

**MINUTES OF A MEETING
OF THE
CITY COUNCIL
AUGUST 6, 2002**

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

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

ABSENT: Alderman Davis

City Clerk Woodruff: July 2nd

Mayor Coody: There may need to be a correction to the July 2 minutes. We just noticed this a minute ago, it was brought to our attention that they are talking about 46th Street and it has a capacity of 20,000 cars per day but currently it is handling 36,000. It seems that 36,000 is wrong.

City Clerk Woodruff: The 36,000 is wrong?

Mayor Coody: I'm not sure what the number is but I'm sure it's not carrying the capacity of the highway.

Alderman Santos: 22,000 seems like the number I remember.

City Clerk Woodruff: Okay.

Alderman Marr: There are 22,000 at the intersection and I think 13,000 at 46th.

Alderman Jordan: 13,000 at the intersection.

CONSENT:

APPROVAL OF THE MINUTES: Approval of the July 2, 2002 City Council Meeting Minutes.

RAILROAD RIGHT-OF-WAY: A resolution approving the sale of 7.68 acres of abandoned railroad right-of-way between Garland Avenue and South School Ave to the University of Arkansas for \$82,300 in conjunction with expansion of the "Genesis Center". Income from this transaction will go toward the purchase of the Meredith property on Nonamaker Street.

RESOLUTION 118-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

GARLAND AVE: A resolution approving an agreement with the Arkansas Highway and Transportation Department regarding design and funding for the replacement of the South Garland Avenue Bridge.

RESOLUTION 119-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

McGOODWIN, WILLIAMS AND YATES: A resolution awarding the engineering contract to the firm of McGoodwin, Williams and Yates for the Water Transmission and Distribution System Master Plan Study in the not-to-exceed amount of \$205,000.00 and approval of an engineering contract contingency in the amount of \$20,000.00.

RESOLUTION 120-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Jordan moved to approve the Consent Agenda. Alderman Marr seconded. Upon roll call the motion carried 7-0. Alderman Davis was absent.

OLD BUSINESS:

RZN 02-15.00: An ordinance approving rezoning request RZN 02-15.00 as submitted by Dave Jorgensen of behalf of Larry Garriott for property located north of Persimmon Street and west of 46th Street. The property is zoned A-1, Agricultural and contains approximately 57.82 acres. The request is to rezone to R-1, Low Density Residential; and to accept the attached Bill of Assurance. The ordinance was left on the second reading at the July 16, 2002 meeting.

Alderman Reynolds: Mayor, Mr. Jorgensen wants this item tabled.

Mr. Jorgensen: For various reasons, we'd like to table this tonight, the people are on vacation, and we're trying to get organized. We're trying to get our information on the traffic count. We're getting ready to have another meeting with the neighborhood out there in that area, we just haven't had a chance to have that meeting to meet with them another time. For that reason we'd like to table it for tonight and we'd like to get back on the agenda two weeks from tonight. We'll try to have that meeting next week.

Mayor Coody: So you want to table this until two weeks from now?

Mr. Jorgenson: Correct.

Alderman Bechard: I was just curious if you had set that meeting up with the neighborhood yet?

Mr. Jorgensen: No, I haven't. I've been waiting to make sure that I can get the owner available too.

Alderman Jordan moved to table this item until the next meeting. **Alderman Reynolds** seconded. Upon roll call the motion carried 7-0. **Alderman Davis** was absent.

OUTDOOR MUSIC ESTABLISHMENT: An ordinance adding a definition of "Outdoor Music Establishment" to Chapter 151 Definitions of the Unified Development Ordinance and adding Section 163.30 to the Unified Development Ordinance to make an Outdoor Music Establishment a Conditional Use in specified zoning districts. The ordinance was left on the second reading at the July 16, 2002 meeting.

Alderman Santos moved to suspend the rules and go to the third and final reading. **Alderman Marr** seconded. Upon roll call the motion carried 7-0. **Alderman Davis** was absent.

City Attorney Williams read the ordinance.

Greer Gamble: The City of Fayetteville already has the right to control any disturbance of the peace no matter what the cause, noise, litter, traffic, etc. I've been in the music business for over 40 years. I'm curious as to how this ordinance applies to me at a private party, if it does at all? It is my understanding that if I were to create a problem at a private party and the neighbors called the police, do they not have the authority to tell me to turn it off or turn it down.

Mayor Coody: Yes.

Greer Gamble: Under disturbance of the peace. I have been in the music business for the last 40 years and I have not had the police called on me. My sound system pushes over 1100 watts. Are we still going to regulate the size, number, location, so on and speakers? Is that still in the ordinance?

Mayor Coody: Now you're asking about a private performance in a private home?

Greer Gamble: I also use that same sound system in the outdoor venues here in Fayetteville. I have a lot of questions in that regard. It seems to me that if you wanted to control the noise spilling over into community the very simple solution to that would be to limit the size of the venue that you are willing to license in what should be buffer areas around the entertainment zone. I think that if you acknowledge that there is an entertainment area in Fayetteville and zoned accordingly that a lot of these problems would go away. It occurs to me that the only solution to this is to band outdoor music and the only solution to the problem of smoking in restaurants is to band smoking. It's not the size of your equipment, but how you use it that counts. The music is going to spill over into the neighborhoods, so the only way you are going to solve the problem rather than just strangle it is to just band the outdoor music and be done with it.

Ms. Marinoni: Spoke on the ordinance.

Pat Beason: Spoke in favor of the ordinance.

Jo Bennett: Spoke in favor of the ordinance.

Alderman Marr: Being the person I guess who sponsored this; I want to make one last comment that hopefully make clear what my intentions were on this ordinance. Some of the comments that I've heard tonight, are a proactive discussion; one was co-existence with neighborhoods, which I do think is important in this area. I see the benefit of a conditional use whether that was a dance hall, or outdoor music establishment, or a use that is not otherwise allowed by right which we have sometimes with office and residential and so forth, as a means of getting factual public information, co-existence versus a prohibiting attitude from people simply out of fear. I also think that it gives us a culture of collaboration and communication as opposed to antagonistic conflict. I've said it through the entire process that my goals have never been to kill outdoor music on Dickson Street, to not have outdoor music establishments. I've traveled the U.S. and the world and I've certainly experienced what I would consider to be good outdoor bars. I think it's so difficult for me to understand how having a front end discussion is not a good thing in this process. I think there have been some good points of discussion brought up over these three readings in the last six weeks. I think we do need to look at entertainment districts if we're in fact going to label things, they should be labeled formally and there should be discussions on that. I don't think that the discussions should be limited to Dickson Street because there may be other areas of town that are also entertainment in nature. It is still our mission today to protect and improve the quality of life by listening to and serving the people with fairness, to me this is an issue of looking at fairness to everyone involved in this particular area. I'd like to thank the Council for your consideration and understand the spirit by which it is intended and it is not to be another obstacle simply to keep something from happening. If anything, it is to encourage that when it happens it happens in a good manner with good discussion on the front end.

Mayor Coody: This went before the Ordinance Review Committee didn't it?

Alderman Young: Yes.

Mayor Coody: What was the consensus of that committee?

Alderman Young: We passed it on to the Council.

Mayor Coody: Okay.

Alderman Bechard: Conceptually, I couldn't agree with Mr. Marr. Unfortunately I can't support the conditional use because I go back to the concept of upfront discussion, I absolutely support that. Creating an environment where people can talk on their phones and sleep at night, as we've talked about before is a concern; I absolutely support that as well. So conceptually I couldn't agree more. My issue is I disagree with the tactic, I think that a conditional use is not the right approach. As I understood, and this is something Tim said two weeks ago, "typically a conditional use is used when someone is asking to do something outside of an ordinance", in this case no one is asking to, correct me if I'm getting this wrong, nobody is asking to do anything

outside the ordinance. I struggle with why we are putting a conditional use in place when no one is asking to be outside the ordinance. A second issue that I have with this is that I'm concerned about the Planning Commission they are not experts when it comes to sound, are we going to give them the training? We're asking people to be experts that currently are not experts. Some folks have said that by creating this conditional use it's going to solve our problem, I don't think that that's the case. The Planning Commission could say put up some walls and turn the speakers a certain way and great, two years from then the business changes ownership. They decide to take down those walls, they've changed their speakers and they turn their music up, the conditional use isn't going to stop that, what's going to stop that is the sound ordinance. I hear again tonight that over the last six years the sound ordinance has been great and thank you for that, I agree. If the sound ordinance isn't great, we need to handle the sound ordinance, but that's the reasons why I can't support this. I want it to be clear and on the record that I'm absolutely for an upfront discussion and sure don't want people who live down there to move, that is absolutely not what needs to occur here.

Alderman Marr: The tactical decision to go with conditional use was because you can't write an ordinance that handles every situation that you might encounter in looking at an outdoor music establishment. Another benefit of a conditional use is so that you are allowed to look at things on a situational basis under the circumstances that are in front of you.

