MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
AUGUST 15, 2000

A meeting of the Fayetteville City Council was be held on August 15, 2000 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Mayor Hanna, Aldermen Reynolds, Austin, Davis, Trumbo, Daniel, Santos, Young and Russell; City Attorney Jerry Rose; Staff; Press, Audience.

CONSENT

APPROVAL OF THE MINUTES: Approval of the minutes from the July 18, and, July 25, 2000 meetings.

Mayor Hanna stated Wings Air would be removed from the consent agenda.

Alderman Austin stated he would like to have the Skate Park removed from the consent agenda to allow public comment.

Alderman Young moved to approve the minutes. Alderman Daniel seconded the motion. Upon roll call the motion carried unanimously.

OLD BUSINESS

NEW BUSINESS

ARKANSAS RESEARCH AND TECHNOLOGY PARK: An ordinance approving a bid wavier and an agreement (Amendment No. 1) to a previous contract for additional professional services with EGIS Consulting Inc. regarding the USCOE 404 permit for the Arkansas Research and Technology Park. The total contract amount is $164,050.00.

Mr. Rose read the ordinance for the first time.

Alderman Daniel stated she agreed with the bid waiver. She wondered how the public would benefit from the wetland and woodland reserve would benefit the public and if it could be used to supplement biology classes.

Mayor Hanna stated he did not think that there were any plans at the present how the property would be used. It would be considered a wetland and they would have to be careful on what they did with it.

Mr. Venable stated they would have to be restrictive. There was the Arkansas Darter present, and there was some concern over that fish. There could be some trails put in, but they would have to be careful not to disturb the wetland.

Andrea Radwell, an area resident, she expressed an interest in the preservation of the Wilson Springs wetlands. Her comments were to provide some information to the City Council to may be helpful in making decision regarding the development of the Arkansas Research and Technology Park. The first issue was the Arkansas Darter, a fish species found in Wilson Springs and Clabber Creek. The Arkansas Darter is a candidate species for endangered status. It would be in the city's best interest to proceed as though it was fully listed. The Corps of Engineers concurs with this recommendation. The Wilson Springs wetland is a very high quality wetland. Over three hundred species of living things have been identified. It should be kept in mind that our objective is the preservation of the wetland as a whole. The other issue that is relevant to decisions regarding the development of the Arkansas Research and Technology Park is the proposed sewer line that is shown in preliminary plans along the eastern border of the Park. A 404 permit is required for each section of the line that crosses a stream or wetland. I talked with Ken Lyon at the Corps of Engineers last week posing the question of how this would be handled since the line is in an area that already requires a permit, He said only one 404 permit will be required. But it needs to be addressed how the sewer line will be designed to minimize impacts on Clabber Creek. It is a large line with a one hundred foot easement. The Fish and Wildlife Service has expressed their concerns about the impact of the line because it crosses Clabber Creek near its confluence with Wilson Springs. The design of the line and considerations for protecting the stream during construction will need to meet the approval of the Corp and Fish and Wildlife before the 404 permit will be issued. Her intent was to inform the council on the status of the Arkansas Darter and the plan to include a sewer line in the mitigated area of the Park. Informed decisions are required to arrive at a plan that is acceptable to all interested parties.

Alderman Santos stated he had confidence in EGIS that they would do everything they could to protect the darter as part of their contract.

Ms. Radwell stated she would like to see the land used for educational purposes, however, it was a delicate situation because it was wetland. She thought there was an area that could be used as a park.

Mr. Drew Holt, EGIS Consulting, stated Ms. Radwell was correct about there being concern about the fish and the wetland. EGIS has worked with the city to reduce the impact associated with the first project plan. He believed that they had reduced the impact to a point that the project would be economically feasible and environmentally friendly. They were at the point now, that they were wanting to finalize the mitigation plans to move forward with the project. The fish species would be a major consideration in the final design as were the wetlands. The mediation plans included thirty acres of preservation and approximately fifty acres of creation.

There was approximately ninety acres of mitigation. The creation was where they created wetlands and upland buffers as part of the mitigation. The preservation was leaving it as it was.

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

Mr. Rose read the ordinance for the second time.

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

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

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

ORDINANCE 4266 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BEKKA DEVELOPMENT: Consideration of a claim by Bekka Development for legal expenses in conjunction with Town Center. A claim for parking rental revenue was approved at the June 20, 2000 meeting of the Fayetteville City Council. If the claim is approved, approval of a budget adjustment to fund the approved claim is also requested.

Mayor Hanna explained they had seen this item earlier and it had been their desire to wait until the judge ruled on the motion to pay for their expenses. They had been turned down, so it was now back to them.

Alderman Daniel stated that even though the City Attorney had stated in his opinion they were not legally responsible for this. Bekka Development had been very cooperative. It would have been impossible to do the Town Center Project without their cooperation. They had been through a lot legally. She was personally in favor of this and would be voting for the compensation.

Alderman Trumbo stated he agreed with Alderman Trumbo. No one anticipated the Town Center lawsuit. They had been brought into. The city had benefitted from the expertise of Jack Butt and his law firm. He did not have a problem paying the legal fee.

