MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
DECEMBER 19, 2000

A meeting of the Fayetteville City Council was held on December 19, 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, City Clerk Heather Woodruff, Staff, Press, and Audience.

EMPLOYEE OF THE MONTH
Mr. Steven Hale was awarded employee of the month.

EMPLOYEE OF THE YEAR
Ms. Debbie Bryan was awarded employee of the year.

CONSENT AGENDA

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

WILSON PARK POOL
A resolution awarding Bid No. 00-75A to Heckathorn Construction for the Wilson Park Pool Improvements Project. The construction costs are $258,263 plus a project contingency amount of $28,737. The total amount requested is $287,000 with an attached budget adjustment.

RESOLUTION 163-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MCCLELLAND ENGINEERS
A resolution approving an amendment to the engineering contract with McClelland Consulting Engineers to extend the contract an additional year; Task Orders No. 3-6 and the associated budget adjustment in the amount of $143,664.00.

RESOLUTION 164-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

EARNEST LANCASTER EXTENSION
A resolution approving Change Order No. 1 in the amount of $23,838.00 for the construction contract with Harrison Davis Construction for the extension of the Earnest Lancaster Drive.

RESOLUTION 165-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SEWER REHABILITATION
A resolution approving the contract with Heller Co. for sanitary sewer rehabilitation, Illinois Basin 16, and White River Minisystem 9A in the amount of $501,4000 and a 10% contingency.

RESOLUTION 166-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CABLE TV
A resolution approving the extension on the Cable TV contract to February 28, 2001 to allow for further negotiation of a franchise agreement.

RESOLUTION 167-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

COMMUNITY ACCESS TELEVISION
A resolution accepting a contract with the Community Access Televison for public access television services.

RESOLUTION 168-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

NOMINATING COMMITTEE REPORT

Airport Board: Frank Sperandeo
Michael Andrews

Audit Board: Adam Motherwell
Marty Bryan
Wesley Murtishaw

Parks & Recreation Advisory Board:
Wade Colwell
Gail Eads
Bob Shoulders
Rex Dufour

Tree & Landscape Advisory Committee:
George Cowen
Peter Loris
Beverly Melton
John DuVal
Lynn Rogers

Alderman Young moved to appoint the following people to committee. Alderman Reynolds seconded the motion.

Airport Board: Frank Sperandeo, appointed to a five-year term
Michael Andrews, appointed to a two-year term
Audit Board: Adam Motherwell, appointed to a three-year term
Marty Bryan, appointed to a two-year term
Wesley Murtishaw, appointed to a one-year term
Parks & Recreation Advisory Board:
Wade Colwell, re-appointed to another two-year term
Gail Eads, re-appointed to another two-year term
Bob Shoulders, re-appointed to another two-year term
Rex Dufour, appointed to a two-year term
Tree & Landscape Advisory Committee:
George Cowen, re-appointed to another two-year term
Peter Loris, re-appointed to another two-year term
Beverly Melton, re-appointed to another two-year term
John DuVal, appointed to a two-year term
Lynn Rogers, appointed to a two-year term

Upon roll call the motion carried unanimously.

OLD BUSINESS

RZ 00-27.00
An ordinance approving rezoning request RZ 00-27.00 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. The ordinance was left on the first reading at the December 5, 2000 City Council meeting

Mr. Rose read the ordinance for the second time.

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

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

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

ORDINANCE 4283 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

WIRELESS COMMUNICATION
An ordinance approving an amendment to the Wireless Communication Facility Ordinance 4178. The ordinance was left on the first reading as amended.

Mayor Hanna stated there was another amendment to the ordinance. .

Mr. Conklin stated Section 2 has been added with regard to the definition of original tower height. There had been some debate over how they looked at a structure and how they determined the height. The new definition did not include any antennas. It has been his interpretation that "existing structure", was the structure itself, not the structure and the antenna. He believed by adding "not including any antennas" clarified the intent.

Alderman Russell moved to amend the ordinance to include Section 2 as presented. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

Alderman Reynolds stated he had a letter from a resident requesting the ordinance be left on the second reading.

Mr. Rose read the ordinance for the second time as amended.

Mr. Jeff Dangeau, Arkansas Western Gas, stated they found the amendment acceptable. He urged the Council to pass the ordinance. He presented drawings of their proposed tower structure.

Alderman Davis stated there would be vegetation around the fence. He stated the ordinance allowed them to replace the existing tower of 170 feet, plus an additional 20 feet of antennas.

Alderman Young stated according to this there would be nothing above 190 feet.

Mr. Conklin asked how the proposed tower was going to compare to the existing tower with regard to color and lighting.

Mr. Dangeau replied the color would be a natural aluminum gray color. They would not have to light the tower at 190 feet.

Mr. Conklin added when a tower exceeded 200 feet then they would have to put a strobe light on the tower. He asked if they would have to use the red and white color scheme on this tower.