Alderman Santos: Mr. Gamble pointed out that, I didn't think about when we're talking about the size and direction and power of the PA system, is that the owners of the outdoor music establishments, most of them don't have their own PA systems. The bands bring them in or they get a sound professional like Mr. Gamble to bring in his PA, so how do we regulate that. I mean I kind of thought of it as being a built in part of the building but it's really not.

Alderman Young: But it is the owner that has to regulate that.

Alderman Santos: The owner will have to agree he is going to manage the sound crew or band or who ever brings in a PA.

Alderman Young: To maintain his conditional use.

Alderman Santos: Okay.

Alderman Thiel: My initial concern about this ordinance was that it might have a negative affect on the entertainment business, but after listening to everything, trying to listen with an open mind, I don't think that's the case. I think it will be positive for both the business and the community. I think it will enable the businesses to establish a good relationship with the adjoining neighborhoods upfront. I, of course, also think it's important for us to remember that we have conditional use for dance halls and this has been very useful to us in the past to deal with issues where conditional use has been given to a dance hall. Without having this course of action our hands would have been tied in some situations. I do want the public to know that we didn't eliminate the \$1,000.00 bonding requirement that we added (C) (1), (C) (2) and (C) (4) to

this ordinance, and also the conditional uses now can be appealed to the City Council if they are denied at the Planning Commission level.

Alderman Reynolds: Mayor I'll abstain on voting tonight. In the six years on the Planning Commission, and this is my fourth year on the Council, I've never voted on anything that related to Dickson Street and I'm not going to start voting tonight. But I think people need to think about this because in the 15 years that I've owned a business and the 40 years I've been at Dickson and West Streets, in the last two years I've seen a lot of businesses change hands on Dickson Street. So we're either going to be an entertainment district or we've got to change it to commercial use, one or the other, we both can't make it.

Alderman Thiel: I definitely agree that this Council does need, or the Planning Commission needs to have some direction to establish an entertainment district. There is also another business that is leaving Dickson, and basically the bookstore for the same reason. It's becoming strictly an entertainment area. We probably do need to designate that at some time but I don't think it needs to be added into this conditional use ordinance that we're looking at right now. I do think that it's something we need to address in the near future because something similar to this can come up again.

Alderman Marr: I completely concur that, that needs to be a discussion, and I think it has a lot of components to it. We've referred to zoning as entertainment zoning, but I've read R-1, R-2, R-3, C-1, and C-2 and I don't see entertainment descriptions in any of those definitions. I think it would be appropriate so that quite frankly the discussion of the people should be at the point of zoning whether that zoning for that use is most appropriate at that time. I think it's a combination of both zoning and our Master 20-20 Plan, did we designate entertainment areas within that and should it be different. We certainly didn't look at that when we reviewed the 20-20 Plan in 2001 and I think the idea of an entertainment overlay is an item that requires a lot of discussion, just like the Overlay District off of I-540 required a lot of discussion and public input. I don't think it is appropriate to do it within this ordinance. I'm not saying that I would support that we have it, but I certainly support that we have discussion around it.

Alderman Young: On Dickson Street, unless you have retail along with the bars, that's not a good situation, to maintain Dickson Street as a viable economic engine so to speak, you have to have the mix. The retail is leaving, there are reasons they are leaving, but if there is a discussion on an entertainment district, I think that would be a good opportunity to put things in that district that would encourage retail so that you could do two things at once. You could establish the entertainment district but also put some kind of incentives or some kind of breaks or something for retail which would maintain the mix. That's the only way you're going to maintain economic viability down there.

Alderman Marr: It would be nice to see it viable between 8 and 5 also.

Alderman Jordan: When it went to the Ordinance Review there was a lot of compromises that went down. The \$1,000 bond concerned me and we did away with that. I think this is going to

cause more upfront conversation between the development community and the owners down there. And I think I'll support it.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 5-1. **Alderman Santos, Jordan, Thiel, Young and Marr** voting yes. **Alderman Bechard** voted no. **Alderman Reynolds** abstained. **Alderman Davis** was absent.

ORDINANCE 4409 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RAZE AND REMOVAL: A resolution approving a raze and removal of a house at 1200 S. Roberts as per Ordinance 3948. The item was tabled at the July 18, 2002 meeting.

City Attorney Williams: Actually I've talked with the person that purchased this property, they have done a lot of work cleaning up the outside, and I think they are now taking the house down. I don't think it's totally finished at this point and time and they would like to ask us to table it for another 30 days. At that point in time I'm sure that it will be totally taken care of and then we can just vote the resolution down.

Alderman Thiel moved to table this item until the September 3, 2002 City Council meeting. **Alderman Reynolds** seconded. Upon roll call the motion carried 7-0. **Alderman Davis** was absent.

NEW BUSINESS:

RZN 02-17.00: An ordinance approving rezoning request RZN 02-17.00 as submitted by Dave Jorgensen on behalf of Bleaux Barnes and Sam Mathias for property located south of Deane Street, west of Sang Avenue and east of Porter Road. The property is zoned R-1, Low Density Residential and contains approximately 21.03 acres. The request is to rezone to RMF-6, Low Density Multi-family Residential.

City Attorney Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the second reading. **Alderman Thiel** seconded. Upon roll call the motion carried 7-0. **Alderman Davis** was absent.

City Attorney Williams read the ordinance.

Alderman Santos: The president of the neighborhood association asked me that we keep this on the second reading tonight. The neighborhood is pretty much behind it. I don't think we'll have any trouble with passing it at the next meeting. I would add that this has been discussed quite a bit already. The neighborhood association has met with the developers, they've talked about it and everybody's come to an agreement. I stood all alone and supported rezoning of this property and I have met a lot of nice people in the Sang Neighborhood Association since then. I'd still support this for the same reasons I supported the other one. But this one is much less objectionable to the neighbors and I think we can make everybody happy with this one.

Alderman Jordan: Yes, I've sat in on some of the meetings as well and I think that they have come to real solutions to whatever problems they did have. I think it is a very good development too.

SOLID WASTE ADDITIONAL PERSONNEL: A resolution authorizing an increase in Solid Waste and Recycling to permit an additional driver.

Gary Dumas: This is funded through user fees, those who'd be using the roll off services would pay for this. It would give us the ability to expand service and to continue to grow incrementally that business line.

Alderman Thiel: Are you going to discuss the memo that was given to us? We need to do something about the commercial waste situation before we add someone at this time. If we're actually reducing some of our commercial at this time, maybe you could bring us up to date a little bit more on everything.

Gary Dumas: I think the direction that we're headed over the past, since the discussion on July 9th, there has been serious confusion and ambiguity among some of the other service providers on exactly what the discussion was about. Historically since probably about 1959 the city has had an ordinance in place which prohibited private waste haulers from doing business in the city, unless they were permitted by the City Council. That ordinance was strenuously enforced the last several years, I think primarily because the city didn't have any roll off activities that was all provided by third parties. Because the commercial business that we did have the 2 yards, 8 yards plus the cans that are out there, the 95 or 64 gallon cans provided a user subsidy from the commercial side of the operation to the residential side, that subsidy next year will be about \$568,000, that was in the report that I gave you on July the 9th. This year that subsidy is greater because we haven't yet incorporated in any of the efficiency that will be going into effect with the new automated system. If those commercial customers in that small commercial class are allowed to go to other service providers, that is going to create, very quickly I would imagine a situation where the city doesn't provide any commercial waste in that class of customer, Steve Davis is here and he can confirm this. This would mean that probably by the middle of next year the reserve cash that is required to be in the reserve account of the Solid Waste Fund would be below recommended standards. If you disagree with the memo, the City Council has a couple of choices, either the Solid Waste Fund would become a tax supported fund as it was prior to 1998, or there will have to be rate increases to make up that estimated one half million dollar loss that we will be suffering not having that cross users subsidy from that commercial class of customers.

Alderman Thiel: Well if we already had this ordinance in effect, at what point did we stop. You explained why we weren't enforcing it because we did not have.

Gary Dumas: We never stopped enforcing the ordinance, what happened was that there was some confusion. Maybe I'm understating the confusion that occurred on the private side but up until July 9th there was an understanding between the private waster haulers, the city, the

commercial customers in this class 2 to 8 yards, and the cans, that the city was the sole provider of the service.

Mayor Coody: City Council meeting?