Alderman Russell stated he had voted for paying for the lost parking revenues, but he did not believe they should go along with this unless they were obligated to by contract. The American rule was that they could be sued for anything and when you are you paid your own attorney fees unless they could get the plaintiffs to pay because the law suite was frivolous or another person was contractually obligated to pay. He had supported their right to go before the judge and try and get the plaintiff to pay the lawsuit, but the judge denied the motion. They were getting some benefit from the Town Center, so he would be voting against the resolution.

Alderman Davis asked if they were setting themselves up for further attorney expenses due to the appeal.

Mr. Rose stated the case may or may not be appealed, they did not know yet. The time for appeal had not run. If Bekka chose to have an attorney to represent them in the appeal, then attorney would be incurred.

Alderman Trumbo moved to pay the legal expenses as submitted by Bekka Development Co. Alderman Reynolds seconded the motion. Upon roll call the motion failed by a vote of 3-5-0. Russell, Austin, Davis, Santos, and Young voting nay.

FAILED BY A VOTE OF 3-5-0.

FULTON PARKING LEASE: A resolution approving a lease agreement with Fulton Enterprises, Inc. d/b/a Town and Country Shop, located at 9 South Block Street for the lease of four parking spaces.

Alderman Trumbo stated they had leased thirteen parking spaces to the Television station that had moved into the old Campbell Bell Building. Part of their reasoning in leasing those spaces was that they were investing in an old building and were bringing more life back into the downtown square. The rate was fifty dollars per space per month. The reason they were looking at approving parking leases for property owners on the square was because they were land owners on the square because of the investment they had made. He thought it was the right thing to do for people who had business on the square. They were looking at detailed parking policy in the future on leasing other public parking spaces. These were the only ones that he was aware of that was for land owners on the square. It would help the people who had a great deal of capital invested in the downtown square.

Mayor Hanna stated the leases were going to play an important part in their ability to build a parking deck on that lot, which they were doing some studies on now. They would be leasing more spaces as time went on, because they were going to have more spaces.

Alderman Daniel stated she did not see an overall picture here. She thought if they started leasing out the spaces it would start effecting general pinch on public participation. People who come to the Farmers Market. She was concerned about leasing those out until they looked at the overall picture.

Alderman Russell stated he understood the concerns of businesses around the downtown area. He has spoken with at least one business owner down there had he completely understood the concerns about customer parking, especially after the lease of the parking spaces to NBC. He was not categorically opposed to any leases of the downtown parking spaces, however, since there was a comprehensive parking plan in the works he thought it would be more appropriate to consider these leases after that plan was developed. He apologized and took one-eighth of the responsibility of having leased those parking spaces to NBC without a plan being in place and without asking the Parking Management Coordinator what she thought about it. He thought more leases might make the situation worse.

Alderman Russell moved to table the item. Alderman Daniel seconded the motion. Upon roll call the motion failed by a vote of 4-5-0. Reynolds, Austin, Davis, Trumbo, and Mayor Hanna voting nay.

Alderman Austin stated some cities gave incentives to corporations to locate in there city. If they were going to bring items to council they needed to vote on them. Up or down.

Alderman Santos did not believe it was time for them to be voting. He did not believe they had enough information. He was concerned they were going to kill the business downtown if they did not protect public parking for customers.

Alderman Austin asked if he was protecting them from themselves. If the owners were leasing spaces so they could have business.

Alderman Young stated the whole purpose of having an overall policy to help decide these things. These leases may be just fine, if they had an overall policy. The policy needed to address more than just the square. It needed to address Dickson Street. Some day it would have the same kind of problems. If the parking deck was constructed what would happen to these lease. Who would have priority. There were a lot of questions that were unanswered.

Alderman Austin asked how long they had been dealing with the parking issue and how many other potential leases are out there.

Mr. Maguire replied they had started dealing with this about April or May of this year. His take on this was that the leases were for property owners that owned property on the west side of the square. That was the only request that they had. It was probably the only ones they would consider. He did not expect any from the Bank. He did expect a request from Merryship to lease to tenant in the condos in the Campbell Bell building. Those leases would be held to the area along the alley. The retailers that were on the agenda, he viewed them as protecting their customers. Not someone's employee spaces. The policy issue was political bull.

Alderman Davis asked how far along they were on developing the policy.

Mr. Maguire stated he had just given them the policy.

Alderman Reynolds stated they should be proud that NBC came to the square. He did not think they had another business that they could compare to NBC or them needing the thirteen parking spaces. He was in favor of the leases, but he would like to limit the number of leases per owner or business, so the public would not loose all the spaces.

Mayor Hanna stated he did not believe they were leasing the spaces for themselves. He thought they were leasing it for their customers. They had been advised that the city would not police those spaces and that they would have to do their own.

Alderman Trumbo stated if they were going to have feasibility to float a bond issue to add a deck to the parking lot. There were not going to get a debt rating by bond rating agency to float a bond issue unless they had leases to provide cash flow to repay the debt. He thought this was a preparatory step to get the leases and cash flow in place. He thought the policy could come later in the bond issue. They had to have substantial lease revenue as a repayment source in order to float a bond.

Alderman Daniel stated she did not agree with his reasoning. She thought a bond agency would see that it was a good investment. She was not against helping their businesses. She thought the city should be very actively involved. She was against doing it piece mill this way.

Alderman Russell stated there was a member of the city staff call the Parking Manger who has expressed interest in developing a policy. She thought it would take a month or two to come up with the policy. He was willing to wait until then to consider the lease. He could not vote for this tonight because of the lack of the policy. He stated he would like to vote for this after a policy was in place.

