MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
DECEMBER 5, 2000

A meeting of the Fayetteville City Council was held on December 5, 2000 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Mayor Fred Hanna, Aldermen Reynolds, Austin, Davis, Trumbo, Daniel, Santos, Young and Russell, City Prosecutor Casey Jones, City Clerk Heather Woodruff, Staff, Press, Audience.

ABSENT: City Attorney Jerry Rose.

CONSENT AGENDA

APPROVAL OF THE MINUTES
Approval of the minutes from the November 21, 2000 City Council meeting.

COST-SHARE
A resolution approving a budget adjustment in the amount of $58,892.32 for the cost share with the Developer of the Cliff's PUD for the construction of Cliffs Boulevard and Happy Hollow Extension south of Cliffs Boulevard.

RESOLUTION 161-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

AIRPORT MINIMUM STANDARDS
An amendment to the Airport's Minimum Standards. This amendment will give the Airport Manager authorization to approve, after consultation, the insurance requirements for businesses operating at Drake Field.

RESOLUTION 162-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

The minutes were removed from the agenda.

Alderman Young moved to approve the consent agenda. Alderman Austin seconded the motion. Upon roll call the motion carried unanimously.

OLD BUSINESS

RZ 00-24.00
An ordinance approving rezoning request RZ 00-24.00 as submitted by Jerry Martin for property located at 1209 Bailey Street. The property is zoned A-1, Agricultural and contains approximately 2.30 acres. The request is to rezone to R-1, Low Density Residential. The

ordinance was left on the first reading at the November 21, 2000 meeting.

Mr. Jones read the ordinance for the second time.

Mr. Jerry Martin, applicant, stated the property had two homes on it that were non-conforming. He bought the adjacent property. He was going to move one house from the two acre plot to the other plot. Then both properties would become conforming.

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 carried unanimously.

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

Mayor Hanna called for the vote. Upon roll call the ordinance passed unanimously.

ORDINANCE 4279 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

RZ 00-26.00
An ordinance approving rezoning request RZ 00-26.00 as submitted by William Greenhaw, Attorney, on behalf of Wilma Jean Baker for property located at 1391 and 1393 Farmer Avenue. The property is zoned A–1, Agricultural and contains approximately 0.71 acres. The request is to rezone to R-S, Residential Small Lot.

Mr. Jones read the ordinance for the first time.

Mr. Greenhaw, applicant, stated the objective is to obtain a lot split. There were two houses on this one lot. One of the houses was occupied by the owners daughter. The other house is occupied by a tenant that had expressed a desire to buy it. The rezoning was a pre-requisite in order to obtain a lot split in order to give a good title to the tenant. There was no opposition at the Planning Commission level.

Mr. Conklin stated the Planning Division had not received any objections to this rezoning.

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

Mr. Jones read the ordinance for the second time.

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

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

Mayor Hanna called for the vote. Upon roll call the ordinance passed unanimously.

ORDINANCE 4280 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZ 00-27.00
An ordinance approving rezoning request RZ 00-27.00 as submitted by Hilda and Edward Hurtado, on behalf of Dewitt C. Goff for property located at 1819 South School. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately 0.80 acres. The request is to rezone to C-2, Thoroughfare Commercial.

Mr. Jones read the ordinance for the first time.

There was no public comment. The applicant was not present.

THE ORDINANCE WAS LEFT ON THE FIRST READING.

WOODBURY PLACE
An ordinance approving a cost-share and bid waiver in the amount of $38,135.00 with the Developers of McIlroy Plaza for the installation of a drainage pipe across the Woodbury Place Subdivision.

Mr. Jones read the ordinance for the first time.

Mr. Ron Petrie, Staff Engineer, stated McIlroy Center was being built at the corner of Salem Road and Wedington Drive. Just down stream from that is Woodbury Place Subdivision. When the Highway Department did the improvement to Wedington Drive that the pipe was inadequate and small. McIlroy Plaza was providing detention to make their pre-development and post-development flows the same. They were also extending this pipe approximately 550 feet across their site. They were also paying a percentage of the off-site improvements.

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

Mr. Jones read the ordinance for the second time.

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

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

Mayor Hanna called for the vote. Upon roll call the ordinance passed unanimously.

ORDINANCE 4281 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

WIRELESS COMMUNICATION
An ordinance approving an amendment to the Wireless Communication Facility Ordinance 4178.

Mr. Jones read the ordinance for the first time.

Alderman Austin stated the Ordinance Review Committee had looked at this for two meetings after it had been forwarded from the Planning Commission. They had received quite a bit of public input.