Gary Dumas: The City Council meeting and the discussion that occurred, a private waste hauler placed a container at new business on Millennium and Crossover. We contacted that waste hauler, told them that the ordinance was in place, which they knew because some of our former employees are their current employees, they refused to move it. They said that based on the Council discussion of July 9th that it was an open market in the entire commercial sector. We had more than one discussion with them with the same result. We finally convinced the owner that the ordinance was effective, and their container was removed and ours was put in place that was the week of the Council meeting on July 9th. Over the weekend and in the last couple of days this has been kind of an increasing thing, four businesses which I mention in the background there, have located at their facilities private waste hauler's container. I think there is another 4 or 5 that are in place as of today. If you read the comments from those businesses and if you want to mention them you can but I don't know that there is a need to, they are very confused, and they feel that what they've been told by the private waste hauler is that the ordinance is not effective. They are saying that if the ordinance is effective the city should make a decision and enforce the ordinance, we have been attempting to do that. The reason for the memo is to tell you that we're going to do it more aggressively, since conversations have not resulted in them removing their containers we'll begin tomorrow issuing citations through the police department.

Alderman Reynolds: Mayor, we had a lady that ran our Solid Waste Division and a lot of folks don't know that she left and went to another business and when she did it kind of left us with a period when we didn't have any one out there to watch the hen house. When she went to that new business she started doing the opposite of what she did when she worked for the City of Fayetteville, when she was here she didn't allow anybody to come in here and do this. What this Council needs to do tonight is to tell Mrs. Hill and Mr. Dumas that we're going to enforce this ordinance and we're behind them 100%, and let them pursue this and make the people pay it and go by it. We want our people in this city to throw their trash out and we want them to recycle, we're kind of encouraging recycling at the force. These people coming in here and carrying the trash out from these other companies are not recycling, that's not what we want, we want recycling. We want to save space at the landfill and we want our ordinances obeyed and followed, so I think we need to do that tonight. Please just give them that kindness.

Alderman Bechard: Why would these businesses be going to this other trash company versus the city? Is it pricing?

Gary Dumas: Absolutely. A \$568,000 subsidy that this class of commercial user pays into the system which is being used to subsidy the residential rates. Based on that our cost of business is beginning \$568,000 in the negative and when you add the cost of business plus that \$568,000 it means that, I would hope that any reasonable private business would be able to make a profit.

Our cost of business is probably very similar to their cost of business except for labor charges, then with a \$568,000 hill to climb before you get there its fairly easy for them to cut our rates.

Alderman Bechard: Is it that we are choosing to overcharge our businesses so that we can subsidize the residential and thereby putting our businesses at a competitive disadvantage. They have to pay a higher cost to do business in Fayetteville because you are forcing them to use a higher cost service than if they were in another city around here and is that putting them at a competitive disadvantage?

Gary Dumas: I'm not going to give you the answer that you want. I'm going to say that yes the private businesses are paying a premium for the services they are getting but that is not unusual with businesses or with communities that provide solid waste services to both residential and commercial consumers. Typically there is a cross user's subsidy whenever you have both segments of the market. I think previous Councils made that decision here, that's probably part of the reason for this ordinance so that they could maintain a reduced residential rate. Although our commercial base is only 1100, 1200 customers they have the ability or have had the ability historically, to provide that subsidy because they also live here too typically, so they save the money at the home rather than at the business.

Mayor Coody: From what I understand and from what we talked about, there's basically two different commercial containers, two different kinds of commercial services right now. The small container, the two to eight yard which is what we are talking about right now versus the roll off's which is the big containers. The roll off containers is not part of this conversation right now, we're just talking about the two to eight yard and that's traditionally what the city picked up and we've had a monopoly on that.

Gary Dumas: Correct.

Mayor Coody: The last time the City Council met there was discussion about privatization and private enterprise and being competitive that was inferred to me. Then, all of the sudden the small commercial container business market was open for them to come into and that's the market that subsidizes our residential rates, according to the reports we have seen, between \$4 and \$5 per month, per residential customer. Is that right?

Gary Dumas: At the current rate structure of \$9.25. When we go to the next system we are going to be much more efficient than that but right now that is about the subsidy.

Mayor Coody: Basically, what the city is looking at doing is maintaining the status quo on our small two to eight yard containers. That's basically to stay where we were before the July 9th meeting, go back to where we were because that's what makes the system balance more and that's what we're operating under. You asked about competitiveness in commercial pricing, I know that when we started doing some roll off containers and we looked at the prices of what Waste Management and some of these other enterprises were charging and then we came in considerably under that because we were able to cover our costs and make a little bit of money

on top of that. When the city got into the roll off business we were able to drastically reduce the fees that commercial customers had to pay. Is that accurate?

Gary Dumas: Yes, that's correct.

Mayor Coody: Roughly, how many dollars are we're talking about here?

Gary Dumas: I gave a memo to the Council who was here in January that gave a real life scenario with an existing business in town that had service through one of the private waste haulers; our bid would have saved them \$350 a month, if they could have taken our bid but the private waste hauler enforced the contract that they had with them.

Mayor Coody: That was with the roll off container. But we have actually lowered the prices for businesses using roll off containers, so we have been able to do well for businesses here and make them even more competitive by saving them \$350 bucks a month which is \$4,200 a year which is pretty substantial.

Gary Dumas: The entire thought process behind getting into the roll off business was so that we could spread our cost over a larger base, the overhead costs and hopefully reduce through that roll off market sector, and put more into the system so that we could maintain or reduce the rates. You never reduce I don't think, governments just don't do that.

Mayor Coody: We did sewer tax.

Gary Dumas: But at least try to maintain rates or slow the rate of growth of those other rates.

Alderman Thiel: I think that the mayor has explained it real well. I think that our discussion at the July 9th meeting was about the large roll off container, we were not discussing our current commercial process at all. If I said anything that lead Ms. Zotti or Roll Off to think that I was advocating that they ignore our ordinances or that the commercial businesses in Fayetteville ignore the ordinances that we have in place, I certainly apologize for that. I certainly think that we have to continue what we have and we have an ordinance in place to do so.

Alderman Marr: Mayor it offends me that anyone who sat in that meeting and listened to that discussion could interpret commercial, the eight yard versus the roll off, there was a clear distinction between this and that. This is someone in my opinion that's just trying to fly in the face of the city and force us into a decision. I certainly support us making sure that we get our commercial business that we never had a discussion about back and make it very clear the ordinances of the city.

Gary Dumas: Our intent is to bring you something to discuss at the next meeting concerning the larger containers also.

Mayor Coody: Basically we want to continue to maintain the status that we had before the 9th which is we're going to maintain our business with the small commercial carrier, small commercial carts. Is that right?

Gary Dumas: Yes, and we will be upping the aggressiveness in which we enforce that, if it requires that.

Mayor Coody: Basically, are you asking for a consensus from the Council on this item or is this just an informational item.

Gary Dumas: I kind of wanted someone to bring it up so that we could have this discussion publicly tonight.

Alderman Marr: I just wanted to make a comment about this additional head count position. When you look at these numbers the fact that you reduce overtime 459 hours for roughly an additional \$9,000 in overall payroll costs, you can take one on the large customer side to three to four customers of a smaller construction site and have a return on that instantly. It allows us the capacity to go to 25 service calls per week to increase our business. To me it's a no brainer that this is a good cost move and I appreciate you looking at it for us.

Mayor Coody: The Solid Waste Department in operating with more efficiency and operating much more cost effectively we have reduced, thanks to new management and to a new attitude in the Solid Waste Department, we have reduced turn over by 75% since 1999 which is substantial decrease in turnover and also the amount of money that we were paying out in worker's comp claims about this same time period was through the roof which put us into a higher risk pool with worker's comp. We've reduced the dollar amounts that we've paid out for worker's comp claims by 50%, those are substantial numbers and I just want to thank the Solid Waste Department for working so hard to turn this department around. You've done a very good job.

Alderman Reynolds: We've got a real good management team out there and I'm proud of them also.

Gary Dumas: A large part of those reductions in turnover and in injuries is the attitude of the employees and that's reflective by the appreciation that they get from the Council and from their administrator.

Gary Lowery: Commended the staff at Solid Waste. I understand the City of Fayetteville has its own exclusive franchise for hauling its own waste. Why does this not include all aspects of it?

Mayor Coody: One of the things you asked about is about handling all aspects of waste. Were you talking about the roll off containers?

Gary Lowery: I'm talking about all of them.

Mayor Coody: I think pretty much roll off is the one big item that we don't handle very well and the reason is because we don't have the manpower or equipment. We're beginning to get into that line.

Gary Lowery: You don't have to get into that line. You can contract out with some body else and have them provide this service for the city. You don't have to provide the manpower and the equipment. You can contract that out to someone else and have them do it, including the roll off division.

Sharon Davidson: I agree with what Mr. Lowery is saying, although he's saying do it from the business point as financial. I'm asking you to do it for the green, the environment, the right thing for everybody to do. I'd rather you all have control of our trash. Please take care of our trash and maintain control of it.

Alderman Young: What is the resolution? What are we being asked to pass?

City Attorney Williams: To add one driver to the staffing levels for the Solid Waste Division.

Mayor Coody: Of course, it's going to be paid for out of the Enterprise Fund not the General Fund so this has nothing to do with the latest one cent sales tax ballot the issue that we've had lately.

