MINUTES OF A SPECIAL MEETING
OF THE
CITY COUNCIL
NOVEMBER 25, 2002

A special meeting of the Fayetteville City Council was held on November 19, 2002, at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

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

PARTY TIME PONIES: A resolution approving a Certificate of Public Convenience and Necessity for Party Time Ponies allowing them to operate pony rides.

Ms. Woodruff stated they have submitted their insurance and their coggins was up to date.

Ms. Julie Johansen stated she would like for the council to abolish the helmet law that was required in the ordinance, because of sanitation. When they use the same helmet from child to child they run the risk of passing head lice and other parasitic activity. There is not an affective spray that can be sprayed on the helmets to kill the head lice, it is not feasible. The ponies will be on a ring this year on the northeast corner of the square. They will be attached to a pony ring verses walking around the square, which will be a safer environment for the children.

Mr. Ray Dotson, an area resident, stated he had a problem with the ordinance because they have a license to drive the carriages.

In response to questions, Ms. Woodruff stated the driver's license permit had been in the ordinance previously.

Mr. Dotson stated the driver's license was a headache for the carriage people. He would also like to address the fee increase. He thought it was an excessive fee for a carriage ride.

Ms. Woodruff stated the fees had been increased from one hundred dollars to two hundred and fifty dollars per year. It did not affect Mr. Dotson's license this year because he purchased the license last year, but in January his fee will go up to two hundred and fifty dollars. Party Times Ponies will have to pay two hundred and fifty dollars this year.

Alderman Thiel moved to approve the resolution. Alderman Marr seconded. The motion carried unanimously.

IMPACT FEES: An ordinance enacting impact fees for all territory within the City's water and wastewater service areas including areas outside the corporate city limits and within the service areas located within Washington County and other incorporated cities. The ordinance was left on the 1st reading at the November 19, 2002 City Council meeting.

Alderman Santos moved to suspend the rules and move to the second reading. Alderman Jordan seconded. Upon roll call the motion carried 6-3, Davis, Reynolds and Bechard voting nay. Mayor Coody voting yea.

Mr. Duncan stated they are down to just water and waste water impact fees. Their study had documented that there was a need and a growth potential. Fayetteville had the potential to double in the next two decades. Impact fees, unlike other types of charges, are a one time charge, they are not reoccurring taxes. The courts had indicated that for impact fees to be legal it had to be a fee and would not have the features of a tax. An impact fee is only assessed on new development, it is not assessed on existing development. Since we are only taking about a water and wastewater impact fee, the time that the fee would be assessed would be at the time of a water meter purchase. An impact fee could only reflex the actual net cost of growth, it is controlled. You can not just charge what ever you want to. Their fee had been only based on the cost of the treatment plant expansion cost. Water treatment, they are only looking at the distribution line cost for water treatment, that is because it is not owned by the city. Their plant served Fayetteville and three other communities. Residential fees are based on household size and non-residential fees are based on meter size. When they started the study, all of the fees were based on meter size. Impact fee studies should be based upon local data. The costs do vary between communities. He summarized the cost per residential unit and non-residential unit and their methodology for figuring the fee.

Alderman Thiel stated she had some real concerns about the non-residential fees.

Mr. Duncan stated water and waste water is based on meter size. Water and wastewater fees probably have less impact on non-residential than any other facility. Most non-residential uses were not big water and wastewater uses. In terms of relative impact to residential, non-residential does not consume a lot of water. Most of the non-residential meters were going to be in the one to three inch size.

Alderman Davis stated most non-residential developments would not be big water users, but they were going to be charged $2,826 to come to Fayetteville. From what their attorneys are telling them they could not pass the impact fee on to the other cities that used their facilities.

Alderman Reynolds expressed concern about an existing house having to pay for sewer hook up when connects were finally made available.

Mr. Duncan stated many communities wanted to try and get those existing developments off septic tanks and onto sewer systems. Some cities make concessions to get them onto the system.

Ms. Thiel stated the ordinance stated it included existing developments.

Mr. Williams stated it could be amended by striking "existing or" and just require it to be new development and not existing developments with new connections, which is how the proposed ordinances reads.