Alderman Santos noted they had a letter requesting to leave the ordinance on the first reading.

Mr. Conklin explained the intent of the amendment was to clarify the provision on replacement towers. Several months ago, Arkansas Western Gas had approached the Planning Division with a request for a replacement tower. At that time, it was determined by his office that what they intended to do would not be allowed under the current ordinance. Therefore amendments were proposed and brought forward to the Planning Commission. Those amendments were included in the ordinance which was read this evening. The issue was when they had an existing tower and they had to replace it, should they be allowed to replace it in a different location than the existing tower. The issue was if they had to replace it in the exact location that the existing communication tower was located, then communication would be disrupted. The ordinance addressed this issue, it would allow replacement within an area that was technically feasible. Another issue was to taking an existing tower and increasing its width. The Planning Commission had recommended that if they increased the width of the tower, that it would be limited to thirty-six inches maximum. It was limited to guide towers. The Planning Commission also had concerns with existing towers being left as the replacement tower was going up. They set a ninety-day period. They required a demolition permit. It had to be removed within ninety days. He had added sections in regard to noise requirements and compliance with Federal regulations in regard to lighting and signage, a section in regard to color of towers, structural integrity, inspections, security fencing and anti-climbing devices and vegetative screening requirement. So when they did have a replacement tower, they would have to bring their site up to those standards, just as if it were a new tower. He had received some additional language from Arkansas Western Gas. They would like to clarify some of the language.

Mr. Jeff Dangeau, Arkansas Western Gas Company, stated in Subsection D there seemed to be only a phrase. It did not really make a statement.. He presented a proposed amendment to the Council.

Mr. Conklin stated Subsection D was taken verbatim from Section C under Co-location. It was the exact same wording. It talked about locating on existing towers.

Alderman Davis stated the intent of this was to have replacement towers and to ask for the twenty-feet additional height.

Mr. Dangeau stated there was an issue of how tall the replacement tower structure can be when they add the antenna to it. In their case, they had an existing structure that was 170 feet tall and on top of that there was a 20-foot antenna for a total of 190 feet. When they came to replace that tower, he wanted it to be clear on how tall the total structure and antenna could be. What they had originally proposed was to have a total height of 210 feet, 190 feet tower plus a 20-foot antenna. When they came away from there he wanted to make sure which it was. If they were going to be at 190 or 210 feet.

Mr. Conklin stated under E under exemptions in the ordinance it talked about existing tower. The ordinance stated existing towers the same height and height of the existing structure was as it currently existed. His interpretation was that when it states "tower structure" it was the actual structure of the tower. It did not include the height of the antenna. He believed the Arkansas Western Gas structure was 170 feet and they had an antenna 20 feet above that, then they should not be allowed to build a 190-foot tower and then add an additional 20 foot antenna. He felt the intent of the ordinance was to replace the same tower structure height. The reason why Section D of this ordinance was before them was to clarify that issue. They were allowed to replace the 170-foot tower and they were allowed to replace 20 feet of additional antenna height.

Alderman Davis asked he was trying to give them the ability to have a 40-foot antenna?

Mr. Conklin replied he was trying to give them the ability to have what they currently had. Which was a 170-foot tower and on any existing tower they could go an additional 20 feet up with an antenna. He was trying to have this applicant to build the same tower structure height and to add an additional 20 feet.

Alderman Davis stated when the committee was formed to write the cell tower ordinance one of the first items they discussed was if they wanted an abundance of small towers or if they wanted to encourage co-location. From the community input they received, they felt it was clear to have fewer towers and encourage co-location. It appears that they might have shorted this ordinance when they did not discuss or make a statement on actually tearing down an existing tower to replace with a tower doing the same services of the tower being replaced. In this situation, he thought they did not want them to have to tear it down before they built a new one. This tower took care of EMS, Washington Regional and others. He could see where Arkansas Western Gas was abiding by what was the intent of the ordinance to allow co-location. If they were going to co-locate they were allowed to have an additional 20 feet in height.

Mr. Dangeau explained the amendment. If they wanted to limit the replacement tower to a total height of 190-foot they would take his proposed language. If they left it as it was written, that would leave the door open for them to construct a 190-foot replacement tower and add a 20-foot tower.

Alderman Young asked them to leave it on the first reading. He did not believe the drafts said what they wanted to intend. He was going to work on the wording. It needed to be crystal clear.