Alderman Santos moved to pass the resolution. Alderman Marr seconded. Upon roll call the motion carried 7-0. Alderman Davis was absent.

RESOLUTION 121-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MCCLELLAND ENGINEERING: A resolution authorizing Change Order No. 1 to the engineering services agreement with McClelland Engineering allowing for additional public participation activities for the Wilson Springs Business Park extending time frames established in the contract and adding the amount of \$32,388.47.

Gary Dumas: I hope you got the detailed per hour breakdown by task. I think that, that could answer most of your questions if it doesn't I'll try to address them. There are two parts to that request; one is for the work that has already been done as part of public participation, that's approximately \$16,000. There is a second portion which is anticipated work in the public participation area that may or may not be required as the project moves forward. You know that part if we're going to have continuing aggressive public participation process in this project as necessary but it's the Council's decision on whether that portion is necessary or not.

Alderman Thiel: Under the original January 25th contract, the breakdown was preparation for and presentations at public meetings that amount was \$4,461 which they deducted that amount from here. I would like an explanation and I'm still confused, it was also \$5,280 with EGIS and that was for planning public meetings, the team planning and coordination of meetings that's

\$6,875. Why is that not shown in here some where as a deduct. What was that for? Was that not for coordination of meetings?

Mr. Tarvin: Our contract is a cost not to exceed contract and if that was part of it then that would be deducted automatically. Our billing will only be what we actually do.

Alderman Thiel: It's just not shown on this estimation of hours. This report that we received for this meeting you've deducted the lesser contract amount of \$4,461 but not the \$6,875.

Mr. Tarvin: Part of the preparation for public meetings has to do with the platting process itself which is not necessarily the public participation part of the work but the public meetings that are a part of the platting.

Gary Dumas: Okay, team planning and coordination meetings. There's been a preparation of three final options and cost estimates. Wouldn't there be some credit then due back because down at the lower part of the contract, this is just an estimated fee breakdown, Phase I design services that was \$58,000.

Mr. Tarvin: I think I know what your question is. Would part of the work we did in this effort have been done later on?

Alderman Thiel: Right. So that's going to come off.

Mr. Tarvin: Possibly a portion would be. There was more public participation in this than we anticipated and that would be the additional work, some of the options we looked at would not have been looked at, we actually looked at more than three. We looked at five to six and narrowed it down to three that we did the cost estimates on, so there were some efforts there that were not anticipated in the beginning. But again, our contract is bill only what you do and we were asking for an increase in the "not to exceed" because of the scope change.

Alderman Thiel: I guess my other concern is according to this it was in response to direction given to us by the City Council at the March 19th meeting. I did go through the minutes and to honest I don't see anywhere where the Council really directed all these team meetings. Mr. Dumas stated that they were asking the Council to let them proceed with the preliminary plat work. McClelland will come up with at least three designs which would be presented to the Council for review; from there they would prepare a final preliminary plat. I stated that I would like to see three proposals that showed a broad diversity. I'm not quite sure where all these five additional team meetings with Dumas and/or EGIS were requested. I'm not saying you didn't do them and they are accounted for fully here, but I guess that some of the summation of why it happened or why it went beyond the initial scope of the project is the thing I'm trying to understand.

Mr. Tarvin: From what I recall from that March 19th meeting was that there was quite a long discussion and the people that were against the development made their presentations. It got to a point to where the Council said can't we work together and at that point I got up and I said yes

we can meet together if that's what you want us to do, in fact I had already asked the ladies to come over to our office and work with us. Mr. Young said and I want three alternative plans and I want cost estimates for those three alternative plans and we said okay.

Alderman Young: EGIS contract is a subcontract to you is that correct?

Mr. Tarvin: No sir.

Alderman Young: It's a separate contract with the city.

Mr. Tarvin: Yes.

Alderman Young: On this listing here is your preparation for the first two public meetings, then you've got project engineer, 62 hours, is that actually the work on the project or preparation for the meetings?

Mr. Tarvin: That was the preparation for the meetings.

Alderman Young: 62 hours?

Mr. Tarvin: Yes, sir, and preparing drawings and PowerPoint presentations.

Alderman Young: That's what I mean you're actually working on the project putting the three plans together.

Mr. Tarvin: No, not those three plans. This was getting ready for the public meetings, to prepare maps of the wetlands of all the detail that was presented in those public meetings. That was before the actual lay outs actually began. We made a point at those meetings to make it clear that there was not a perceived notion involved in the design at that point, that we were waiting for public input before we started and we were not doing design at that time.

Alderman Marr: I attended the meeting the night that this was discussed and I do believe that there was some direction to have a meeting with environmental people, a team and I think it was also encouraged that an overall look be taken at the project. You described who attended the first meeting, who attended the second meeting, do you have any detail on the third, who was at the third meeting and what actually took place at that meeting?

Gary Dumas: That was meeting in the field, I was there, Carol Jones was there, and some people from the community were there.

Alderman Marr: What was the actual work product of that meeting?

Gary Dumas: The work product was to go through one of the things that McClelland had prepared before; there was a graphic which showed the survey points that were on the property so there would be some geographic reference on the map and on the ground. The group walked

the site primarily to understand where a variety of features were, one item was a native prairie inside the wood area. There are two or three small detention ponds that were built by the city or the city's contractor that is just inside of the woodland area just outside of the property, toward the south end of the property. We tried to find out how those were built; we found out that it was the city that did them back a few years ago. They were seen as some natural features that were out there that should be preserved and they may need to be preserved we don't know that yet. The work product was to make everyone more familiar with where the lines on the map were in relation to the wetlands, the little northwest, southeast stream that runs from the Clabber Creek into the wetland toward the middle of the property. I want to make sure that everyone is aware where the features were that we've all been talking about. There had been some confusion of where those features were.

Alderman Marr: There was a statement made in a letter that it was the understanding that our role in the public participation portion of the project was to be minimal and that EGIS would have the lead role. What I'm curious about is what dollars were in the EGIS contract, and can we transfer those dollars into this as opposed to approving new dollars?

Gary Dumas: I would have to research the EGIS contract a little more than I have, the EGIS contract is not very large, I think 55,000 or 60,000 dollars. The EGIS contract is not broken down specifically in public participation the way the McClelland contract is but there is some where in the neighborhood of \$15,000 in their contract for public participation in a variety of forums. I would imagine that if the project moves forward and we get into discussing mitigation plans and options, what we are going to do after we determine what the plan is, that their public participation activities will significantly increase. That's where the rubber is going to meet the road when we begin talking about how we're going to do the mitigation activities on the 17 acres or if the option is the one half acre or zero acre option then there won't be any mitigation. There will be quite a bit of funding left over in their contract.

Alderman Marr: It doesn't make sense to me that we would ever design a contract around not expecting to have public participation and so there's probably dollars somewhere in one of these two. What I would like to do is to get the actual work that is being done. I've got copies like it's an invoice, and what I am use to seeing in our business is where it actually takes the budget line item what the charge is, the hours etc, against the contract. What I'd like to know is, is it possible to get this with a column of what was in the original contract and then a column of the charges that are above and beyond the contract as opposed to having it all lumped in and me sitting here trying to figure out which is which. I think it gives us an idea of where the specific run of times is. I have one other question and this is where I'm asking for your education, it appears like over 300 hours of work into the public meeting component on this particular invoice, of this what is typically the hours associated in the planning time for a meeting and does 300 seem high to you? That seemed high to me.

Gary Dumas: For the public participation?

Alderman Marr: For the preparation and presentation of public meetings.

Mr. Tarvin: It depends on who is doing it, some cities do more than others, it seems high to me. We came into to this thinking that it would be lower than it is. We're not sure yet how much it's going to be because it hasn't ended yet. It really depends on how much time you want us to spend. Some cities don't spend much time.

Alderman Marr: In the meetings that you had planned, typically how many hours would you associate with one meeting?

Mr. Tarvin: If you get a billing rate of \$40, then $50 \times \$40$ is \$2,000. There was about \$4,000 budgeted for as I recall for public participation.

Alderman Marr: So it wouldn't be an unreal expectation if I'm seeing 300 hours to have expected at least six meetings if I were in line with the amount of planning time.

Mr. Tarvin: What we did was we actually had eight more meetings after the March 19th Council meeting.

Alderman Thiel: But five of those meetings it sounds like were team meetings.

Mr. Tarvin: To get ready for the other meetings.

Alderman Thiel: With Mr. Dumas?

Mr. Tarvin: Yes ma'am

Alderman Thiel: Okay. Those weren't public meetings or were they?

Gary Dumas: No but they were in preparation.

Alderman Thiel: They weren't public meetings though and I guess by team meeting then that would go back to the original proposal which had team planning coordination meetings \$6,875 there listed for that which hadn't been shown on this that we've been given.