Mr. Dangeau explained the reason they painted a tower red and white was so an airplane could see it during the day. The current tower did have a beacon on it. It was not mandated by the FFA to do that. One of the neighbors had asked for the tower to be lighted years ago. There would not be a beacon on the proposed tower. They had to break 199 feet before they had to light a tower. In response to questions from Alderman Davis, he stated the existing tower was approximately 40-50 years old. They do begin to lose structural strength after that many years. There were currently 17 antennas on the existing tower. They had installed a combiner which would lessen the load.

Ms. Sue Conrand, an area resident, stated she lived near the tower. She questioned the type of fencing around the tower. Currently, there was chain link fencing near Ruth and Rockwood. Would they be able to see through the wooden fencing and would their view be blocked to Rockwood Trail?

Mr. Conklin replied the fencing would be placed 25 feet back. He would be working with Arkansas Western Gas on the location of the fence to make sure it would not block visibility. The fence would be a solid wood board fence. The ordinance also required landscaping in front of the fence. From the street back they would have landscaping, then there would be a six-foot high fence.

THE ORDINANCE WAS LEFT ON THE SECOND READING AS AMENDED.

GRADING AND DRAINAGE
An ordinance approving amendments to the City's Grading and Drainage ordinances. The ordinance was left on the first reading.

Alderman Trumbo moved to suspend the rules. Alderman Young seconded the motion. Upon roll call the motion carried unanimously.

Mr. Rose read the ordinance.

Ms. Colene Gaston, an area resident, stated that no where in the ordinance did it define what a "project not requiring detention" was. She felt that needed to be clear, if they were going to create an exemption for such projects. She would like to add a provision that before the grading permit was issued that the City require a copy of their State of Arkansas Department of Environmental Quality Storm Water Construction Permit. This was a permit that was required before any grading on property greater than five acres occurred. She felt they needed to ask for a copy of this permit and the Storm Water Pollution Prevention Plan, which was required for that permit. It was her understanding that often the City Engineer would ask to see it anyway. She felt it should be a requirement before the grading permit was issued. In another section she questioned the definition of detention and when it was required. She questioned the wording, when it referenced "the Plan".

Mr. Rose stated what Ms. Gaston has proposed were some amendments to the ordinance before them. He wished she had made her comments before the second reading of the ordinance. This had been before committees on a number of occasions, it then went to the Ordinance Review Committee, and had been placed on its first reading two weeks ago. He asked the Council if he should prepare the amendments.

In response to questions, Mr. Beavers stated the existing ordinance required detention, unless deemed otherwise by the engineer. The existing ordinance also adopts a manual. The manual gave the guideline on when detention could be waved. They looked at the protection of the down stream properties. They did not have a specific definition, but they did in the manual. The State permit was not required by ordinance, but it was standard practice that they did ask for that. It was in their manual.

Mr. Venable stated he thought everything had been settled. They had been working on this ordinance all summer and fall.

Ms. Kay DuVal, an area resident, stated she had presented her concerns during the Ordinance Review Committee meeting. She had sent her changes by mail. She felt there needed to be some substantive changes to the ordinance. It was her feeling that the draft had been voted on too quickly. She presented her changes in written form.

Mayor Hanna stated they would leave the ordinance on the second reading.

Mr. Rose explained they had several options, they could consider the ordinance before them and vote on it, up or down. Two, they could amend from the floor. He did not recommend that to them very often. It was difficult to draft from the floor, especially if the changes were of some discussable merit. They could refer this back to a committee to hear the suggestions and then bring that product back to the City Council.

Alderman Davis stated he would like to see the amendments from Ms. Gaston before they decided what to do.

ORDINANCE WAS LEFT ON THE SECOND READING.

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

Alderman Davis stated he had a problem with Amendment No. 2. When they were given the budget for the transit and parking for the University, between the two different departments, there was a $103,536.00 profit. They were asking for an additional $10,000 from the City. They were having a difficult time this year meeting the budget demands that they had. He could not see giving someone else an additional $10,000 when their overall program showed a profit of $103,000.

Alderman Trumbo stated the Razorback Transit was a vital service. He did not think that there was any connection between them funding an additional $10,000 and the City getting reimbursed for police officers at the football game. He did not think that the City could afford an additional $10,000.

Mr. Steve Davis, Budget Manager, stated at the City Council budget retreat, the staff had been asked to prepare three amendments to the proposed budget for the City Council to consider. He explained the way the current budget stood they were using $646,000 of General Fund Reserves. He was not sure that there was a program that they could cut without reducing services in that area to fund any of these additional items. It they wanted to add money to any particular item, they would be dipping further into their General Fund Reserves.

Alderman Davis asked Mr. Davis what his comments were about going into their General Fund Reserves.