In response to questions from Alderman Davis, Mr. Conklin stated he wanted to make sure the language was the same for existing towers and replacement towers. He did not want to have to rewrite the language for existing towers. It has been his position from day one, that if they had a 170-foot tower structure that you would only be allowed to have a 170-foot tower structure and in fairness to the existing tower facility to allow them to go 20 feet more up, then the tower structure with antenna. Then he thought it would be fair for the replacement tower to have the same ability to go 20 feet and increase in height. He was concerned that having different language in this section of the ordinance from what they used for existing towers to allow them to go 20 feet up would be confusing.

Alderman Russell asked Mr. Conklin if it was his position that if they passed his version of the amendment that new and replacement towers would both be under the requirement that new or replacement tower plus antenna could be up to 20 feet higher than the previous tower, only.

Mr. Conklin replied that was correct.

Alderman Russell added if they had 190-foot tower plus antenna, that did not mean that they could go up to 210 feet.

Mr. Conklin replied no it does not. He had tried to make that clear from day one. Tower structure in his mind was the actual structure of the tower minus the antenna.

Alderman Austin stated they needed to make it clear that the height of the entire structure was the end of the tower structure and then there was some distance above that for the antenna. He questioned the advantage of the amendment.

Mr. Dangeau stated Mr. Conklin had interpreted the ordinance as requiring them to tear down the existing tower and put up the replacement tower in the exact same spot. To do that they would have to inter-up communication for some period of time while the construction was going on. What they had proposed was to move 20 feet to the north and put the new tower up and move the antennas, then take the old one down.

Mr. Conklin stated he did not believe the ordinance would allow them to go from a 15-inch guide tower to a 42-inch guide tower 40 feet taller and in a different location and have the existing tower on Mt. Sequoyah and the new tower 20-30 feet away for a period of time. He had written a letter to Arkansas Western Gas to give them the option to appeal his decision to the Board of Adjustment. The other alternative was to clarify this section of the ordinance.

In response to questions, Mr. Dangeau stated they had hoped to have this project completed before winter. That was not going to happen. They needed to move as quickly as possible. The current tower was over forty years old. It had a lot of antennas on it. They would like to get it replaced with a stronger structure. One that would support more antennas.

Alderman Austin moved to amend the proposed amendment to include the suggestion of Arkansas Western Gas, excluding the word "or replacement tower" from the proposed adjustment.

Mr. Conklin stated he would sit down with the City Attorney to make sure that his interpretation was reflected in here. He wanted the words "or replacement" removed.

Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.

Mr. Michael Mulain, an area resident, stated he lived under the tower they were discussing. He was not sure where they were in the process and he did not know what the amendment was. It was his understanding that the whole issue was going to come before the Council again. He asked that the public be allowed time to review the changes.

Ms. Ann Prassel, resident, stated she had attended all the public meetings about this. She had never heard from them on how many or what type of antennas they expected to add to the new structure. What could they expect this tower to look like?

Alderman Davis asked them to provide a drawing what the tower and antennas would look like.

Mr. Dangeau stated the existing antennas would go back on the new one. There would be room for additional antennas. There would be no restrictions on what type of antennas might go up there.

THE ORDINANCE WAS LEFT ON THE FIRST READING.

GRADING AND DRAINAGE ORDINANCE
An ordinance approving amendments to the City's Grading and Drainage ordinances.

Mr. Jones read the ordinance.

Alderman Davis stated he appreciated the eight citizens that worked on the committee with the aldermen and the staff. They found that from January 1, 1998 to present, the Engineering Department had reviewed approximately 213 construction projects of various types and sizes. Approximately 151 projects involved grading approval. Of those 23 that were giving approval in advance of drainage approval. The staff was not aware of any drainage or technical problems with any of these projects resulting from the approval grading in advance of the final drainage approval. They did not issue partial grading permits, but they have always been complete drainage permits. They had debated over the length of time it should have been the original drainage submittel and the acceptance of a final approval of the drainage calculations. With the help of the staff they had determined that 120 days was acceptable. The committee did find that seven of the twenty-three projects that had been giving grading approval in advance of the drainage approval had to be submitted more than two times before the drainage calculations were approved. This had caused concern for the committee. Some felt the additional submittal should result in additional fees. The City Engineering staff felt additional fees were not the answer. This was the reason they had a five to one vote. Mr. Maynard had wanted to limit the number of resubmittals per job to three. He was also hoping to have the resubmittals done within a two week period. Ms. DuVal had questions about language, but Mr. Rose thought that the language was good and did not see a reason for the change.

Alderman Austin stated the Ordinance Review Committee had felt that they needed to move this on to the City Council and give the public a chance to comment.