Alderman Marr: I was just going to end by saying that it appears that we have documentation on the additional cost but once again it goes back to our struggle, what's the end work product we're getting for the dollars we're spending. We need to be more disciplined about the control; I think public input needs to be limited in any way, in fact I think that's what makes Fayetteville, Fayetteville. I'd like to see more direct requests that this is the meeting and this is the cost instead of us having casual conversations about what we'd like to have three more meetings or we'd like to have you know, X amount of things happen and okay we can do it but we don't have at that point a number that we're talking about and then we act like we're surprised. Three designs that we looked at, we've spent \$16,000, and now we've got another \$15,000 that we're planning for it and I want to be a little more diligent understanding what I'm going to get for that \$15,000. I don't want to get into the habit that the City Council is doing line items, that's why we have a mayor and city staff.

Alderman Jordan: I think that one of the things that concerns me that our job basically is to be good stewards of the taxpayers' money. We came to a meeting and are told we need to come up with \$32,000 more dollars after we already have a contract for \$128,000. I thought that EGIS was going to handle most of the public meetings. Did I hear that wrong or where does this EGIS leave off and McClelland pick up here? I thought EGIS was handling this whole public business. Am I wrong there?

Gary Dumas: That was the initial thought in both, in the two contracts.

Alderman Jordan: And we paid them \$60,000 for doing that or there about.

Gary Dumas: Well their money was primarily for the mitigation plan and getting that through the various regulatory agencies and public participation process of that also. Based on the discussions that occurred at that March 19th meeting and I believe the meeting before that, there was a decision made, on my part I guess, that was based on some of the audience's concerns about EGIS that it's better if they took a secondary role in the earlier public participation, in this second round of public participation, which wasn't in their contract either though. That second round of public participation was requested on March 19th.

Alderman Jordan: I think in the future we should prepare a little more for more public comment, more public participation in these meetings, especially on an issue like this. It does concern me that we still don't know exactly how much we are going to spend.

Gary Dumas: I think as Councilman Marr mentioned you'd like to have a work product that comes out of the expenditure of public funds. Ideally you would have that. I'm not sure what you're going to have as this project goes forward with a useable work product, a useable work product would be an approved subdivision plat. I don't know if this is going to come out of this or not no matter how much or what the effort is that is spent. Thee project is actually just beginning to get started and we haven't even resolved yet what the design scenario is going to be.

Mayor Coody: I've been pretty deeply involved in this project since the beginning because I think it's important for Fayetteville that we get moving on this. I think one of the things that we hoped for was that by having public comment and by bringing both parties together around the table we could seek and find some kind of consensus, I've given up on that idea. So basically it's going to be up to the Council to say this is where we're going to go one way or the other and make a decision. But if we try to get everybody to agree on this we can spend money on this until the cows come home and we're never going to reach that point.

Alderman Marr: So mayor are you advocating that we not look at the additional \$15,000 that's a part of this?

Mayor Coody: I don't know right now what we would get for that \$15,000 any more than what we have for the money we've spent already. Because one school of thought is we don't develop

any of that land and anything other than that is just not going to be met. So there's no middle ground. So I just feel like we can continue to spend money on public input and public consensus and never reach an end because I think that there will always be a persuasion saying that we shouldn't develop any of it. And that's never going to change.

Alderman Young: Then are you advocating disbanding that committee you put together to look at this?

Mayor Coody: No, that's a whole different deal altogether.

Alderman Young: No it's not. That's public input there.

Mayor Coody: No that's not costing us any money.

Alderman Young: But it will be when they start presenting their issue.

Mayor Coody: I'm sorry I didn't understand that.

Alderman Young: The engineers may be sitting there with the clock running.

Gary Dumas: They haven't yet. At some point I'm sure they will be invited to make a presentation to the Task Force.

Mayor Coody: The Task Force I think in my prospective was put together so we could have several people, advanced people in different disciplines and areas of expertise look at that piece of property. Look at what our needs are in Fayetteville, Arkansas and see if they couldn't make two things come together and find out what the highest and best use of that land is. Carving out 100 acres of wetlands is a sensitive area in all scenarios and saving it in perpetuity and wondering what to do with the other 200 acres. How it should be developed for the best long term benefit of Fayetteville.

Alderman Thiel: We did ask for three plans, and this Council has not seen three plans yet.

Mayor Coody: Hasn't that been shown?

Alderman Thiel: No, we have not; we have not been presented any of these.

Alderman Jordan: The problem with that is that a lot of the people they don't know anything about the plans that's already been presented.

Alderman Young: I know of one plan that was presented at the Ward 2 meeting and that was it. It was shown and that's the last I saw of it.

Alderman Thiel: Mr. Dumas has gone out to the Chamber, to the Rotary Club, to the public; there have been public presentations that I'm sure that's part of what we're paying for,

preparation for public meetings, as far as this Council seeing those three plans and discussing them, no they have not.

Gary Dumas: The three plans were presented at an agenda session on the third floor, I'd have to go back and check the date.

Alderman Thiel: We had them in front of us or we had them up on a board, where we could hardly see them, but we never had them!

Gary Dumas: I'm not sure if you had them or not.

Alderman Young: No we didn't.

Alderman Thiel: We did not get a copy of them.

Alderman Young: Are there any cost estimates with those three plans?

Gary Dumas: Yes.

Alderman Young: Well we haven't seen those I'll guarantee you that.

Alderman Thiel: I mean if you want to start moving this forward let's start discussing something. I mean you say you want to move it forward but it's not moving forward.

Mayor Coody: I could have sworn that we saw all these plans in front of the Council at the agenda session and all that material was available at that time.

Mayor Coody: Well if the plans were shown up on the wall, if I could see them I'm assuming that other people could see them.

Alderman Thiel: We just looked at them on the wall but we can't study them?

Alderman Young: We want something we can take home with us.

Mayor Coody: Okay. Would you please print up some 8 1/2 x 11's so we can distribute them to the City Council.

Gary Dumas: With the cost estimates, yes.

Mayor Coody: Budget about \$15,000 for that will you?

Gary Dumas: Actually I'll do that so we don't have to have the engineer to do that.

Alderman Thiel: Thank you.

Mayor Coody: You have been going to these meetings with the task force and the engineers those haven't cost us a dime.

Gary Dumas: No they have not.

Alderman Thiel: I think that's critical that we have those meetings.

Alderman Jordan: We did talk about that with some of the environmental community and they talked to me and said that they did not have any input on those three plans.

Mayor Coody: Mr. Tarvin will you please address that, that the environmental community had no input on the three plans.

Mr. Tarvin: We had three meetings. We had two meetings in our office and one meeting on site.

Mayor Coody: Who attended those meetings? Do you know right off hand?

Mr. Tarvin: Yes.

Alderman Thiel: It's right here.

Alderman Santos: It was on the government channel.

Mr. Tarvin: The first meeting was Mayor Dan Coody, Director Gary Dumas, Alderman Cyrus Young, Fran Alexander, Jeff Erf and Tom McKinney, and the second meeting Director Gary Dumas, Don Bunch of the Planning Commission, Andrea Radwell and Tom McKinney, others were invited but those are the ones that came.

Alderman Jordan: So you're saying that the environmental community did see those plans.

Mr. Tarvin: Yes, sir. They helped develop them.

Mayor Coody: When I was there they were helping point and outline.

Mr. Tarvin: We were working over the work drawings.

Mayor Coody: These plans from what I experienced came from a partnership arrangement, basically teamwork from those folks, Mr. Tarvin, and Carol.

Mr. Tarvin: I have copies of the cost estimates right here if you'd like to have them and make copies of them.

Mayor Coody: Chris could you make some copies of these.

Mr. Tarvin: I have one color copy of each of the plans.

Alderman Thiel: They have not been provided to the Alderman.

Alderman Santos: I was wondering if we should bother to waste paper on them. Their cost estimate for the public input was 500% more than what work they've already done and they want to charge twice as much as that again. Didn't we give a pretty stern warning to McClelland not too long ago about doing work that wasn't authorized and then expecting us to pay for them and we said we'll pay you this time but this is the last time.

Mr. Tarvin: No, sir.

Alderman Santos: Not McClelland. It was McGoodwin, Williams and Yates.

Alderman Jordan: It was a different firm but yes we did.

Alderman Santos: So is this the first warning for McClelland now. I mean why do we bother with contracts if we're going to pay them whatever they can come back and ask for.

Mr. Tarvin: May I answer that question please. First of all we did not exceed our contract amount; our contract amount is \$128,000.00. What we did was exceed an estimated portion for a particular part of that contract, but it was at your direction that we did that.

Alderman Santos: By a factor of five times as much, more than five times as much and really you say it's going to take ten times as much as your original estimate to do that one part of the job. Lioneld and I were under the impression that EGIS was going to that.

Mayor Coody: I will say as far as EGIS goes, if you remember the meeting that I remember, EGIS was basically not well received. It was clear to me that there was bad blood between a lot of the folks in the room and EGIS, and if EGIS was involved then there was not going to be any kind of decent conversation and I think that's why we decided to let someone else handle this, that had a better relationship with the people.