Mr. Davis replied as a practice it was not very good. For this budget year, it was not going to hurt the City very much. It would bring their reserves from about 8.7 to about 8.1 million. City Council next year would need to look at what were the core City services and what levels they could fund and what reserve fund level did they not want to go below. Their current budget policy had a ten percent fund balance to be held in reserves at all times. He thought that was inadequate. He thought sixty days expenditures or fifteen percent, was more adequate. There could be any kind of natural disaster or elongated snow removal process, that could cost them a great deal of money. There could be flooding situations that could cause them to dip into the reserves at any time.

Amendment to CAT

Alderman Young moved to increase the budget for Cable Access by $6,000. Alderman Russell seconded the motion. Upon roll call the motion carried unanimously.

Amendment to U of A Transit

Alderman Russell moved to amend the budget for U of A Razorback Transit as stated in Amendment 2, in the amount of $10,000. Alderman Young seconded the motion. Upon roll call the motion carried by a vote of 5-3-0. Reynolds, Austin, and Davis voting nay.

Amendment to Airport Museum

Alderman Reynolds moved to increase the Air Museum funding. Alderman Austin seconded the motion.

Mr. John Kalagias, Director of the Arkansas Air Museum, presented clippings from the promotional events that the Museum had sponsored. The major hit to the Airport had been the rerouting of Hwy 71, now, 540. Before people would see the museum and stop, now they could not see it and it was hard to find. It had cut their attendance by more than half. They had tried to pick up their business by creating special events. The special events had gone very well. They had a short fall of approximately $17,000 this year. He had held back the money from Air Fest, which was suppose to go into their endowment account. The foundation account, when he got there, was approximately $2,000. There was $120,000 now. They were building that account so one day they would be self sufficient. They had money in reserves, but he did not want to spend it. He wanted to put the money into the foundation so some day they could be self sufficient. This museum was a private non-profit museum.

Mr. Davis stated the staff would need direction from the Council on which fund to take this money from. Their options were the Airport Fund or General Fund. Budget was recommending the money come from the General Fund.

It was a consensus of the Council to take the money from the General Fund.

Upon roll call the motion carried unanimously.

Amendment to Downtown Dickson Enhancement Project

Ms. Bootsie Ackerman stated they had requested $35,000. $25,000 was approved. She asked them to reconsider the additional $10,000 funding. They had hired a part time person to work as a special events coordinator. They were wanting to increase her hours to increase their services and support to their many festival events.

Alderman Trumbo moved to approve the $10,000 additional funding for DDEP. Alderman Austin seconded the motion. Upon roll call the motion carried 6-0-1. Reynolds abstaining.

Alderman Russell asked Mr. Davis to explain why the City had reduced funding for First Night.

Mr. Davis stated in reviewing the balance sheet for expense ledger, they noted there was a $3,000 carry forward from the last year and an item called saving for salaries. It appeared that they had a $22,000 carry over on a little over $100,000 budget. An approximate 20% carry over.

Alderman Trumbo moved to pass the budget as amended. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 169-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

Mr. Conklin explained the General Plan 2020 had been adopted five years ago. Staff was directed to bring forth revision to these planning documents every five years. He presented the final drafts of the plans. He explained the changes which had been made. There had been some discussion on the eastern by-pass. That issue would be brought back to the Planning Commission on January 22, 2001. He would also be bringing forward an ordinance which would not require right-of-way dedication where the line was shown for the by-pass.

Alderman Santos moved to adopt the plans. Alderman Russell seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 170-00 A-C AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

BOYS AND GIRLS CLUB

A resolution of intent to levy a two mil tax on Real and Personal Property within the City of Fayetteville for two years for the Fayetteville Boys and Girls Club.

Alderman Trumbo stated the Council had approved a two-mil tax for two-years with a sunset provision for the Senior Center. The Boys and Girls Club had received a ten-million dollar grant from the Reynolds Foundation. They had to raise approximately two-million dollars in order to get the Reynolds Foundation grant.

Mr. John Benberg, Boys and Girls Club, stated they had already been to Council to present the proposed new facility. The grant from the Reynolds Foundation did not fund anything outside of ten feet. There was a substantial supplemental fund-raising challenge that they had to meet. Some of which had to be done on a short time frame.

Alderman Trumbo stated the resolution proposed tonight did not bind the City Council to the two mils. They did that every October. This was only a good faith resolution which would give their group the ability to tell the Reynolds Foundation that they were intending on providing two mils to the funding of this project.

Mr. Tom Stockland stated he felt their relationship was very fundamental in getting them through the application process. This was yet another step. It would be important to the Reynolds Foundation to see that support and to their other fund raising efforts.

Alderman Trumbo asked what this facility would do for Fayetteville.

Mr. Stockland stated this facility and the program that went with it can be a major positive factor in the quality of life for this community for a long time to come. They were looking to raise generations of young people. They would have better tools. They would do better in school. They had better leadership skills. They were more prepared for their first employment experience or to higher learning. They would not be on the streets. They were not involved in risky behavior. They could gain computer experience.