Alderman Reynolds moved to amend the ordinance striking "existing or" from sections A and B. Alderman Thiel seconded.

Alderman Young questioned what would happen if an existing house had a standard meter and they wanted to increase their meter size, would they have to pay an impact fee.

Mr. Duncan stated those were local policy issues and that they could do what ever they wanted to do. They did not have to charge the impact fee.

Mr. Marr read the ordinance, "in the event of redevelopment or reconstruction, change of use from existing development the fee shall be the difference between the fee for entire redevelopment or reconstruction."

Alderman Young stated the ordinance actually charges for the actual use of the property. If they get a sprinkler system that required an eight or twelve inch line, but they only use an inch and a half meter, they were charged for an impact fee as if there was an inch and half meter.

Mr. Williams stated it was in the ordinance under fire suppression and low pressure.

Alderman Young asked if that applied to residential or any plan within the city or just commercial.

Mr. Duncan stated he read it to mean anywhere within the city. They would still pay the standard typical meter rate. They would not have to pay for the pressure condition.

Alderman Santos stated residential developments do not pay by the meter size, they pay by the square foot size. He questioned if they added on to their existing home would they be responsible for the difference in the impact fees.

Mr. Duncan stated that was a policy issue. Most of the communities did not require that. If they went by variable rate, then whatever the house was built at should be the size for what they purchase.

Upon roll call the motion carried 7-1, Marr voting nay.

Alderman Santos stated they needed to make it clear whether they wanted to charge the difference between what the existing fee would be for additions to residential units. He did not think that they should charge for those additions.

Alderman Santos moved to add to the end of the section D.2., "Enlargement of a single family home will not require any impact fee." Alderman Davis seconded.

Mr. Mark Sugg stated he was a property owner. He questioned if an existing house had been torn down and there was an existing meter still there and he built a duplex, did he have to pay two impact fees?

Mr. Duncan stated if there was an existing structure, then they already had a vested right to the facility so they did not have to pay. He had the right to a single family home and he would only have to pay the incremental difference.

In response to concerns from Alderman Marr, Alderman Young stated the existing houses / people had already paid for the infrastructure. The new construction, they were the ones creating the need for the new facilities. If they had an existing house that burnt down and wanted to build a new larger house, in his opinion they should pay the difference between the old size and the new size house.

Alderman Marr stated under this amendment, that example would not have to pay.

In response to questions, Mr. Duncan stated 95% of all water and waste water impact fees in this country are a one size fits all.

Alderman Bechard stated if they were wanting to use variable rates in order to be fair, then when someone enlarged a home, then they should pay the difference.

Alderman Santos stated adding on to a home was not usually to accommodate extra residents, it was to make their homes more comfortable. The existing structure had already bought in, that was why they wanted to charge impact fees to new developments.

Alderman Bechard stated they had to come to terms with some consistent approach to how they were going to fund this and charge people so they could be fair across the board.

Alderman Thiel suggested that they consider exempting their CDBG Target area. There should be some provisions for waiver of impact fees for low income homes. She liked the idea of eliminating the sliding scale that they had started off with and consider a target area to exempt and the ability to grant waivers based an a certain criteria.

Alderman Young stated he was concerned if a fee was going to be charged to enlarge a structure and if they went with the meter sized to assess the impact fee, then when they enlarge the structure they would not increase the size of the meter.

Alderman Santos stated they needed to stick with standards and averages. There would be exceptions. He thought the sliding scale would be the fairest way to enact the impact fees and charge the people who are creating the demand the proper amount.

Alderman Thiel stated she thought there were better ways to calculate the fee than on square footage. She thought it should be based on the cost of the house and how much the house was going to be sold for. The sliding scale was very confusing. She would prefer going back to the idea of the meter rather than the square footage. Then if someone wanted to build low income housing, then they had to come before the council and ask for a waiver. They could set up a criteria for low income.

Mr. Jeff Erf stated he liked the idea of basing the fee on square footage. People who afford a large home could afford a higher impact fee.

Mr. Sugg stated the plumbing permits were based on the number of fixtures. He thought that would be a good way to calculate the impact fee.

Mr. Duncan stated fixtures were rarely used.