Alderman Santos: Well shouldn't we have amended the contract at that point rather than waiting until after they do more work without any authorization?

Alderman Jordan: That's what I'm thinking.

Mr. Tarvin: The problem is that we don't know how much to amend it by, we still don't know. At the time we were asked to do that we went forward knowing that we were not going to exceed our contract amount but we were doing it at your request. At this point to be honest with you we don't think you should spend anymore money on this, because we agree with the mayor. We don't think its getting any further, but since we don't know how much effort you want us to do, we don't know how much to ask for.

Alderman Santos: We can have plenty of public comment without having to pay engineers to sit in on the meetings. So don't we pursue public comment, free public comment?

Alderman Jordan: I agree. We can get a room somewhere.

Alderman Thiel: I agree.

Alderman Reynolds: How are you going to answer their questions? We don't know where they are at and what they are doing. The last meeting Mr. Dumas had the impact group was talking about selling it to the public school or to the university. Why are we spending more money on this, I don't think anybody wants to do anything with it. I think it's a dead in the water subject. I think we need to drop it until somebody comes to us and tells us.

Mayor Coody: Just this last week I had one national major telecommunications firm ask if we're going to do anything out there, I basically have them on hold. Another outfit is interested, it's not a technology based firm, it would be an entertainment based firm, but there is interest.

Alderman Jordan: There's that entertainment district.

Alderman Reynolds: Entertainment district.

Mayor Coody: I basically told them that they probably wouldn't be a good marriage for what has been envisioned for that property. We get interest on that property all the time but I don't know what to tell them because I'm saying well its open ended.

Alderman Reynolds: Maybe we need to turn it over to a real estate firm with that fiber optic cable in the ground and let them sale it and let's get out of land business.

Mayor Coody: Is that a motion?

Alderman Reynolds: I think we'll wait until this committee comes back and gives us the final on it. It maybe the next motion we make.

Alderman Thiel: We have now had an appraisal on it you said, can this Council see that? We have not seen the appraisal.

Mayor Coody: Gary you what to see if you can make some copies of that for the Council?

Gary Dumas: I'll get that out to them tomorrow.

Mayor Coody: Thank you.

Alderman Thiel: We find out these things via the public that's interested. They're emailing us to let us know that this information has been given but.

Mayor Coody: Will you do a better job Gary in getting all this information to the Council.

Gary Dumas: Yes I will.

Mayor Coody: Thank you very much. And I'll try as well.

Alderman Thiel: Thank you.

Alderman Marr moved to approve a resolution for the \$16,927.47 that was owed, of charges that we have spent according to the detail that has been provided to us but not for the \$32,388.47. That we look at our director Gary to evaluate the EGIS contract to see if there's any funds in that for a public meeting that we want to move over, and if we need to go above those amounts in either of the cases after that. **Alderman Reynolds** seconded...

Once we know what work product that we are getting then maybe we can have a discussion about whether we want to spend \$15,000 for what that would be. But today I can't get there.

Alderman Santos: I'll probably vote for it but I want to add that no more consultants should be doing unauthorized work and expecting us to pay them in the future.

Mayor Coody: I'm sure that their perspective was that they were authorized.

Alderman Santos: We gave McGoodwin, Williams & Yates a free shot. Let's give McClelland one.

Mayor Coody: This Council authorized them to do public meetings; they were authorized to go forward. We didn't say do three public meetings or do 20 public meetings and only spend this amount of money. This Council told them to make something happen and they've been trying.

Alderman Santos: We only wanted to spend \$4,461.00 on it, not \$21,388.00.

Alderman Jordan: That's correct.

Alderman Santos: That was pretty clear.

Alderman Bechard: I think you made a great point there. It's something that we, both Mr. Marr and Kevin have called for, that when we ask for additional work we need to cost justify the work so that we're all clear on what we're asking for and the cost implications. I do think that based on what I've heard you say that the City Council asked you to do additional work, we should have been clearer. That's something we need to be thinking about in the future, that we ask "how much does that cost?"

Mayor Coody: So the motion is to approve the \$16,927.47 that is owed.

Ms. Davidson: Spoke on the project.

Mr. Tarvin: We actually had 69 hours approximately in preparation for three meetings, roughly 69 hours in preparation of drawings before the meetings. We had about 13 actual hours spent at the three meetings. We had 157 hours of engineering design and cost estimating of the three plans once they had been selected, so most of the cost is in the cost estimates. We had to do a fairly substantial level of design. I personally laid out all the water and sewer systems. I calculated all the invert elevations and all manholes so that we could give you a good cost estimate for the three options, and then we had the street lay out and the drainage structures. It's not like we're billing 300 hours per meeting or something.

Ms. Moorman: Spoke on the project.

Jeff Erf: Spoke on the project.

Mr. Robert Ferrell: Spoke on the project.

Mayor Coody: At the beginning of this I really had high hopes that we in Fayetteville, Arkansas could show that we could do a business development in an environmentally sensitive way where we could preserve a good portion of the land and do a very environmentally sensitive development in a developable part, and find common ground where the environmentally community and the business community could work together. We'll continue to have environmental endangeration until businesses realize that the environment is something that can be worked with and should be worked with in order to pursue and protect it for all our benefits. I'm disappointed that Fayetteville is not leading the charge to show that the business environment and natural environment can work together.

Mayor Coody asked shall the resolution pass. Upon roll call the resolution passed 6-1. Alderman Bechard, Santos, Reynolds, Thiel, Young and Marr voting yes. Alderman Jordan voting no. Alderman Davis was absent.

RESOLUTION 122-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PRUNING AND TREE REMOVAL: A resolution authorizing the mayor and staff to work with local public utility companies to seek long-term solutions to the problems arising from the pruning and removal of trees near overhead lines.

Pete Heinzelmann: Voiced his concern about the drastic clearing of trees along our city streets and in our yards. He would like to see the city and AEP; the power company, sit down soon and work out some acceptable method of trimming around power lines. He would also like to see at least some of the lines put underground. He hopes that Mayor Coody and the City Council will seriously consider starting a program to bury utility lines.

Mayor Coody: Thank you very much. You mentioned Greg Boettcher; one of the reasons that I hired him for this position was because of his extensive background in electrical utility work, so he would be able to help us with this kind of job.

City Attorney Williams read the resolution.

Alderman Young: I'd like to say that I have a problem with the resolution as it is read right from the very beginning, because of the use of the word authorization. The mayor and the staff are already authorized to do this; they don't need any further authorization, now if this resolution states that it encourages the mayor to do this, that's fine. The mayor already has the authorization to do that, that comes with the tree ordinance.

Alderman Thiel: That's a very good point.

Alderman Young: So there's really no further authorization needed.

Mayor Coody: Would you please make a motion to change that language then.

Alderman Young moved to change the wording to "That the City of Fayetteville hereby encourages the mayor and the staff to work with....". Alderman Santos Seconded.

City Attorney Williams: That would also go for the title right?

Alderman Young: Right.

Upon roll call the amendment to the resolution passes 7-0. Alderman Davis was absent.

Mayor Coody: The reason for this resolution is to show that the City Council supports this effort. We wanted to make sure that we're all on the same team and same page on this because this is going to be a long term process and I didn't want to have somebody come back later on and say they didn't agree with this law. So it's good to have the City Council behind it.

Alderman Thiel: I know that this resolution is looking at long term solutions and I know that that's important, but I think on the short term we need to realize that SWEPCO does have to trim branches and trees. We could also encourage SWEPCO to do more frequent pruning rather than such drastic pruning. I know this will probably cost more but if there's some way we can encourage SWEPCO to prune more often and communicate between the neighborhoods. There just needs to be better communication between the utility company and the people that are going to be affected so that they will know when they are going to prune so they can prepare for it.

Alderman Reynolds: Mayor I wish that we would have the same franchise agreement with SWEPCO that we have with Ozarks Electric. I don't know why it didn't happen. We certainly need to move forward in your approval and get that agreement with SWEPCO for our future.

Mayor Coody: Is there a date certain for this franchise to expire and a new one to be reissued?

City Attorney Williams: I not sure, I'll have to look at that. I think there is and I don't think it's immediate, but it doesn't mean that we can't renegotiate with SWEPCO if they're willing to do it.

Alderman Santos: Seems like I saw that either party could back out with 60 days notice.

City Attorney Williams: We could certainly renegotiate with them and we can see if they will agree to the same terms that Ozarks Electric has agreed to.

Mayor Coody: I've been out with Mr. DeWeese, on several occasions, we've met with the Public Service Commission member and some other folks about this issue. SWEPCO's not the only utility on the power poles, so are Cox Cable and Southwestern Bell and I don't know if there's anybody else on there, but SWEPCO is at the top. So you can basically look at the poles and see who's got what wires where. We'll have to work with all the wire services to try to get this hammered out.