Alderman Austin stated it seemed to him that when someone made an application to the city for something that had no policy on the books. They were operating on what the accepted policy is and they stopped that and started writing policies then they were acting in bad faith. The strongly felt they needed to vote those up or down.

Alderman Santos stated this was not political bull coming from this side of the room. He and his colleague were concerned about preserving public parking downtown. They were only asking that they look before they leap.

Mr. Maguire stated the policy was that they were leasing to property owners on the west side of the square. As far as it being political, let him suggest to them that if they wanted to micro manage city employees, show him in the policy where they could do that. They were managing his business and his employees. He did not appreciate that. He thought it was political.

Alderman Santos replied he thought Mr. Maguire worked for them. And that they represented the public and he was supposed to represent the public and not himself.

Mr. Maguire replied he did.

Mayor Hanna asked for public comment.

Mr. John Lewis, Bank of Fayetteville, stated they had been involved in this discussion about leasing the parking spaces behind their bank. His first comment would be to congratulate the board on leasing spaces to NBC. That was the essential ingredient that got a run down building remodeling into something the entire community could be proud of. He was at channel five on Sunday, and the first thing he had noticed was that they had designated parking spaces at the mall. It was important to them to have access to their vehicles and the studio. The first step was to accommodate a new citizen to their city and to allow them to conduct their business the way they needed to do that. He was concerned about parking on the square for thirty years. He could remember when the parking problem on the square was that no one wanted to park on the square and the landscape problem on the square was that they had to get the grass out of the cracks of the sidewalk. They had seen great progress from a joint effort of tax payers for voting taxes upon themselves to build the Continuing Education Center and all the other civic improvement that had been built downtown. He concurred with the number of leases that they were looking at. He supported that. The bank had made a decision not to ask the city for any leases. They would like for the lot to be run as a short term parking lot. The lot was not for his convenience. He did not park in that parking lot because that was for the customers of the bank and for Town and Country. They were going to have to use the trolley more until they could get all the parking problems downtown solved. He concurred with these leases. The bank was not going to ask for any spaces. What they had asked the city to do was to consider more short term parking so their customers could use them. It was not for the benefit of the employees or the management of the bank. It was for the benefit of their customers and the other customers of business in the downtown area. He would like to see more short term parking. It was a difficult decision.

Mr. Jeff Erf, resident, asked if the Parking Management Coordinator's opinion was sought for this lease and the other leases.

Alderman Austin stated he did not want to get into that issue, because he thought that was in-house issue. The management that reported to the Mayor were present to answer to the public. He did not want to examine what they did in-house.

Mr. Maguire replied she reported directly to Ms. Cramer in the Accounting. There were some issues within the city that they did not consult with second and third level management. They would consult with them if they thought they would have input. In this case they did not see any input in there.

Mr. Erf stated there had been a lot of talk about parking spaces. He thought one of the selling points for the Town Center was that they would be providing parking for the downtown area. What was the sudden interest in parking spaces.

Mayor Hanna replied the sudden interest in parking spaces was the fact that they gotten some renovation on the west side of the square and those people have requested parking spaces. They have had a lot of parking congestion around the square because of the construction both on the private building and the Town Center. The Town Center parking would not be ready until April. It would relieve a lot of parking problems in the downtown area. He stated they were also planning on decking the lot behind the west side of the square. One of the things they were trying to do was to get it set up so they could sell a bond issue that could be supported by the revenues of the parking.

Mr. Erf reminded them that it was public parking. He had concerns that if all the business started leases spaces then they were going to limit parking for everyone. He questioned the enforcement issue.

Mayor Hanna stated it would not be a city issue, it would be up to the person who leased the space.

Ms. Liz Fulton, Town and County Shop, stated her family had been in business on the square for forty years. They had seen a lot of business come and go over the years. They had seen a lot more retail businesses go then they have seen come. They were positive about the square, their customers loved coming to the square. More and more she was hearing them say that they would have stopped but they had not been able to find parking. This hurt her business. What they were asking for was short term parking spaces for their customers. So her customer would believe that they would have a good chance of finding a parking space. They wanted those spaces to be short term and not for employee that had time to plug the meters. They did not allow their employees for to park near the square. She was not asking for her employees or herself. It was important for retail to have designed spaces for retail.

Alderman Trumbo stated he use to work on the square. Most of the people parking in the lot they were discussing tonight were employees on the square.

Ms. Fulton stated most of those spaces were designed as long term parking. There was only a small area near the bank and her store that were short term parking meters. The problem was the employees that were working in the area.

Alderman Davis stated one of the reasons his business had to leave the downtown area was because of the lack of parking. Their customers could not get close enough to come to their office. He thought they should allow these applicants to have these spaces.

Alderman Austin stated they had a problem with managing success. It was a good problem to have. These were good problems for Fayetteville to have.

Alderman Trumbo moved to approve the resolution as presented. Alderman Davis seconded the motion. Upon roll call the motion carried by a vote of 5-4-0. Russell, Daniel, Santos, and Young voting nay.

RESOLUTION 114-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

DAVID AND CATHY, INC.: A resolution approving a lease agreement with David and Cathy, Inc. located at 21 S. Block Street for the lease of two parking spaces.

