase in the water and sewer they could do that.

Alderman Bechard asked how many cities had impact fees.

Mr. Kelly stated it varied on where they were. He did not know exactly. In Florida, approximately 99% of the cities and counties had impact fees. It was a fast growing fees and retirees had resisted any other funding source. Any community that was growing at a rate, like Fayetteville, or greater the number is over 80-90%.

Mr. Duncan stated he had never worked in a city that had no water or sewer system development charge of any kind. Most of the communities have had those fees for twenty to twenty-five years. The park fees tended to go back that far to. Road fees were a lot more recent and they would see those in the rapid growing communities.

Alderman Bechard stated they had stated what they did was base it on cost, a cost to use. To him that was a principle that they would undertake as a city. Where would they stop that? He lived in a new subdivision so the amount of time they were going to spend fixing his roads would be minimal compared to a subdivision that has been around for twenty to twenty-five years. If they were going to use this cost to use, they needed to up an impact fee in place for those older subdivisions where there are higher cost in maintaining.

Mr. Duncan replied that was not what they were talking about. What they were talking about was when his vehicle left the subdivision and went out and mingled with everybody else in the community and used common, arterial, roads to get from one point to other. Impact fees are one of the strongest pro-growth tools in the country. Impact

fees did not slow down growth. Impact fees subsidizes growth. They provide the water and wastewater facilities that make growth happen. It was a fiscal measure that kept the fiscal burden off existing residents.

Mr. Kelly stated the economic logic behind impact fees was three fold. There was some evidence from economic studies that part of the cost was charged back to the land seller. The landowners were profiting from selling land that was originally acquired for agricultural or passive uses. They were converting that to a much higher value, through land development. The availability of public utilities was part of that value. Through this charge, developers to the extent that the market was competitive, would say that they had to pay less for the land. The second part of it was that they were dealing with people who were in the business of developing land and houses to make money. It was different to add a cost into their doing business, than it was to charge someone for the use of a social service such as the library or senior center. The third part of it was that this was a capital investment. The facilities that they have add to their value of their home.

Alderman Santos stated impact fees were to be used to build new infrastructure and not for maintaining existing infrastructure.

In response to questions Mr. Duncan stated his reference to "based on cost" meant that they had to base it on the cost to the community to provide that facilities.

In response to questions, Mr. Duncan stated they had tracked the amount of money that they have been spending through other sources. When they did a road fee they tried to figure out how much money had gone into the gasoline tax at the pump and how much of that came back to the community to be spent on roads. They had to deduct the fee by that. In many cases there were bond issues out that was improving roads or parks and they had to deduct that.

Mr. Kelly stated much of the sales tax that they paid every year went into paying operational expense into the city. They had tried to calculate in the portion that has been going toward capital expenditures and calculated that back as a credit. The maximum possible fee that they were giving them has already given them those credit. It was the difference between what these people would be paying directly and what it was going to cost.

Alderman Santos stated they calculated the true impact fee, and then they subtract all of the tax that went towards that. What was left was the fee that they would need to charge. In response to questions, Mr. Duncan stated there were various ways that they could distribute water and waste water. There were some communities that had it by the number of bathrooms for single family.

Mr. Kelly stated the legal requirement was for proportionality. Utility people like to do it on meter sizes. This method was actually better.

Alderman Davis stated they were looking at square footage. There were a lot of people who had a large number of people in a smaller home than in a larger home.

Mr. Duncan stated the courts had been very comfortable in looking at housing size as a determinate in impact fees.

Mr. Williams stated there had only been one case in Arkansas where they looked directly at water and sewer impact fees. In that case, the city of Marion had just chosen a single fee of \$950. They did not have graduated fees there. The court did not say that they could not have graduated fees. The courts did sanction and say that was constitutional was the \$950 fee for every kind of residence.

Mr. Kelly stated that they had done this kind of analysis.

Alderman Davis asked if the University was exempt from the impact fees.

Mr. Williams stated the university was a higher entity and they did not have to follow the rest of their development process. He did not know how they would be able to apply impact fees to the university.

Mr. Duncan stated in most communities that had a university, they normally did not have a problem with the water and wastewater. If they needed your service they would figure out some way to participate.

Mr. Conklin stated in the past the university have not gone through their city process.

In response to question from Alderman Davis, Alderman Santos stated the university was looking to add six hundred beds and four building.

Alderman Davis stated they were in essence giving the university an advantage over the developer.

Alderman Young asked if they would have to give credits for right-of-way and what would they be.

Mr. Duncan stated road fees were comprised of two different components. The land and right-of-way and the improvements. The right-of-way usually ran about 25%. All communities usually require the dedication of right-of-way, then they adopt the a road fee which only paid for the asphalt. He added both their attorney and the city's attorney had questions about the legalities of road fees in the state of Arkansas.

Alderman Thiel stated if the park fee was just an adjustment of increasing the value of the land, then the Parks board could make that recommendation to the council. That did not even need to be a part of this.

Mr. Duncan stated it was two things. They were also adjusting the people per unit based upon the 2000 census. Then applying the new numbers to the current cost of the land.

Mr. Kelly stated it would be an amendment to an existing ordinance. It would be a calculation adjustment. It would not change the legal substance in any way.

In response to questions, Mr. Williams stated their contract with other cities did not give them the right to impose an impact fee. The contract with Elkins was a contract where they would take a certain amount of their sewage and wastewater. They were not close to the amount that they had guaranteed that they would take. Their contract would run until they reached that amount. The contract with Farmington and Greenland were fifteen year contracts with a right to renew for another fifteen years. Farmington was in a moratorium because of their sewer problems. He did not think they could impose impact fee. He thought they might be able to charge an impact fee on water outside the city limits because they came to the city. That was still an open question right now.