In response to questions regarding transportation to the facility, Mr. Stockland stated many years ago the neighborhood which surrounded their current facility was different. Now the area was primarily college students. They did not have nearly the walk up participation that they use to have. They were currently landlocked. It was very difficult to get oversized vehicles in and out. They did not have room for growth on site. The new location would provide a wonderful location. It was right off Hwy 540. It was fairly accessible from just about everywhere. They had a new permanent branch location at Jefferson Elementary. They were looking to expand the yellow bus traffic and other transit means. The new facility would have a combination of what they currently had and using a number of other partners transportation wise to get kids where they wanted them to be able to go. They had to be complete by the end of summer 2003. They could not turn a spade until they received their restrictive maintenance endowment raised. They had front end pressure and a finite time frame imposed on them by the Reynolds Foundation.

Alderman Davis asked them to place on the front of their publications their opportunities for scholarships.

Mr. Stockland stated they were in the process of redoing their web site and their new publications would have the scholarships more visibly noted. In response to questions he stated they were working with their architect for better numbers. They were currently estimating 15 million dollars. 9.2 million dollars would be coming from the Reynolds Foundation. The building would be about 10.5 million. In addition, 1.5 million on the outside for construction cost. In addition, they had to raise an endowment of $1,860,000 which would be to maintain the facility in Class A condition. That was one of the Reynolds requirements. That was also the part they were having trouble with. They went out to raise money, people were asking how much the City was going to put in. If the two mils were to pass it would have them in excess of twelve million dollars between the City and the Reynolds Foundation. Then they would raise less than three million dollars. They felt that was a doable deal. Time was of the essence for them.

Alderman Davis stated it was his understanding that two mils in one year equaled roughly a million dollars.

Alderman Trumbo stated that they needed to keep in mind that they would vote next October, one year at a time increments. What they needed to keep in mind was the request to go forward was the two mils for two years on one year renewals. It would kick in after the Senior Center's two mils.

Alderman Davis stated they were looking at roughly fourteen million dollars for the facility.

Mr. Stockland stated one thing they had done in getting the HMR money, the Parks had asked that our funding won't be increased by inflation. What that did was slowly squeeze them and they had to find ways to replace that money. They were trying to get an operational endowment.

Alderman Russell stated he would like to offer some words of caution. What concerned him was the speed. The resolution meant that they intended to support the milage, however, they did not know what the City was going to do until they passed the ordinance in October.

Mr. Stockland stated he understood the City could go back and say that they had changed their minds and they were not going to support them.

Alderman Russell stated that technically it was possible that it would not happen.

Mr. Stockland stated there were a lot of things they were going forward on in good faith. He was not uncomfortable doing that, but he would like some indication if they were opposed to doing that.

Alderman Russell stated he was not opposed to doing that, one of the good things they were doing was funding a project with property tax revenue instead of another sales tax increase. There has not been a lot of constituent input to them and there has not been a lot of public input from the City Council level yet.

Mr. Stockland stated he understood that.

Alderman Santos stated that what bothered him was that they were trying to declare the intent of other people who were not here yet. Ms. Thiel had called him and asked for them to table the item until the new Council came on board.

Mr. Stockland stated it was hard to raise three million dollars in eight months, it was harder to raise in seven months.

Alderman Davis stated the only advantage he could see was if they were to pass the resolution tonight, it did give him the ability to go to people in late December before the tax year ends and tell them that he did have a commitment from the City of Fayetteville. Some people were looking to give gifts at the end of the year. That may be to their advantage to do it tonight.

Mr. Stockland stated it was easier to get gifts of appreciation before December 31.

Alderman Davis added if they were looking for funds in August, a lot of people did not begin to look at giving away funds until the month of December, once they found out what their tax base was.

Alderman Santos stated he would prefer that the public would have a chance to vote this in, rather than having them vote it in for them. He did not think there was any trouble at all having it pass. He would feel more comfortable having the public vote it in. How could they do it, where they were not lying about it. They could not promise intent for people who were not here.

Alderman Trumbo replied it was up to the individual Aldermen to make up their own minds. They had the authority to implement the two mils. It was whether or not as an individual the public should vote on it and not eight City Aldermen.

Alderman Austin stated he had received comments from citizens in Ward One. They were in favor of this because it was non-binding on the future Council . It was needed. It was a good faith effort on the part of the Youth Center and Boys and Girls Club.

Alderman Austin moved to pass the resolution.

Mr. Erf asked specifically what the Boys and Girls Club will spend the Fayetteville tax payer money for. What were they going to use the money for?

Mr. Stockland replied the money would be used for first the remaining bricks and mortar inside the building. It would be used to put fields in. They had $300,000 from the City in a future budget for parking lots. The other amenities around the building, whether landscaping or trails. If for some reason they were able to do it for less than what they thought at this point the remaining would go into the operational endowment.

Alderman Davis seconded the motion. Upon roll call the motion carried by a vote of 7-0-0.