Mr. Richard Maynard, an area resident, stated this committee had been formed because of the problems with CMN Business Park. The committee had been formed to look at the idea of a partial permit. He thought a better phrase was phased permit. They were to look to see if they wanted this policy and if they did what conditions would they continue this policy. They had some convincing evidence that this had been done for a while. He did not hear any hard evidence that this had caused anyone any harm from doing it this way. The reason he had voted against this was under what conditions they were going to do this. One problem they discovered was that there seemed to be a lot of submittals for the drainage. There was no deadline for completion from the private engineers. The only reason he had voted against this was because it did not have a deadline. They should be looking for a reasonable amount of time between the grading approval and the drainage being approved. It was not our engineers that were holding things up, but theirs. Things were being sent in that were not complete sometimes. He was trying to set deadlines. He felt 120 days was excessive. He also thought there should be a limit on the number of submittals. It was not fair to the majority of the engineers who were trying to do their work right to be behind a third or fourth submittal of someone else. Sometimes the problem solved itself, because there was only so much work that they could do with the grading before they ran out of work.

Mr. Beavers, City Engineer, stated they had presented the information to the committee to let them make their own conclusions. Their position, as staff, was that they tried to protect the adjacent property owners. Their manual or ordinance was not so tough that people could not understand it. It was almost verbatim in the manuals in Springdale, Rogers, Little Rock, and Springfield. They did not get the re-submittals from all of the firms. There were some firms that used them as their quality control.

Alderman Davis asked if there should be a limit on the re-submittals.

Mr. Beavers stated there were so many submittals that come in, they were including the amount of time it would be in their office. At this time, it was from four to six weeks before they could look at it. If it was going to be in a stack for six weeks, then they needed a lengthy time period. They could not have a three to four week turn around, because they could not get to it in that amount of time.

Alderman Daniel asked if he requested any additional staff.

Mr. Beavers replied they had not. They did have a vacant position that would help them with drainage that was approved last year. They had not filled it because of their move. They did not have a place to put them until they moved. They now had an office for that person and that would be a small portion of their duties. They would be hired as a stormwater engineer. Their main duty would be to get the City's master drainage study going forward and to work on their phase II stormwater regulations. There was a Federal requirement that would be enforced in the year 2003 which was going to require additional staff in order to comply with it. They were looking at monitoring, new programs to clean the drainage and the stormwater. Other cities have had to increase their taxes to pay for this program.

THE ORDINANCE WAS LEFT ON THE FIRST READING.

2001 BUDGET
A resolution adopting the 2001 City of Fayetteville Annual Budget and Work Program.

Alderman Santos stated they had decided that they would go ahead and have this Council pass the budget and to let the new Council make the changes they wanted through the adjustment process.

Mr. Bob McKinney, an area resident, asked them to look in favor of the CAT budget. Many organizations used the channel to help in their fund raising and in promotion of their programs.

Mr. Jeff Erf, an area resident, questioned the trolley program funding.

Mr. Steve Davis replied they had done a study on the rider-ship on the trolley this last year. They had found that tourism was so little that they could not justify the expenditure of advertising and promotion funds to support it. The trolley program was going to continue. They had expanded it to include a south route. $109,000 had been budgeted for this program. $80,000 was in miscellaneous programs, $10,000 in Community Development Fund, and $20,000 was in Off-Street Parking fund for the park and ride service.

Mr. Erf asked how the route had been determined.

Mr. Davis replied the south route had been determined by taking public input from south Fayetteville residences and other committee members.

Mr. Erf questioned the funding for the impact fee study.

Mr. Davis stated the total budgeted for the study was $100,000. City Council had approved phase I of a contract in October.

In response to questions from Mr. Erf, Mr. Davis stated there was money for bonds to fund the second wastewater treatment plant. The city had received a letter of commitment from Arkansas Department of Environmental Quality for up to eighty-million dollars in loans at 3.75 percent. If a three-quarter city sales tax was approved to fund that loan it would pay off in approximately eleven years. There would have to be a public vote on it.

Mr. Erf stated that according to the graphs it indicated that the City's expenditure would be greater than the revenues. What year would that be?

Mr. Davis replied 2001 for General Fund. Operating revenues had increased 4-5% so they were using Fund Balance, Reserves, now. That was keeping existing services at the same level. In response to questions, Mr. Davis stated there was no money budgeted for the Town Center.

NO ACTION TAKEN. ITEM WILL BE ON THE NEXT AGENDA.

2020 LAND USE PLAN
A resolution adopting General Plan 2020, Future Land Use Plan and Master Street Plan.

Mr. Conklin stated there had been five subcommittee meetings. Each of the meetings had been public hearing and committee meeting. From there they went to the Planning Commission and had two public hearings at Planning Commission. This is the eighth public hearing.