Dr. Mark Lindsey stated nationally there was a program called RUBS a multi-family property that is not able to raise rent because it was maxed out in the area, looks at charging the residents their share of the bulk water and sewer use. It is determined not only by square feet, but by the number of people in the household. It comes into a closer prorate share of service and is nationally accepted.

Upon roll call the motion carried 5-3, Young, Marr and Bechard voting nay.

Mr. Williams suggested rewording the definition of new construction to read, "any construction or expansion of a non-single family home or other building structure or use. Any change in use of a non-single family home or building structure or land".

Alderman Thiel moved to approve the amendment. Alderman Santos seconded. The motion carried unanimously.

Alderman Young asked for an interpretation of D.3 and D.5. What were they doing in those two?

Mr. Duncan stated D.3 was related to mixed use projects. They would have to calculate it all, add it up, and the total was the compost.

Alderman Young asked on D.5. if irrigation meters would be assessed impact fees.

Mr. Duncan stated they would not be assessed a wastewater impact fee. There would be a water fee.

Alderman Thiel presented a map of the target area for their HUD funds. She suggested that they exempt this area of town from impact fees.

Alderman Marr asked if the recommendation only applied to residential fees or would non-residential fees be exempted.

Alderman Thiel stated it should only be residential.

Mr. Duncan stated if they did not charge for improvements in that area, then they could not build any improvements. If they decided to exempt residential in this area, he recommended that they exempt non-residential because they needed to treat them equally and fairly.

Alderman Young questioned if they did not collect the impact fee in this area, then they could not spend money in there. What they were really saying was that they could not spend impact fee money.

Mr. John Williams, an area resident, stated he supported impact fees and had paid taxes for years.

Mr. Jeff Martin, an area resident and local homebuilder, presented a presentation against impact fees. They did have alternative solutions to impact fees. One of which is a water/sewer rate increase. The stake holder's group findings were inconclusive. They did not agree on any one impact fee or any one decision. He suggested that the council wait until the State legislature passed a law regarding impact fees.

Mr. Bill Burkhart, Home Builders Association, stated he had participated in the impact fee discussion for the past three years. Impact fees are very vague laws, they could be challenged and there is no way to be equitable in all cases. He thought the ordinance was fundamentally flawed. The State legislature was working on guidelines for impact fees this year, he suggested that they wait until they had finished.

Alderman Young asked Mr. Burkhart if the Home Builders would support impact fees in Fayetteville, if they matched the State legislation.

Mr. Burkhart stated yes. In his opinion they would be challenged across the board.

Alderman Young asked how the proposed ordinance was different from the State legislation.

Mr. Burkhart stated it did not match their 2006 capital improvement plan. So they could not say that it was directly related to their CIP or the cost that it bears. They had a sliding scale as a formula to show what their cost were. Costs is not how much the square footage is.

Mr. Jeff Erf, an area resident, asked them to act on the proposed ordinance. They did not know if it was going to pass.

Mr. Bill Molher stated the issue was fairness to people who already live in this town. Without impact fees, the burn of the cost of growth fall on the current residents that already occupy homes.

Mr. Mike Henry, Realtor Association, stated the realtors in this State are opposed to impact fees. They thought there were better ways to fund the cost of infrastructure. They were supportive of the Senator Bisbee legislation.

Mr. Tim McMann, an area resident, asked if the impact fee money would be applied to fixing their problem with raw sewage flowing into their waterways.

Mayor Coody stated it would add capacity to the new plant.

Mr. McMann stated if they would raise the rates, the water people would use less and they would then be promoting conservation. He suggested that they raise the water and sewer rates rather than impact fees.

Ms. Amy McMillan, an area resident, asked why they had not included fire protection in their impact fee.

Mr. Williams stated the Supreme Court had ruled it illegal.

Alderman Reynolds stated he did not believe that this covered enough area. Every one that he had talked to had wanted streets, more police and more firemen. He thought it needed to involve more things.

Alderman Bechard stated he was against this impact fee. He would support an impact fee to improve their fire stations and improve their roads. He was for optimizing a revenue stream. Fayetteville had the lowest city taxes in the area.

THE ORDINANCE WAS LEFT ON THE SECOND READING AS AMENDED.

Meeting Adjourned at 10:05 pm