RESOLUTION 171-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

COST SHARE AGREEMENT

An ordinance approving a cost-share and a bid waiver in the amount of $82,350.00 with the developer's of Hopkin's Retail Center for the installation of a 12" waterline across Wedington Drive and along the west side of Garland Avenue.

Mr. Rose read the ordinance for the first time.

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

Mr. Rose read the ordinance for the second time.

Alderman Santos 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. Rose read the ordinance for the third and final time.

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

ORDINANCE 4284 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

OMI

A resolution approving Amendment No. 6 to the OMI Contract for the operation and management services, Fayetteville Wastewater Treatment Plant at the total cost of $3,715,901.00.

Mr. Venable stated the contract they were working under now was originally approved in 1994 and ran through December of 1999. A new five year provision was signed at that time and was approved to continue on. This year was the first year under that. This would be the second year of the second five-year contract.

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

RESOLUTION 172-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

TROLLEY OPERATIONS:
A resolution approving Amendment No. 3 with the Jones Transportation deleting operating days and increasing payment rate by 6% with the renewal agreement for Trolley operations for the period January 1, 2001 through December 31, 2001.

Alderman Davis moved to approve the resolution. Alderman Reynolds seconded the motion.

Mr Jeff Erf stated the total projected cost of the trolley route was approximately $127,000. The 2000 budget contained $109,000 in funding, and therefore to continue funding and the minimum of services an additional $18,000 would be needed. Where did the money come from?

Mr. Maguire replied they expected the budget to require an amendment during the year for potential fuel increase cost. They would have to come back to Council and ask for the additional money, unless the price of fuel went down.

Mr. Erf stated that per passenger the cost was over $3.00 per person.

Mr. Maguire replied Ozark Regional Transit ran approximately $9.00 per person.

Mayor Hanna added they ran into that when they ran into sparse population in rider ship.

Upon roll call the motion carried unanimously.

RESOLUTION 173-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

HMR TAX
An ordinance amending Section 3520 of the Code of Fayetteville, regarding the HMR Tax.

Mr. Rose read the ordinance for the first time.

Ms. Marlin Johnson stated in their packet they would see a list of other cities that collected HMR tax and they did collect from convenient stores. There was a key they keyed in on which was the deli items and those would be the items that would be taxed.

Alderman Santos stated he had always thought of this as a luxury tax. He would be a lot more comfortable if they did not go after things that were not luxury and were not bought by people out of town. He thought deli items from convenient stores and grocery stores were.

Ms. Johnson stated the reason they were bringing this to them was to bring their City Ordinance into compliance with State Law. It was a fairness issue to tax on premise items as well as off premise consumption items.

Alderman Austin asked if they had resolved their collection issue.

Ms. Johnson stated the City collected their tax. Last month there was approximately $20,000 that the City had not collected for the A&P commission.

A Fayetteville resident residing at 200 W. Lafayette, stated he owned a pizza shop in town. They spent five months paying state, federal, and local taxes. In November the A&P Commission announced they had a record collection of revenue, a $117,000 in one month. When they had voted for the Town Center they had said that there would not be an increase in HMR Tax. They were already asking for a tax increase. This increase would be regressive tax on the poor citizens. It was going to be a very confusing tax and it was going to be very expensive for them to collect. A lot of this money did go to a lot of good organizations, but they needed to make a point that a lot of this was the responsibility of the private sector. It was an endless parade of people wanting money.

Mr. Randy Zurcher, an area resident, asked the Council to leave this on the first or second reading tonight.

Mr. Joe Fennel, A&P Commission, explained the reason they wanted to change the ordinance was because the law had changed since it was enacted in 1977. All they wanted was for the rules in Fayetteville to reflect the State rules. They were also talking about getting current on the collection of the tax. The way they had collected the tax in the past is not working as well as it can work. They needed money to continue to help people do good projects.

In response to questions, Mr. Rose stated their present ordinance had every thing in it that could be taxed in way of what could be taxed as to what was in the existing statute in 1977. It tracked it word for word. What they had before them tracked word for word what could be taxed out of the State statute. There was no variance from their passing here and what State law specifically allowed to be taxed. In 1977 the law specifically allowed this tax to be levied by the City Council without public vote. In 1977 it was levied by the City Council, however, someone chose to referendum to the people. There was a referendum held on it and it passed. He did not think that the law required them to tax these things, but it allowed them to.

Ms. Johnson stated the problems came in with interpretation of what is prepared food.

Alderman Santos stated it needed to be more clearly defined.

Mr. Fennel stated another problem with this was the catering business. They did not realize any benefit from them. They were missing a lot of legitimate tax revenue out there that could be doing a lot of positive things in this community.

Ms. Terry Easton, an area resident, asked when the Town Center tax was passed by the citizens was there a promise there would not be a sales tax increase.

Mr. Rose stated he did not recall any promises regarding the HMR Tax and Town Center, but he was not sure.

Alderman Young stated the HMR Tax was set, however, this was a variation on it. He did not recall anything one way or another.