In response to a letter from Ms. Denham, Alderman Santos stated that asking for rezoning for specific tracts of land was not appropriate in the General Use Plan.

Mr. Conklin stated they would like to have their designation changed from mixed use to some type of commercial.

Mr. Denham stated he was a property owner on the corner. The property to the north was zoned commercial. The property behind and to the south were zoned Industrial. They felt the highest and best use of the property would be commercial.

Mayor Hanna suggested they hear the appeal at the special meeting.

NO ACTION WAS TAKEN. SPECIAL MEETING WILL BE HELD DECEMBER 7, 2000.

CMN COST SHARE

An ordinance approving a bid waiver for the negotiated construction costs for the City's share of the "50/50" cost-share for the final pavement, drainage and other construction for the boulevard sections of Steele Boulevard and Van Asche Drive at the CMN Development in the amount of $623,654.18. Approval of, and authorization for the Mayor to expend a 10% contingency in the amount of $62,365.42 and approval of a budget adjustment in the amount of $378,553.60.

Mr. Jones read the ordinance for the first time.

Alderman Russell questioned the need for the extra money.

Mr. Venable stated this was the final phase of the work that was going on. It covered the section of Steele Boulevard that ran from Joyce to Van Asche. It was shown as a boulevard. In 1998 the Council had approved the cost sharing on this section of the road. The first phase of the work was on the grading. There was a bridge including the cost-sharing. That had been completed. Our original estimate was somewhere around 1.3 million. They had only set up one million dollars in the CIP. He did not remember the reason why they did not put the rest of the $300,000 in. This was the remainder of the work to be done. In response to questions from Alderman Russell he stated their original estimate was approximately 1.3 million with the amount of work that had to be done. This type of work was not cheap. The developer was paying for half of it. This was what had been agreed upon by the Council.

Alderman Russell asked if there was a signed agreement agreeing to the cost-share.

Mr. Venable stated we had agreed to pay for fifty percent for the work for the boulevard which was two twenty-eight foot lanes with media and sidewalks. This was what they had agreed to in October 1998. There had been quiet a discussion at that time.

Alderman Reynolds stated the developer was going to construct smaller two-lane streets and put in smaller sidewalks. The Council had asked for the boulevard and the larger sidewalks.

Alderman Trumbo stated they had agreed to do 50/50 to go to a four-lane road rather than a two-lane road. They had to honor that commitment.

Alderman Russell asked why the original estimate was not a part of the CIP.

Mr. Venable stated they did not have enough in the budget and they did not have the exact cost in. His original estimate had been 1.3 million dollars, which was close to what they were running.

Alderman Russell asked if the 6th Street Improvement had come in under budget by this amount.

Mr. Venable stated it had been under budget by $600,000.

Alderman Davis stated he appreciated the foresight of the people looking at the future infrastructure that may be needed in Fayetteville. He noted a couple of intersections in Fayetteville that should have been four lane rather than the two.

Alderman Austin stated this was another Council's decision. He did not want to change their decision.

Alderman Reynolds stated Benton County was in the process of constructing two huge malls. This development was going to be our tax base for the future. He did not want them to turn this down and not finish this project. They had too much invested in it. They needed to move ahead and get the tax base. He hated to see the stores in the mall area moving on down the road. Their tax money was going down now. They had some big projects and they were going to be looking at some big money projects in the next year. They were going to need this.

Alderman Daniel stated this would help move the traffic in the area.

Ms. Fran Alexander, Fox Hunter Road, asked if this was the final bill.

Mr. Venable stated yes it was. There was a ten percent contingency in case there was an overrun.

Ms. Alexander asked if it included landscaping?

Mr. Venable replied that it did. There were seventy two-inch caliper trees that would be located within this area.

Alderman Trumbo moved to suspend the rules and move to the second reading. Alderman Davis seconded the motion. Upon roll call the motion carried 6-1-0. Young voting nay.

Mr. Jones read the ordinance for the second time.

Alderman Russell asked if they were interested in tabling the item.

Mr. Venable stated they were already working out there. The weather had a lot to do with what they could do. In his opinion they needed to go on, but they needed to suit themselves.

Alderman Santos moved to suspend the rules and move to the third and final reading. Alderman Daniel seconded the motion. Upon roll call the motion carried by a vote of 7-1-0. Young voting nay.

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

Mayor Hanna called for the question. Upon roll call the ordinance passed by a vote of 6-1-0. Young voting nay.

ORDINANCE 4288 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Meeting adjourned at 8:30 p.m.