Alderman Trumbo moved to approve the resolution as presented. Alderman Reynolds seconded the motion. Upon roll call the motion carried by a vote of 5-4-0. Russell, Daniel, Santos, and Young voting nay.

RESOLUTION 115-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

AD 00-24: A resolution approving Administrative Item AD 00-24.00 submitted by Jay Snider on behalf of Kappa Sigma Fraternity to change the name of West William Street behind the Kappa Sigma house (between University Ave. and the alley to the west) to Whiteside Street in honor of Charlie B. Whiteside III.

Alderman Daniel stated she was against changing street names. She was not in favor of this. She had asked the fraternity to find some other way to honor Mr. Whiteside.

Alderman Santos asked if they had received a reply from the University or the Fire Department.

Mr. Tim Conklin, Planning Director, stated he had contacted Vice Chancellor Richard Hudson. His statement had been that they were pleased that the city was considering honoring Mr. Whiteside and they would support renaming the street, if that was what the City Council had decided. If the city council decided not to rename the street, they would encourage the fraternity to find a different way to honor Mr. Whiteside. Mr. Gary Smith, University Transit, was not opposed to the street name change. University Police Department was not opposed to it. Arkansas Highway Department, this was an institutional drive. They did maintain that segment of Williams Street. They were opposed to it.

Mayor Hanna asked if there were any residents on that street.

Mr. Conklin replied there were no houses on Williams Street.

Mayor Hanna stated the street was bound by a cemetery on one side and the other side had the University Parking lot and the fraternity property. There was one lot that faced University that was vacant.

Alderman Santos asked if they were requesting the other block of Williams to change too. If they were changing one block he would like to change the next block. He noted it did not have any residents on it.

Alderman Trumbo stated he had served on the Board of Student Affairs at the University of Arkansas with Mr. Whiteside. He would be abstaining of the vote because they worked for the same stock exchange company.

Alderman Reynolds asked who West Williams was and why the street had been named after him.

Ms. Paula Marinoni, Board of Evergreen Cemetery and Washington County Historic Preservation Society, any street that was named after a person in the central part of the town was probably historic. The street was named after the family of James H. Williams. He purchased the property which now house the Soundware House and Underwood. In 1881 he had built a home on Dickson Street. He was a banker. He was listed in the history books of Fayetteville. They had been a prominent family on Dickson Street. At first she had been opposed to it. Evergreen Cemetery was is the burial place of many of the founding contributors of Fayetteville. It was very important to the history of Fayetteville and to the State. They had been working with families trying to restore some of the monuments. To restore these sites is very expensive. If they could encourage people to take ownership it would preserve this for the city. It was not something the city was obligated to do. They had two main neighbors there. The cemetery, which was very susceptible to vandalism. She had asked the fraternity to enter into an agreement with the cemetery. The fraternity would agree to do all in their power to keep the street in a condition that would serve as a source of pride to the men of Kappa Sigma and Mr. Whiteside. They would enter into an informal neighborly agreement with the Board of the Historic Evergreen Cemetery and to adopt the cemetery as an ongoing community project. This would involve helping to watch out for vandalism and inappropriate behavior in the cemetery and to report such activity to the police and to the Board. We further agree to work with and under the direction of the board on and on going annual project in the cemetery. If the remaining portion of William St. is ever in jeopardy they would join with the community to make sure the remaining portion was preserved. If they had one portion that was preserved then his memory is still in tack. She urged them that this was a turning point in time. Would not cost them anything to help insure the cemetery was watched out for. The Heritage Committee helped them to erect a fence on the north side of the property which has help considerably. They were able to find someone who was dedicated and interested as a grounds keeper to was doing a good job and he was locking and unlocking the gates. The bicycle cops also policed the cemetery. Still there is vandalism.

In response to questions from Alderman Russell, Ms. Marinoni stated she had written the letter with the current president. They were in full agreement. This did not bind the city, but she wanted it documented. It would be reading into the fraternity minutes. She thought it was a very positive partnership for the future. The Board of Evergreen Cemetery are for this under these conditions.

Alderman Davis stated his concern was what kind of house this would be in a few years. Most houses when through cycles. He did not think they could expect any fraternity to help them forever, because of the change in membership

Ms. Marinoni stated she wanted it in writing. There was competition nationally to stand out as a chapter. This chapter of Kappa Sigma has seen very prominent national recognition. This was high profile project and would be in their best interest to be a part of this now. She stated she was aware of the risk. The opportunity far out weigh the risk. The had the fraternity as a partner was a situation they wanted to take advantage of at this time. They needed them to help them..

Alderman Austin stated this was a win win situation. Even if they quit helping in two years, they had received two years free help.

Mr. Jay Snider, Kappa Sigma, stated they took a lot of pride in community serve. He stated it would be taken care of.

Alderman Santos moved to pass the resolution. Alderman Russell seconded the motion. Upon roll call the motion carried by a vote of 6-0-1. Trumbo abstaining.

RESOLUTION 116-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CRAFTON, TULL AND ASSOCIATES: A resolution censuring the Board of Directors of Crafton, Tull, and Associates for the firing of Fayetteville Alderman Cyrus Young.