Mr. Rose stated they could collect up to three pennies for an HMR tax. This City has chosen only one penny for an HMR tax. It may have been said in that context, if it had been said.

Alderman Young stated what they were proposing was to apply that same one cent on these other businesses.

Ms. Easton stated she had a problem with the tax being placed on coffee and other styrofoam items. It was a regressive situation. She suggested the item be tabled to give some time for citizens

Ms. Johnson stated there had not been a new HMR Tax since 1977. The only vote that they had was the bond issue to build the Town Center, which was from existing HMR revenue.

Alderman Young asked who made the determination about the restaurant.

Mr. Rose stated it was the Finance Department.

ORDINANCE WAS LEFT ON THE FIRST READING.

TREE SETTLEMENT

A resolution approving a settlement agreement in Serafini, et al. vs. City of Fayetteville, Arkansas, et al., CIV 2000-536.

Alderman Trumbo stated he would like to see them table the item until the new Administration was sworn in, rather than this City Council.

Alderman Trumbo moved to table the resolution. Alderman Santos seconded the motion. Upon roll call the motion failed by a vote of 4-3-0.

Mr. Rose stated there needed to be a majority of the those elected to the Board for the passage of a motion. It required five for passage.

Mr. Sam Campbell stated when someone who sued the City they were suing the taxpayer. Has the person suing the City been damaged.

Mr. Rose stated the damages that were alleged are not monetary damages. The damages that they claim is that the ordinance has been illegally interpreted by the City of Fayetteville.

Mr. Campbell stated the settlement would mean that the case would not go to trial. For a private group to settle a lawsuit, it affected his pocket. He could not understand why they would settle. He stated they should dispense with the settlement.

Mr. Dan Coody stated whatever they decided tonight, chances were that it was going to come up before the next City Council. He thought they would be looking at the same discussion in two weeks.

Mr. Clay Fulcher, Attorney for the plaintiffs, stated this settlement would not cost anybody in Fayetteville any more money. This was going to be a proposal out of existing City budget. A compromise meant finding common ground. The settlement was for $550,000. The City was under no obligation to continue to allocate money after 2002 to the proposed Tree Preservation Fund. The plaintiffs did not get the money. The City kept their money. The City got to keep their money and simply agreed to allocate $550,000 out of its existing budget to be spent on tree preservation, trails and green space. It was the City Council who would determine how to spend the money which would be allocated to the Tree Preservation Fund. The committee they proposed to set up would only advise the City Council on perspective parcels of land or areas to invest these funds. No attorney is going to pocket any money nor receive any percentage of a jury award because the plaintiffs were not seeking damage. The settlement was not some form of punishment, rather it was for additional green space, trials and green space for all the citizens to enjoy. The fund would represent less than one-third of one percent of Fayetteville's annual budget. Argus provided the City with an estimate of $800,000 per year in increase tax revenue. There was another item which related to the Landscape Administrator sending out another letter to architects and engineers restating that Fayetteville has a Tree Ordinance and that trees must be preserved. Special efforts must be taken to preserve trees larger than twenty-four inches and that the Landscape Administrator needs to be brought into the development process at an earlier stage to ensure the preservation of trees.

Mayor Hanna stated the first offer he made and suggested that they could take one years sales tax generated from that development to purchase tree easements or conservation easements. They had figured it out in budget and it was approximately $400,000. This is tax money they were talking about. It was not a new tax. When they take this money and obligate it for tree easement and building trails they are taking it away from other things that are more important to the City. Right now there were more important things than allotting money for green space. It will take away from other projects. There was no doubt about it. The one thing that concerned him was that he had been told that if they did reach an agreement and settle this lawsuit before they went to trial the next time they started another project out there another lawsuit could be filed. This could go on. He thought that they would be better off to go to court and to let the judge make the decision on whether or not they enforced the ordinance properly.

Mr. Campbell stated this was anti-tree. If they were to tell a landowner who had trees on his land that he had fewer rights than the landowner down the street that did not have any trees. It would not be long before the trees would begin to thin out. The real issue was whether they settled it in the corner or did they go to trail. They should not settle it in secret, but in open court.

Ms. Terry Easton expressed her concern about the green space in Fayetteville.

Ms. Margo Clark, an area resident, stated she had a copy of the agreement in principle that he signed in October 27, 2000. She thought that they had reached a settlement. What changed?

Mayor Hanna replied what had changed was what he had heard from the people who read that and heard it and were concerned about how they spent their tax money. He had not been involved in the negotiations.

Alderman Trumbo stated when he first saw the agreement he was not in favor of it.

In response to concerns of Ms. Clark, Mr. Rose stated that the Mayor and everyone understood that in signing the agreement that in no way they were committing this City Council to anything. The agreement in principle as he recalled was a document that was signed at the request of Argus to ensure them that the negotiations had some chance of success. If it did not then they did not want to give up their trial date.