Alderman Marr: I would also encourage a local Public Service Commission meeting so that citizens can easily be able to provide that input locally without having to go to Little Rock or somewhere else to get their point across. I received probably more calls on this than even my crazy outdoor music ordinance, so I do think it's a major issue. We saw this in the historic neighborhoods this time and some major traffic thoroughfares in our city that aren't real attractive. I cringe at the thought of people driving down North Street after football games and seeing some of the views that we have there. I realize that we only have power and authority to do only certain things and this is really handled by the Public Service Commission.

Mayor Coody: One of things that we've discussed is burying all the power lines in town but that would be prohibitively expensive, so we're going to look at different options and use the option that might work best for any given situation. Some might be buried, some might be moved back to the old alleys we have here in town. I think getting the power lines off our main thoroughfares and main street to where when we drive down the streets we don't have to see this extensive tree trimming going on and we can build an urban forest. We could develop a good tree planting program where we don't have to plant trees now and 20 years from now cut them all down. I know in the historical district they bundled the electrical in a very tight bundle with insulators to kind of compress them to where they will have a lesser impact on the trees. I think there are a lot of different options, we're going to look at different options for different locations, all of it costs money though.

Alderman Thiel: That is one reason for us to keep in mind to not abandon our alleys. We haven't been doing that.

Alderman Santos: The University uses utility tunnels; it's about nine million dollars a mile for a utility tunnel.

Alderman Jordan: In the neighborhood that I live in we have never had our trees trimmed. I've lived there 25 years and we never had our trees trimmed but they're certainly trimmed now. My neighbors took it a step further; they came to the house and expressed their displeasure. I think one constituent said it was like the limbs had been beat off with a rope some way. I think that those underground lines would be the way to go. Everybody came home one night and there are these tops of trees laying in their yards.

Mark Kenyon, Coordinator of the Wilson Park Neighborhood Association: Spoke in favor of the resolution.

Mayor Coody: Thank you Mr. Kenyon. You bring up a good point when you say that the citizens need to get involved too because this is going to take everybody working together on this.

Brian Steel: Spoke in favor of the resolution.

Sharon Davidson: Spoke in favor of the resolution.

Alderman Bechard: Do we know how often these people come in and cut these trees down?

Mayor Coody: I think it is on a seven year cycle but I'm not sure.

Steve Singleton: Spoke in favor of the resolution.

Judy Singleton: Spoke in favor of the resolution.

Bill Dollar, representing the Tree and Landscape Advisory Committee for the City of Fayetteville: Spoke in favor of the resolution. We are meeting every Monday at 4:00 in Room 111 at City Hall to address the issue of utilities and tree trimming in the City of Fayetteville. These meetings will be on an on going basis until further notice.

Alderman Young: Kim Hesse, are oak trees considered slow growing species?

Kim Hesse: Fairly slow growing, there are some types of oaks that are quicker than others; it just depends on a lot of different situations. The growth of every tree species depends on many different parameters.

Alderman Young: Could you make a wild guess at about how much an oak tree grows in a year?

Kim Hesse: No, it depends on soils, moisture and on the amount of sun that it gets; there are so many different factors. Typically in our soil they are so shallow and so rocky that they are quite slow growing, but you'll have an occasional situation where you will be amazed at how quickly they can grow. So it's hard for me to give you that.

Alderman Young: In rocky soil they don't grow very fast and in good conditions they do grow fast.

Kim Hesse: They do grow fairly well.

Mr. Tommy DeWeese: I work for American Electric Power. This is the actual document that we leave at the premises where we go to trim the trees, this is left two weeks in advance of that. I have a document that basically outlines a notification process. The tree trimming issue in Fayetteville is almost an annual event. We would sure like to strive for everyone's satisfaction so that we absolutely have the minimum impact possible. We try to do the balancing act that we're charged with on maintaining reliable electric services and still yet trying to balance the assets that we have in Fayetteville of the trees and the beauty.

A long term solution is really what I think the mayor and I have talked about. We've driven around town and we've looked at some various installations, this is what I know that American Electric Power and myself, a resident of Fayetteville would like to see happen. Underground lines are mentioned a lot here, they are extremely expensive. We did a study of the south part of College Avenue five or six years ago and that was running at a little bit more than \$1.5 million a half mile for the electric utilities part to bury those facilities. There are expenses that you have to take into affect not only from the electrical side of it but from the telephone, television cable and also most important from the individual whether it's a business owner or homeowner. In many instances if you go into an existing area where you have what we call overhead service it's going to require that resident or business to relocate their service entrance and to have quite an expense on their part as well. I've agreed with the Mayor that we would go in and look at various locations in town to see where we could get the biggest return for our dollar and save the most tree canopy that we can. That doesn't mean that this is overall cure a 100% solution that's going to happen overnight; with the dollars that we're talking about here it's very long term. It's going to be a slow proposition but we at least need to identify where we want to target our efforts. I wish that I could say the tree trimming activities in our town will go away, they will not. We do notify the city in advance on the circuit that we plan to trim; we keep an outage record of all those circuits. North Street with WRMC hospital and the VA hospital had a bad outage record on it, when you have facilities like that on it you want to try to maintain reliable services there as much as possible, so that was one of the reasons for North Street. But I'll give you a heads up right now along Highway 45, Mission Street from the cemetery on the trees are burning in the lines out there and we're going to have to trim that area out there. We try to give the city advance warning. I know that those will be available to the Tree and Landscape Committee as well on where we need to plan on trimming out there; we'll be glad to try and help to improve on the communications gap as much as possible. I'll be glad to work with you all towards that goal, but it's a long term solution and we've got a beautiful asset here that we try to maintain as much as possible. It is so expensive and one solution bearing the lines is not it, as the mayor mentioned it's going to be a combination of a lot of things. 1916 was the first franchise that was granted by the City of Fayetteville to the electric company, we're not going to be able to correct a lot of problems that have gone on since 1916 overnight, we just don't have the money to do it. I think we can take a step forward and keep stepping forward next year and the next year after that to do it. I will never be able to promise you that we will not have dissatisfied citizens in

Fayetteville over tree trimming. I have worked for the utility company for 33 years and I've never seen a pretty tree trimming job in my life and I don't think I will but it's a necessary thing that we have to do to maintain our service. I will volunteer to take the steps forward with the city and the citizens to try to look at the areas to see what we can do to at least start down the road to this because it's an annual thing we have here each year.

Alderman Marr: You say it's a two week notice but I went home and looked at the date on it and it wasn't any where near two weeks, so what is the process of tracking that these are in fact being delivered with that much notice. How do you handle the situation where you are trimming in the summer and people are on vacations and what you may count as a two week notice maybe a one day notice for them?

Mr. DeWeese: We have an individual that his sole job is to contact the individual property owner, in Fayetteville we're sort of unique we have a lot of students here that rent property and they could really care less about the trees or what happens to them. We try to as best we can to contact that individual property owner not the kids that are living there or the renter.

Alderman Marr: How often do you get back to an area, what would be the typical cycle?

Mr. DeWeese: To give you a specific answer four years, in reality it may have varied 15 years or 10 years. In some really sensitive areas, we have not been in there as often as we should have and we may have taken the easy way out to try to avoid the criticism and the public out cry whenever we do. We realize that and we try to work with them. Four years if you want a specific answer from me but in reality it varies a lot.

Alderman Marr: Why is it not acceptable to allow a neighborhood association or a homeowner to contact their own service to trim if they use the service you're using?

Mr. DeWeese: The main thing with that is the safety and reliability issue that we have to have working around electrical conductors, that's really the main reason that we have to have those people approved. They have to have the proper training. We do have an arborist on staff that does make those cuts on those trees and we have them reviewed. I know that the city, Kim reviews a lot of our cuts as well.

Alderman Marr: Have they reviewed some of the pictures that we've seen?

Mr. DeWeese: Yes.

Alderman Marr: And what was their assessment of that trimming?

Mr. DeWeese: You'd have to ask Kim you know on that.

Alderman Marr: What about your arborist?

Mr. DeWeese: My own assessment on that, yes they are very drastic looking cuts on a lot of those trees, I don't want to speak for Kim you'd have to ask her. To my knowledge we have not made any cuts that were not properly done according to the arborist standards. I am not an arborist, let me make that clear.

Alderman Marr: I guess I too am looking for some short term solutions. If you have an approved vendor list who understands how to work around utility lines then I don't understand why that list can't be made available to individuals or to neighborhoods to have them contract to trim them yearly if they choose to do it so that they don't have trees destroyed. I don't think anyone wants to have their power out or doesn't want the utility to be able to do what they need to do to maintain power to the city, but at the same time we don't want to ruin them. I don't know the solution but I think you need some short term solution other than we're going to get to bury them. I researched a county in California and it wasn't millions, it was billions of dollars to put their utilities underground. So I don't see that as a solution that's going to help us today.