Alderman Santos stated the firing of Cyrus Young by Crafton Tull was a very public gesture by a firm who thrived on public business firing a public figure. In the letter from Crafton Tull to Mr. Young it directly implied that the interest of Crafton Tull should have been the interest he was representing rather than the interest of his constituents. He stated he would like to remove sections two and three from the proposed resolution, which addressed punishing Crafton Tull. He wanted to remove any mention of punishing Crafton Tull and to leave it as a censure of their actions.

Alderman Santos moved to amend the resolution to remove sections two and three. Alderman Russell seconded the motion. Upon roll call the motion carried by a vote of 6-0-1, Young abstaining.

Alderman Trumbo stated it was incumbent upon anyone elected to keep frivolous items from being brought to the city council. Especially to listen to the City Attorney's legal advise. If a city alderman brought forward an issue knowing that something slanderous might be said in a public forum, then the City of Fayetteville opened itself up for a law suite. He thought it was incumbent upon all aldermen elected to not bring forward something of this nature. He did not agree with what he was trying to do. City government was not suppose to be a forum for special interest.

Alderman Russell asked Mr. Rose if his legal advise change any with the amendment to the resolution.

Mr. Rose asked them to ask themselves these questions about what they were doing. Number one, does Crafton Tull have contracts or the expectancies of doing business within this community. Two, do they had knowledge of those contracts. Third, what was their motive in passing this resolution. If that motive was to induce or to cause other to breach some existing relationships with Crafton Tull or to harm in anyway their ability to do business within the community. They had to examine their own motives and what they had said to others that might come to light in any trail. Have they caused any damage to Crafton Tull by their actions. Have they lost profits or has their reputation been harmed in the community. If their answer was yes to those questions, then they had just been found guilty of tort, tortuous interference with a business relationship or expectancy. The truth was not a complete defense. At issue is your motivation. It was not just what they say, but the reason for which you say it. Law was a little confusing. This would be a jury issue. He could not get it thrown out on a summary. They could risk the tax dollars of the city on the faith of that jury ruling in your favor. He did not think it was in the best legal interest for the city to pick a fight if they did not have to. His piece was only legal. His positive advise, if they wanted to take some affirmative action, he would feel more secure if they passed some general resolution, that was supportive of either Cyrus Young or a particular principle rather than derogatory in any way toward Crafton Tull.

Alderman Austin stated he supported Cyrus Young. He respected him as a person, because he was honest. He like his bull dog spirit on the things he was convicted on. He had noticed Cyrus had abstained on the projects that Crafton Tull had done.

Alderman Santos stated this was not just about Cyrus, this was about private corporations influencing City government by punishing the employees for representing the public interest over the interest of the firm. He would like a censure, a slap on the wrist. No more than what they gave Red China over Tibet.

Alderman Davis stated he did not want to do anything that was going to jeopardize the city.

Alderman Santos stated he did not want to either, that was why he had backed down on the punishment of business. That was not the intent of this resolution. It was to censure them for this one public action.

Alderman Reynolds stated he liked Cyrus, but this was a personal judgment and he thought Cyrus should handle this with Crafton Tull himself. He did not think the city should be involved in it. He would not support the resolution at all.

Alderman Daniel stated she was also concerned about Cyrus. She had agreed to bring this to the public and to let it be on the agenda. She did not believe she had ever keep a request from the public, even if she did not agree with it personally.

A citizen stated she did not understand. People were afraid of losing their job. If a person was trying to do their job that they had been elected to do, why they should have to fear losing their job.

Mr. Rose stated Mr. Young and the ability to hire an attorney and to do what ever he felt was appropriate legally against his former employer for any wrong which had done against him.

The citizen did not believe that it was a personal thing. She did not understand.

Alderman Austin stated the council was not the party to deal with this type of issue. They were not a party to that act. That was between Cyrus and Crafton Tull. He did not believe they were the remedy for the differences between the two.

Alderman Santos reminded them, he was talking about the affect on the city. They were not taking about employee and employer, personnel things. They were discussing the chilling affect on free speech and control of elected officials. It was not a personal thing. It was not Cyrus. It was bigger than that. It was an affront to the city. It was an affront to democracy.

Mr. Rick Crochran, an area resident, stated he hoped the motion before them would drop and that they would not vote it up or down. He would like to see them not vote it. He thought they had expressed their vote of confidence. He was concerned at individuals could pay a price for doing what they felt in their heart. Following the ordinance and laws and upholding those. He did not think what he heard in the media explained everything, but what he had seen, he felt that it was not right. He did not want to involve the city and the public in a lawsuits that they could not win.

Mr. Rose had given them good legal advise and council.

Mr. John DuVal, an area resident, stated he was glad they had amended the resolution. He did not believe they needed to enter into a contest of whether they could beat up on Crafton Tull. He did not believe the way the resolution was now proposed was a threat to Crafton Tull, but it did tell them they did wrong. They did wrong to the city. He did not believe he was spouting a political philosophy either. He thought it was the interest of all the citizens of Fayetteville to make it known it was wrong to interfere with the elective process. He thought that was good for the country. This was a basic principle the country could not exist, if freedom of speech was threatened. It was intimidating to be treated with a lawsuits and if for that reason they declined to vote, he could understand. If they were worried about the votes or the respect of the citizens of the city they would vote for the resolution. The city did want to be defended by just speaking what was right and what was good.

Alderman Trumbo moved to deny the resolution as amended. Alderman Reynolds seconded the motion.