Mr. Bob Jordan, an area resident, stated that probably the tree issue was the deciding factor in the election they just had. What they had before them was a great opportunity for them. The impact would be minimal because it would be coming out of sales taxes that had not been generated. The citizens of Fayetteville were going to gain in green space. This was money that they had, but it was money that would be used to benefit the citizens of Fayetteville.

Alderman Reynolds stated everyone that had called him had asked him to vote no and for the suit to go to trial.

Alderman Young stated he had not had anyone call him that supported the settlement.

Alderman Reynolds stated if they were to settle it, what had they accomplished. They did not know if they were right or wrong. He voted with their legal department who said they were right in doing that. A judge or jury needed to tell them if they were right or wrong.

Alderman Trumbo stated they had no finality and open discretion and enforcement. They still had developments that were below the canopy percentage. He wanted to see some finality and direction.

Alderman Davis stated it appeared that replacement is still acceptable to meet the canopy. Nothing had changed.

Alderman Young stated people were concerned that there were no attachments to the settlements. If it were to go to court the judge would not rule on some of the things in the attachments. There was no meat in the attachments. He suggested rewriting the attachments. Their concern was not the money, but that there was no determination.

Alderman Trumbo stated ninety percent of the trees on the new library site were going to be cut down. He saw this happening all over again for their library. Until they had some direction, they would be dealing with this again.

Alderman Austin asked Mr. Fulcher if he would receive a fee if this was settled and where would this come from.

Mr. Fulcher replied, no, he would not.

Ms. Andrea Fournet, 1214 N. Shady Lane, asked why the Mayor did not like it. She asked why they had such a hard time giving them money for trees when they did not have any problem giving them money for roads.

Mayor Hanna stated he had people tell him that if they spent the money on the trees that they would file suit against the City for using their money in a way that it had been designed. Their sales tax money was designated. 75% to Capital Improvements, 25% to General Government. Was that a Capital Improvement? There were two things wrong with the settlement. First it called for the first $275,000 in 2001, and the store would not be producing revenue in 2001, so the money was going to have to come from somewhere else. He assumed it would be in 2002. That money would have to come from reserves or another project. He did not like that. No one had taken him up on his offer in the spring because they all wanted to protest the trees.

In response to questions, Mr. Rose stated there were two ways the new Council could hear the settlement again. One, they could change the settlement in some way to what they were presenting was a different thing than what was being presented tonight. Secondly, they could have a member of the majority make a motion for reconsideration. The problem then becomes, what if one of the new members, who has not had a chance to vote on this, decided they wanted to bring it up for consideration. It was his opinion that they can. It would require a two-thirds vote for reconsideration.

Ms. Fran Alexander, an area resident, stated she wanted to know who had called them. She stated she wanted to know how many calls and who they were and why they were not down here to talk. She resented the Council telling them that they had received calls. They could not see them. They could not hear them. They did not know even if they were citizens. They did not know what they were basing their decisions on.

Alderman Austin stated he would represent the people that talked to him personally whether it was in person, on the telephone or at the Council meeting. He did not think they should be disqualified as a citizen just because they did not come to the Council meetings. That was what he was required to do. He did not feel any guilt at all and he did not feel that he needed to explain beyond that.

Ms. Alexander replied for them to say, "citizen has called me" negates their input. She also wanted them to know that the people who called them did not really know the issue the way the people who have set there did. Trent, continued to talk about percentages. The percentages were not up to interpretation. A number was a number, however, they could make a judgement call, which was the job of the Landscape Administrator. They could say whether or not a project can be built or they did not want to make it fit. What Ms. Hesse's job was, was to make that call. She did not call that interpretation. That was a judgement call based on whether she felt that the structure could be put on the site and still maintain the percentage or not. She had tried to tell them about the library situation. Which was a completely different situation. It was also a judgment call. It was also based on a lot of factors about the health of the trees which were there and maintaining their health with the structure. It was also a downtown in-fill situation. The things they did not understand about urban forestry was appalling. The Ad Hoc Committee was trying to get this into a language where it would not be so twisted. But it all went back to the flexibility of whether the building could be built on the site with the preservation or not. They had not taken that out of it so far. She wanted to address the damage. Every single time they did something on the land, they made an injury. This City has just agreed to 1.3 million dollars of injury for private enterprise. The settlement was a tiny amount of money to start putting bandages on the injuries. They had to understand urban forestry enough to understand this was a health issue. They were having ozone alerts in Tulsa and Little Rock. What made them think that ozone problems could read the boundary lines for Northwest Arkansas. It was very serious. That was when they would start to hurt economically.

Alderman Trumbo stated he differed with her on this topic. He thought this needed to go to trial. Under oath Ms. Hesse had stated that Argus had complied with the ordinance. He thought that they should all know where their ordinance stood and how it should be implemented. He noted St. Paul Church was going to cut down a tree for an addition. Some of the people he knew thought that was a double standard.

Ms. Alexander stated it was very difficult to create an ordinance that was going to apply to every single place.