Mr. DeWeese: It's so expensive and the one thing that we want to work with the city on is to try to go in and try to save some existing tree canopy where we can. Where we need to focus our efforts on is where we can go in and maybe reroute some lines or something like that, again we're talking about a lot of money and it is billions of dollars if you were to get in that area. With the environment that we have here we really are susceptible to storms, whenever we have storms here we have a tremendous amount of outages. December 25th of 2000 we received 26,229 calls for power outages, we really suffered with lengthy outages in some areas of Fayetteville that we're trying to correct right now with our tree trimming program. Some of those outages have been three, four and five days and that's inside the city limits and we're working hard to try to eliminate that in the future, so it's a balancing act. It really is, but again I would only offer to you as the City Council and the City that we sure are willing to take the step forward with you to work where we can and to work towards a long term solution.

Alderman Jordan: In my neighborhood, I've lived there 25 years and this is the first time we've had any tree trimming in that area that I can recall. Across the street from where I live, there's two huge trees sawed completely down. There's has to be a better way.

Alderman Bechard: How often do you have people trimming trees in Fayetteville? Is it everyday?

Mr. DeWeese: We trim in Fayetteville 12 months out of the year.

Mayor Coody: Is there a chance that you could have an approved list that does your work for you, that you could submit to the neighborhoods and they could contract with the same people that you are doing your work with. Neighborhoods could pay them directly and keep you from having to do it, is there a chance that you can do something like that.

Mr. DeWeese: I will be happy to explore that with our company. I can tell you from past experience though, the liability that is incurred, that the answer was no.

Alderman Thiel: Even if they are using the same companies. I don't understand why.

Mr. DeWeese: If I understood the question it would be an approved list of contractors that an individual neighborhood could choose from if they wanted to engage in that. My answer to that was we have not ever done that in the past and the reasoning for not doing it is the liability incurred.

Mayor Coody: If AEP was completely out of the loop, if the neighborhood was contracting directly with the company as a one on one relationship and you all were a million miles away from it, would that be a doable situation.

Mr. DeWeese: The answer to that was due to the liability aspect of it, if an individual contacts the line no matter who basically he is working for the utility company most often is drawn into it.

Alderman Marr: How's that different if they are doing it for you and they are doing it for a neighborhood. The same person is up there trimming regardless.

Mr. DeWeese: As long as you "contracted with the same people" that we had, I don't know if we have a problem with that, but I would have to run that by our legal department. You have to realize there is a tremendous liability around electrical power lines, and it's proven time and time again in court cases and in northwest Arkansas where you have electrical contacts and fatalities which we have had in this area, the resulting liability and the litigation that goes along with that is very substantial.

Greg Boettcher: I know that in our communities when we're doing trimming you maintain radio communications with where ever they are trimming. We reset the breakers, so if someone gets in the line the breaker is reset automatically that way there's less potential for injury. There has to be a lot of coordination with the electric company and your dispatchers when you do trimming. I think once you cut clearances, aren't other trimmers allowed to shape or otherwise work on the trees, is that correct.

Mr. DeWeese: Once you get your clearance, yes.

Alderman Marr: But the clearance is to chop it down, because that's pretty much the choice.

Mr. DeWeese: That's sort of after the fact type deal. I can't express enough of the liability and safety issue that we go through when you're working around those conductors like that.

Alderman Young: You say you're trimming year round, this company you hire to do trimming typically how long is their contract?

Mr. DeWeese: Historically speaking for five or six years, seven years or something like that.

Alderman Young: How come I see so many other companies?

Mr. DeWeese: For years up until about 1990 we used West Tree Service in Fayetteville. I may be off a year or so here so forgive me. About 1992, right in that area, we went to Wright and this year we have just renewed AEP's total service area with ASP Lund and that's the new "group" you see in Fayetteville.

Alderman Young: Well it seems like I have seen quite a few others, I may be mistaken.

Mr. DeWeese: Wright was out of Iowa. ASP Lund is a national company. They've got the orange and black trucks.

Alderman Young: That's one of the things that I and everybody else sees, that they're all from out of state.

Mr. DeWeese: West is from out of Little Rock and they've worked here for years.

Alderman Young: You've mentioned the amount of trimming but did I read correctly that you trim 15 feet away from the lines.

Mr. DeWeese: You can't say that as a general rule. The clearances are based upon the voltage, the type of line and the line construction, I can't give you a one size fits all answer, and there are different clearances for difference voltages.

Alderman Young: So the voltage is what?

Mr. DeWeese: That's one of the things about the North Street area, that is a major circuit high voltage line, there's more clearance there and that's one of the reasons that it looks like it looks.

Alderman Young: That's why I was asking Kim how fast the trees grows, because at 15 feet it would take an awful long time for an oak tree to grow back any where close to the line.

Mr. DeWeese: I'm not an arborist but I will say this in working around them for 33 years each individual tree, each individual soil, you sort of have to look at it individually.

Alderman Young: I'm all in favor in working with you and I understand the safety aspect of it but you all are talking about long term solutions and other solutions. I would just encourage you to look at the corporate responsibility and your corporate policies, because your policies may be set corporate wide all over the country but trees in Fayetteville may not grow as fast as other parts of the country. These arborist standards may not take that into account either and that's the only thing I would encourage you to look at.

Mr. DeWeese: I appreciate those comments and I will try to echo those comments whenever I can because Fayetteville is an extremely sensitive tree area and we realize that. I preach that to our crews coming in here and we acknowledge that.

Mayor Coody: It's kind of a twofold problem, one is that we are losing a lot of our best trees and that of course has a lot of folks upset, including myself because I hate to see nice trees lost as well. The other half of the equation is that as we expose more and more of our utility lines, we're doing two things were exposing even though we appreciate the power and we appreciate what they provide for us visually they don't add much to the community and as we advance in technology where we are getting more and more of these huge thick black cables and we're adding more and more lines to the poles as we cut the trees back more and more, it makes a downward spiral in the appearance of our city. I think this gives us several reasons why we should work together to alleviate the visual impact of the utilities that we all use; if it wasn't for us using them we wouldn't have this problem. We all, SWEPCO, the citizens, Bell, Cox, we all bear a responsibility here and we're all going to have to bend to make this work for the whole community. There may be some neighbors that don't want to have their utilities moved to the back of their house because there's a tree they might lose back their, but it's better for the whole community if we do get them off the main thoroughfare. Not everybody is going to be happy but for a community wide project we'll all have to give some on this.

Mr. DeWeese: One thing I want to add there. I can't make a tree trimming job look pretty, but I can acknowledge to you all, we need to improve and I want to improve, if we've got a problem in communications, I want to take care of it.

Kim Hesse: That's where the problem is because they sucker out the very long weak branch joints, because you don't cut it at the nub or branch knot you just cut them and that's what causes the problem. We do not want them to be topping trees at all, that's the worst thing you can do. You're better off losing the trees and starting over. Where we have trees where the tops have been cut it's much more difficult to find ways to prune them out because of the way they've been ruined, a lot of those trees are like that. Whereas if they were pruned properly we would be able to make more investments. I don't know if that helps but it is a possibility.

Mr. DeWeese: Thank you all very much for your time. I can sure pledge that we want to work with you where we can, take a step forward where we can.

Ms. Singleton: I just encourage you to add short term to the resolution.

Alderman Santos moved to amend the resolution as suggested to include short term as well as long term solutions. Alderman Jordan seconded.

Mayor Coody asked shall the amendment to the resolution pass. Upon roll call the amendment to the resolution passed 7-0. Alderman Davis was absent.

Alderman Santos moved to pass the resolution. Alderman Bechard seconded.

Mayor Coody asked shall the resolution pass. Upon roll call the resolution passed 7-0. Alderman Davis was absent.

RESOLUTION 123-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Thiel: Actually this is something that I know several aldermen have suggested and we have talked to the mayor about, we need to have a retreat.

Mayor Coody: Yes.

Alderman Thiel: We need to discuss the preliminary budget and we need to establish priorities. We need I think probably a whole weekend.

Mayor Coody: Hugh has asked Mr. Rosen to join us but Mr. Rosen and Hugh have been playing phone tag apparently. We had a gentleman set up to try to come but he's booked out way in advance so we decided to go with somebody locally that could do it on a shorter notice.

Alderman Thiel: But can we get a date scheduled here. I've been talking about this for months.

Mayor Coody: I know as we all have. How about if you give me Mr. Rosen's number I'll see if I can't get in touch with him and set something up.

Alderman Marr: I think this is so needed and a great idea. I'm glad we're doing it but I would also encourage us so that the person who facilitates our meeting comes with some municipal background in addition to just a business, that's my one concern about it.

Meeting adjourned at 9:50 p.m.

MURDERED 10/1/00
GILBERTO HARRIS
JAMES GILBERTO HARRIS