Alderman Russell stated some of the members of the public had a grievance against a firm with which the city does business with on a regular basis. These members of the public have approached an alderman with a request to discuss this grievance with the city council at a public meeting. He believed it was their job to listen to the public concerns and to do so with respect. After doing so they may chose to either act upon those concerns tonight or to act upon them in the future or the tell the members of the public that they understood the members of the public that they understood their concerns but the believed that this was not the appropriate form or time for them to be addressed. While he supported the public right to air their grievances about a firm with which we spend their tax money. He felt uncomfortable subjecting the city or himself to a possible lawsuits by taking any categorical action against Crafton Tull in an official capacity. He would be opposing the resolution on those grounds. His personal views had been made public. With every vote they took they had to weigh the principles involved against the risks of public back lash or a number of other things. He thought there was a great deal of principle in this matter, but he did not believe it was worth risking a lawsuits for the city.

Alderman Austin asked if they would be best served by voting on the resolution or by tabling the issue.

Mr. Rose replied there was some finality opposed to tabling it.

Alderman Russell stated his personal preference would be to table it. He did not want anyone to construe a "no" vote on the resolution as a vote in support as a vote in support of what happened to Cyrus.

Upon roll call the motion passed by a vote of 6-1-1. Santos voting nay, Young abstaining.

RESOLUTION FAILED.

CREDIT CARDS: A resolution establishing credit/debit card convenience fees.

Mr. Rose stated this would be a resolution to allow credit/ debit cards to be used when making certain payments to the city of Fayetteville and establishing a convenience fee for such use.

Mr. Steve Davis, Budget and Research, stated they were asking to have a resolution passed to authorize them accept credit cards for payments in the business office. What this will do will offer the citizens another payment vehicle. This would allow people to pay their water bill with a credit or debt card. In order to use your credit card to pay the water, they would need to come to the business office. State law required that they pass the charge on. They could not absorb the cost. There would be a nominal two percent fee. The bank charged the city 1.97%. They then had the cost associated with the telephone line.

In response to questions from aldermen, Mr. Davis stated currently they had $65,000-68,000 a year write off in the Water and Sewer Fund. By having the ability to accept credit cards they may be able to avoid some of that. They had planned to have a credit card machine in the Parks and Recreation, Solid Waste, and the Animal Shelter divisions.

Ms. Nan Simmons, an area resident, stated this was good idea. She would like to see it applied to the Animal Services Division. Many times a resident coming to get their animal out, their fines were so large that it was a hardship for them to come up with that much cash. She would like to see it extended to them.

Alderman Reynolds stated they were going to experiment with this for sixty to ninety days, then phase it in.

Alderman Austin moved to approve the resolution. Alderman Daniel seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 117-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CREDIT CARDS: A resolution accepting a proposal from the Bank of Fayetteville for credit/debit card processing services, approval of and authorizing the Mayor and City Clerk to sign a Visa/MasterCard Merchant Agreement and setting convenience fees associated with credit/debit card acceptance.

Alderman Trumbo moved to approve the resolution. Alderman Reynolds seconded the

motion. Upon roll call the motion carried unanimously.

RESOLUTION 118-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SISTER CITIES: A report on the Sister Cities Committee's status, program, and recent trip to the Dominican Republic.

Alderman Russell stated as a member of the Sister Cities Committee that went on the trip. The city's sister city is San Diego in the Dominican Republic. Their relationship with San Diego was dormant until a couple of years ago when a couple of went on a trip to revitalize the relationship. Seven of them had gone down there in June. He introduced a video of their trip.

NO ACTION REQUIRED.

WINGS AIR, INC.
A resolution approving a lease agreement with Wings Air, Inc. for an above ground facility which they will locate south of the terminal building ramp. This will allow self-service fueling by the pilot using a credit card. Annual compensation will be $384.00 for the ground area with three three-year renewal options. Flowage fees will be remitted to the City as set forth in Section 91.16 of the Code of Fayetteville.

Ms. Alett Little, Economic Development, explained this would be a self-service fueling facility. It would allow credit card purchase of fuel twenty-four hours a day. She wanted to make them aware of two things. There were two contingencies on this lease. One was that Mr. Shawsha and Wings Air must receive approval through the large scale development process. They were on the agenda for plat review for tomorrow. The second contingency was that they must have a license from Air British Petroleum in order to set up the tanks. One of the things they needed to get approval was this lease. There was one item Mr. Shawsha wanted to bring to their attention tonight. There was an eight hundred dollar fee in the city's code for non-residential development. The area they were discussing for placement of the tank was fourteen by thirty-two feet. It was a very small area. He had disagreement that it should cost eight hundred dollars to get that approval. The main thing that they city would do would be to coordinate the utilities and make sure that the tanks were a save distance from buildings.

Alderman Santos agreed that they were not getting eight hundred dollars worth of review on this project. He asked if they needed to amend the resolution.

Alderman Russell stated the agenda stated they were only approving the lease. He asked if under the Freedom of Information Act if they had the proper notification for the fee waiver.

Mr. Rose stated he was not concerned about the freedom of information act. What he was concerned about was their own Rules and regulations, which required them to go further than legally required to inform citizens of the items to be considered by the City Council. He was not sure if it was appropriate to consider at this point. It would take an ordinance to waive the fees.