Alderman Trumbo stated they were always going to have someone upset on any development whether it was a nonprofit or a developer.

Ms. Alexander stated they were misrepresenting the percentage, they did not know about the judgement call. She expected when they came out with their final document, she expected public input. They were not there for two days every week.

Mr. Tom McKinney, Sierra Club, stated usually after the upheavals in Fayetteville there has been a change in the make up of the City Council. This time he thought the City Council had a chance to do something that was very positive, this settlement. He suggested they table the item and take it up in two weeks. He thought it would heal a lot of wounds. He thought those citizens deserved the settlement. All they needed was for the Council to come up with an ordinance that worked. It needed to be very clear in its language.

Mr. Ron Cursely, 129 Elis, stated he had been arrested in one of the trees in the CMN Business Park. He was here to ask them to not support the settlement. He did not feel that the settlement addressed any of the issues that caused the lawsuit. He thought that was far more valuable than green space that might be spent in some way that was very vaguely defined. They knew that if a settlement was accepted, it cleared the path for the trees to come down on Lot 7. He would like to see that prevented. He was one of the people that called and asked them not to support the settlement.

Alderman Trumbo asked him if he would be as tenacious to save all the trees where the library is going in?

Mr. Cursely stated he did not believe the public's perception had not changed. He thought the public believed something was wrong. He thought unless there was a change of the tree ordinance, he thought they could expect another brew-ha-ha. He would predict another citizen outcry, unless they resolved the questions in the lawsuit.

Mr. Grisham, St. Pauls Church, stated he thought they needed to make distinctions when talking about the ordinance. It was a very different thing when they were talking about commercial development of three hundred acres and a church like theirs. They were able to place their new building at a place to the best advantage of the whole city. They were not taking out any trees of real significance. They acted on the ordinance just as it was intended to, to help people like them. It was not a comparable situation. They had the support of the Landscape Administrator. They had no rare trees. They were downtown and an in fill situation. They needed to be able to work with some flexibility. They could have placed a building in the middle of the green space without knocking any trees down and kept the canopy. They were not in the same factual circumstances. He liked the flexibility. He like the seriousness of enforcing it especially on new development. When they were on the size of lot that they had, they did not have flexibility.

Alderman Trumbo stated he did not know if it was apples and oranges. Bridgeport, a new subdivision on Wedington, had 11.5 existing canopy and they only preserved 6%. Cedar Lake Apartments went from 38% down to 4%. There was a wide variety of percentages that different people had different views on. Did they discriminate on trees just because of where they are?

Mr. Grisham stated one of the difference he saw between St. Pauls and CMN was the situation where the buildings could be built without destroying a lot of trees.

Alderman Austin stated there seemed to be some situational ethics involved.

Mr. Grisham stated he thought the City wanted to have the flexibility to take into consideration each of those situation.

Ms. Cindy Sager, 1907 Harold, stated she was a plaintiff. Stated she was very much for the settlement. People had worked very hard to bring this together. She encouraged them to accept the settlement. She stated they looked forward to settling this.

Mr. Loran Wheeler, 1635 W. Shadow Ridge, stated he was also a plaintiff. The City offered them a settlement. He assumed the City had the money. It was also his understanding that there was no sales tax involved in the settlement. The current funds they were talking about were not sales tax. It was also his understanding that the sales tax from Khols could not be segregated out for a special use. He had been told the money exists and it was a matter of putting it in a separate account. He thought they had a right to know who the people were who were opposed to this settlement. He did not think there was anything wrong with the current ordinance. It looked straight forward to him. It was enforcement. It did not make any difference how many ordinances were written if they did not enforce them.

Alderman Trumbo moved to deny the settlement. Alderman Reynolds seconded the motion.

Alderman Russell stated the settlement would not address some of the issues that caused the lawsuit. The only thing that going to court would tell them would be whether the City broke the law on the CMN development. He stated he would like to go out on a note of compromise. He would have supported tax money to be allocated for these purposes. The new City Council and the new Administration can allocate money for these purposes. They can also amend the tree ordinance to make it more clear.

Upon roll call the motion carried by a vote of 5-2, Santos and Russell voting nay. Daniel absent for vote.

RESOLUTION FAILED.

SEWER CLAIM

A resolution approving a settlement of a sewer backup claim at 3216 King Cross in the maximum amount of $24,124.89 and approval of a budget adjustment.

Alderman Santos moved to approve the resolution and to only pay for the items touched or damaged by the sewer. Alderman Young seconded the motion.

Mr. David Jurgens, Water and Sewer Superintendent, stated he only wanted to pay for the things that were physically touched by the sewer. There were still a lot of unknowns. He thought the appropriate number was below the $24,000.

Alderman Davis stated some of the items were ridiculous. Boys clothing, forty sweaters?

Mr. Jurgens stated when they left the site they took everything that was wet. None of the other clothing in the house was wet or damaged.

Upon roll call the motion carried unanimously.

Meeting adjourned at 11:30 p.m.