Alderman Davis stated they could be encouraging growth in Farmington and Elkins rather than spending their dollars in Fayetteville.

Mr. Williams did not believe they could impose impact fees in Farmington and Elkins without their permission.

Mr. Kelly stated they should be thinking as impact fees as a way to get money from developers or to put a huge burden on developers or should they be thinking of them as a new revenue source. They should be looking at them as a total financing package for how they could build the improvements that they need and how they were going to pay for them. If they looked at them in that context, they would decide to use some and to not use some. They should not be looking at just the impact on developers. They needed to look at the entire package and what facilities that they wanted and needed to build.

Alderman Marr stated where they were having problems was their roads. He asked why they could not use an impact fee for roads.

Mr. Kelly stated the only legal thing they could do for roads under their existing statute would be something similar to what they do for parks. It would have to be some sort of fee in lieu. By the time they had finished calculating that he thought the developers would be begging for it. He thought the city would be coming out with less than what they were currently getting. Legally it would be very difficult to do.

Alderman Reynolds asked why they were not discussing the fire and police. They needed new fire stations.

Mr. Duncan stated there was serious legal question about doing that. Fire and Police fees were very little. Police and fire were very labor intensive services rather than capital intensive services. He would not recommend that they get into the police and fire. He thought there were some serious legal complications there.

Mr. William stated the Arkansas Supreme Court had already spoken to that. The city of North Little Rock tried to up a public safety fee on their water bill. The court had stated such a fee was such a tax because it was cost for maintaining a traditional public government function and services already in affect and not for special services. He thought an impact for police and fire was beyond their power.

Alderman Jordan stated his concerns were that the surrounding cities basically a free ride, while their residents paid the extra fees. They were going to make their people pay the impact fees and not surrounding cities using our services. He thought they needed to change their policies so that they kicked into the kitty like everyone else. It concerned him that it was not worth the effort to try and apply these fees to already maxed out arterial roads. Our roads needed work and we needed money for those roads.

Alderman Bechard stated they had discussed how to execute impact fees rather than are they the right thing for Fayetteville. He had called two cities and both of them had stated they Fayetteville had not managed their growth well. They can grow profitably. This was a small piece to a bigger picture. He asked what they thought Pinnacle Point in Rogers would bring in property taxes when it was complete. Ten million dollars per year. The number one thing people looked for in community was schools. The property tax went to schools. He thought what they should be doing tonight was not on a thousand dollar impact fee, but how do they get that kind of growth that improved their quality of life. They had talked about a million dollars per year. He requested that there was over a thousand people that came here a night to do business with Wal-mart, J.B Hunt and Tyson. If they spent the night and bought ten dollars, that was over a million dollars a year that they would get in this city. He thought they had to think of the bigger picture. They still were not handling their road issue tonight. They needed to assess what was the best plan for their city that was going to deliver the concerns that they had.

Alderman Jordan stated they needed to set down as a council and set priorities on what they wanted for the city and how they thought the city needed to go and what every they are they needed to stick with. They needed to set some goals.

Mr. Jeff Erf, an area resident, he thought the property owners would absorb the cost of the impact fees in the long run.

Mr. Duncan stated most economist that have analyzed impact fees have come to that conclusion. Over time they have not shown to increase the cost of any type of product.

Mr. Erf replied so in the long run it would not cost the developers anything in the long run.

Mr. Mike Henry, realtor, stated there were cost that had to covered some way and the issue was the best way to do that and fairest way to do that. The ultimate cost to the buyer is higher. The cost is funded through a mortgage. They would be putting this on the back of the buyers at twice the rate that they city could get it through the funding of a

bond issue. A large portion of the population was not able to buy a house because it was outside their affordability.

Mayor Coody stated an impact fee would be approximately one percent of total cost. A realtor commission was generally eight percent. People were going to charge what the market could bear. He did not think the one percent fee was going to have near the impact was what a realtor commission was going to be. And the realtor commission did not give them anything to build a sewer plant with now.

Alderman Davis stated Fayetteville had the highest cost for homes of anywhere in northwest Arkansas. They also paid more tax, percentage wise, than most communities in northwest Arkansas.

Larry Ash, an economist, stated to some extent the home buyer would pay impact fees. Who were they sticking with this million dollars? A majority of the new homes were being purchased by people who already lived in Fayetteville. Many of whom have lived here for a long period of time. Through their taxes they have paid for the infrastructure that they were asking them to pay for twice with impact fees.

Mr. Tim McMann, an area resident, stated the way the impact fees would be paid would be through mortgage financing. Sixty percent of the of the new home purchased were by existing residents. Did they really understand this complex issue? He thought the voters would support increased sales taxes if they were going to receive the benefits.

Mr. Bill Molher, an area resident, stated the buyer of the new home would pay for the taxes. If the existing resident chooses to live in a new house, he would pay the fee. When he bought a new car he paid a new registration fee. If they were going to pay to cost of new infrastructure development by assessing fees on everyone as they did today, the people who have been here will pay seventy percent of the cost of the new development. Unless more people move in, most of the total cost will be born by the resident who were already here because they constitute the majority of the new population.

Mr. Joe Kid, an area resident, stated they had already taken care of the water and sewer. The road and the police and fire were the problem. He did not think there were issue anymore. They did not want to kill the relocation in this town. They did not want to get black listed.

Mr. McKinney, chairman of the Stakeholders committee, stated eleven people in the community had study this over the last several months. They had submitted a report. He urged them to think long and hard before they made a decision on this issue.

The council reviewed a series of questions and decided to consider impact fees for water and wastewater. Duncan should draft the ordinance with Kit input. Impact fees should be phased in.

The meeting adjourned at 9:25 p.m.

END - TWO PAGES

FOR ASSISTANT

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