Mr. Tim Conklin, City Planner, stated typically he did not accept an application without accepting a fee.

Ms. Little stated there was no question that it needed to reviewed. The question was should the fee be eight hundred dollars. This could be considered an economic development matter. Frequently there were incentives for economic development activities. She stated those were not normally published in advanced.

Mr. Rose suggested that they process the large scale development tomorrow and make the approval contingent upon payment or waiver of the fee.

In response to questions from Alderman Austin, Ms. Little stated they currently had an operator on the field who did serve fuel to airplanes. What they did not have was the ability for people to self serve. They also did not twenty-four hour operation. She did not know of a twenty-four hour operation. They would give them something else to offer people. They had offered the opportunity to the fix base operator about three years ago. They had looked into it and made a decision not to offer this service.

In response to questions from Alderman Reynolds, Ms. Little stated when they had fuel sales on the Airport, they collected a fee that went back into the Airport Fund. The more fuel they were able to sell the more fund would go back into the Airport Fund. The city was not making any of the investment in the equipment. This was only a land lease. They were offering a service that was not currently available. This was City of Fayetteville property. The Airport Board had acted on this at their August 3 meeting. The Fire Chief and the State Fire Marshall had signed off on this.

Mr. Kenneth Shawsho, applicant, stated they presently had a business on the field. They were going into their third year. They saw an opportunity for growth with Fayetteville. It has been a lengthy process. The city of Fayetteville had an ordinance that exceeded the State ordinance. This drove the overall project costs from forty thousand to over ninety thousand dollars. They were asking for the fee waiver because it was going to be on leased property. They had brought their avionic shop to where they were not offering maintenance as well as avionics to the field. They were attracting aircraft from other states. They felt this would be a good and valuable asset for Fayetteville. As far as the market was concerned. This would bring more aircraft to the airport. They felt that adding another business to the airport as another step in the direction to attract more business to the airport. He presented drawing illustrating their proposed project.

In response to questions from Alderman Austin, Mr. Shawsho stated they did not intend to have unfair competition, however, they did intend to make the business work.

Mr. Burl Thompson, Manager of the Springdale Airport, stated he had learned that they needed a healthy FBO. This airport almost died when they lost the airlines. Their was only a small amount of profit being made now. The fuel sales were only about ten percent of what they used to be. He knew this was not the thing to do. It was hard to make a living at an FBO . If they allow this, the current FBO would be cutting their hours and services, then things would start going down hill. They were going to down grade their service to the jets. They were jeopardizing their jet fuel sales. He felt they needed to support their current FBO one hundred percent.

Mr. Chuck Chadwick, Fayetteville Air Service, he explained the FBO took care of fueling the aircraft and the passengers and pilots. They sold fuel to pay for the personnel to provide all those services. They provided a nice environment by the sale of fuel. Fuel was the cash cow at an airport. Mr. Shawsho wanted to sale fuel, but he did not want to provide any of the other services they provided. They had a twenty-four hour FBO it was out at the regional airport. Their company ran it. Their company ran the one at Springdale. It was not twenty-four hours. There was a good reason for that. The market did not pay them to. Their fuel prices were consistent and they were fair. They could land at Springdale or Fayetteville and pay a twenty-five dollar call out fee. That was the normal practice in the aviation business, where the market did not pay for someone to say open twenty-four hours a day. There were small airports that had this type of tank operations. Ms. Little nor Ken where there three years ago when there had been discussion on where or not they were going to put in a twenty-four hour fueling tank. They had not been offered that option. It had been talked about in great detail. Mr. Frederick had done study, it had been determined that it was not feasible for the city or the FBO to do it. It was not that they were offered the opportunity to do it and turned it down. This Fixed Base Operator did not turn down that opportunity. The only good benefit the Fayetteville airport had was the traffic going to and from the University and the football games. They had for the past three years catered free food the pilots and passengers to the games. What Mr. Shawsho wanted to do was get the fuel sales from the games and not provide the service. They had nearly one hundred aircraft in about on hour and half during a game. Their job was to make sure they had enough personnel to park the aircraft, take proper fuel orders for all different kinds of aircraft. They provided transporting on the ramp for passenger and pilots to and from the FBO. They paid for these serves by selling fuel. Mr. Shawsho had stated he wanted to put in jet fuel later. The city had spent a substantial amount of money to construct a fuel farm. They were paying rent on the fuel farm now. The city had not investment in these tanks. His obligation to the city was thirty-two dollars a month. They paid more than that for the pilots to watch tv. It was not a level playing field. He was either going to make a heck of a good profit or have fuel so low they could not compete. The minimum standards state that they should have uniformed linemen on duty eight hours a day. That he shall provide heat and air-conditioned lounge. None of that was in the proposal. He stated they would like to move into the terminal.

Alderman Trumbo stated his argument sounded good, but why would the Airport Board vote unanimously for this.

Mr. Chadwick stated he had not be present during the meeting. They were so eager to get something going that they did not want to turn down anyone. He was not sure the Airport Board understood the FFA regulations. They did not have an exclusive right to sell fuel, but what the grant assurances do say was that they would not treat them unequally. He asked that they not give them a different standard to go by.

Alderman Austin asked Mr. Chadwick if the Airport Board was dissatisfied with their service.

Mr. Chadwick replied he thought some of the members of the board were dissatisfied with their inability to push them into ways they were not willing to go. He stated the passengers and pilots that came to his FBO seemed very satisfied. There was a complaint box. In the past three years they had only had one complaint. They were not going to satisfy one hundred percent of the people all the time, but they wanted to make good business decisions and satisfy the people you could satisfy.

Alderman Austin asked if they approved this lease would his company be able to survive.

Mr. Chadwick replied they could not if they continued to spend the kind of money the were spending on a month basis. Two things were going to happen. They were going to reduce their services that they provide to such a degree that there were going to be no services provided on the field or they were going to be asking for concessions from the City of Fayetteville to give them a deal they could operate under as far as their rent was concerned.

Alderman Austin stated he did not believe it was in the city's best interest to pull back services on an airport they were trying to build.

Mr. Chadwick stated when the grant assurances stated that they shall treat everyone of alike business equally, it didn't work when they had one business providing all the services and one only providing fuel. He added this lease did not even have to come to the council. Alett, had assured him that he would have more of a forum than just the Airport Board, if that was what he requested. His thought was that the Airport Board did not believe that they could turn him down because of the non-exclusive language of the grant assurances and two they were so eager to be pro-active to bring business onto the field that they were afraid to turn anyone down.

Alderman Austin stated he had been under the assumption that this item would be non-controversial issue. This was a tough issue for him.

In response to questions from Alderman Russell, Mr. Chadwick explained the grant assurances stated that they could not have an exclusive right on the airfield to operate any one type of business. Everyone had a right to come on and do it. However, they were to treat those types of businesses equally and hold them to the same standards. They could not treat one to a lower standard or unfairly. They could deny other business from coming on if there was not adequate facilities to handle that. There were some exceptions to that, but as a general policy statement they could not have an exclusive right to operate a business on the field, but they could not unfairly treat the participates.

Alderman Russell quoted from the Airport Board minutes that Dr. Wallas had stated that it was not their role to keep someone from going into business on the Airport so long as they meet our standards. Mr. Chadwick was indicating that he did not believe that the proposal met the minium standard in a couple of ways.

Mr. Chadwick stated that he believed in order to be a fuel service provider on that field you had to have adequate space for the pilots and passengers to be taken care of. The minimum standards were set by a city ordinance.

In response to questions from Alderman Reynolds, Mr. Chadwick stated they provided the same services at Springdale and Regional. They were building a maintenance facility at Regional. The fuel prices were the same as Regional and Springdale.

Mr. Shawsha stated they did meet all the minimum standards. They had a lounge, courtesy car, they did supply maintenance and avionic needs. He submitted that they had more services to provide at Fayetteville now than Fayetteville Air, with the exception of the fuel. They were willing to build a tank at the their own expense to further enhance their ability. They did intend to go into the full service FBO business. The only reason they withdrew their request for the Airport terminal building location was the length of the process had made it economically unfeasible to get started and to capture any of the business from the football sales. At the point when they could go into the Jet A business, then they would be going for that business. If Fayetteville Air wanted to be on equal ground, give them the same opportunity they were asking for. They were going to a lot of expense. They provided every thing in the fuel and oil sales that was asked for. They did not have to have a lineman if they had self service. As soon as they could put a truck in, they would be operating out of their facility across the field. They had all the required things. They would be operating in conjunction with their other business. All they wanted to do was expand their horizons and do a good business for the city of Fayetteville.

Alderman Davis stated he did not know enough about what was going on.

Alderman Davis moved to table the item. Alderman Daniel seconded the motion. Upon roll call the motion carried unanimously.

ITEM WAS TABLED UNTIL THE NEXT MEETING.

SKATE PARK
A resolution approving a contract with Purkiss-Rose-Rsi for the design and contraction supervision of the Skate Park.

Alderman Austin asked if the City of Fayetteville's park be unique or would it be a revised plan from a prior project in California. Had they presented pictures or video of other projects.

Alderman Russell stated he was on the selection committee. Thirteen firms applied. They narrowed it down to five and requested proposal from them. This was the firm that the selection committee decided on unanimously. The committee decided they were the most qualified. The firm had submitted a list of their projects. They had approximately one hundred skate parks that were complete, in progress or under contract. A lot of those projects were in California. They had stated that they would conduct at least two public meetings in Fayetteville with some of their staff to get input from Fayetteville citizens on the design of the park.

Alderman Austin asked how they were going to determine neighborhood concerns and collect the data.

Mr. Terry Gulley, Parks and Recreation, stated they had a subcommittee which had recommended Walker Park as the site. The Parks and Recreation Advisory Board had met at the site. There had not been any concerns expressed to them or the Parks Board about the site selection. The design of the park would be brought up at the public meetings.

Alderman Austin asked if they were going to get out into the neighborhood and find out what their concerns were and were they going to address them.

Ms. Brenda Thiel, Parks and Recreation, stated she had concerns about the Architectural firm. A good firm was really needed that has worked in this area to facilitate these public meetings. She felt they needed to spend the money up front to get their expertise so they could plan a park that the kids could enjoy and that will last.

Mr. Venable stated they did have a local firm hired to do part of the engineering work. So not all of the money was going to the firm in California.

Alderman Davis moved to approve the resolution. Alderman Trumbo seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 119-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.
The meeting adjourned at 10:05 p.m.