REVISED
MINUTES OF A MEETING
OF THE
CITY COUNCIL
DECEMBER 3, 2002

A meeting of the Fayetteville City Council will be held on December 3, 2002 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Alderman Santos, Jordan, Reynolds, Marr, Thiel, Young, Bechard, Davis, City Attorney Kit Williams, Deputy City Clerk Gina Roberts, Staff, Press, and Audience.

CONSENT

APPROVAL OF THE MINUTES

PUBLIC ACCESS: A resolution accepting a contract for public access television services from January 1, 2003 until March 31, 2003.

BKD, LLP: A resolution approving a contract amendment to the contract with BKD, LLP in the amount of $6,000 for additional audit costs.

INSITUFORM TECHNOLOGIES: A resolution awarding a construction contract to Insituform Technologies for sanitary sewer main line and service lateral lining, cured in place pipe method; approval of the first term in the amount of $308,250, with a contingency of $30,000 and approval of the second term in the amount of $308,250 with a contingency of $30,000, contingent upon approval of the 2003 budget including the sewer rehabilitation project contained therein.

MOTOROLA: A resolution approving a radio maintenance contract in the amount of $93,965.48 to Motorola.

MERIT ELECTRIC: A resolution approving a contract with Merit Electric for the installation of new ball field lighting at Lake Fayetteville Softball Complex in the amount of $256,000 with a project contingency amount of $38,400 for a total cost of $294,400 along with the approval of a budget adjustment.

RUPPLE ROAD: A resolution awarding the construction contract in the amount of $753,920.40 to Red Deer, Ind. for the construction of Rupple road from Wedington Drive to the Donald W. Reynolds Boys and Girls Club; approval of a project contingency in the amount of $113,080.60 for project needs including material testing, street light installation by Ozark Electric, and variation in final quantities, and approval of a budget adjustment.

HOLIDAY: A resolution adding one additional holiday to the City's benefit package in accordance with the Hay Group's Benefit Analysis Report.

GROUP BENEFITS: A resolution approving a contract for employee group benefits for 2003.

TRANSPORATION ENHANCEMENT: A resolution in support of Transportation Enhancement Act 2003 (TEA-3).

FEMA: A resolution accepting a grant from FEMA in the amount of $111,508 to purchase protective gear for the Fire Department.

Alderman Davis moved to approve the Consent Agenda with the exception of the Public Access item. Alderman Marr seconded. The motion carried unanimously.

OLD BUSINESS

VA 02-12.00 and 02-13.00: An ordinance approving vacation request VA 02-12.00 and 02-13.00 as submitted by Greg House for property located at southwest corner of St. Charles Avenue and Watson Street. The request is to vacate a drainage easement. Ordinance was left on the second reading as amended at the November 19, 2002 meeting.

Alderman Davis moved to suspend the rules and move to the third and final reading. Alderman Marr seconded. The motion carried unanimously.

Mr. Williams read the ordinance.

Alderman Reynolds stated the developer had made some changes. He had no more problems with the project.

Alderman Santos asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

ORDINANCE 4442 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 02-34.00: An ordinance approving rezoning request RZN 02-34.00 as submitted by Mel Milholland of Milholland Company on behalf of Roy and Stephanie Lovell for property located at 6310 W. Wedington Drive. The property is zoned A-1, Agricultural and contains approximately 2.8 acres. The request is to rezone to R-1, Low Density Residential. Ordinance was left on the first reading at the November 19, 2002 meeting.

Alderman Davis moved to suspend the rules and move to the second reading. Alderman Jordan seconded. The motion carried unanimously.

Mr. Williams read the ordinance.

Alderman Jordan moved to suspend the rules and move to the third and final reading. Alderman Reynolds seconded. The motion carried unanimously.

Mr. Williams read the ordinance.

Alderman Santos asked shall the ordinance pass. Upon roll call the motion carried unanimously.

ORDINANCE 4443 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 02-37.00: An ordinance approving rezoning request RZN 02-37.00 as submitted by Milholland Company on behalf of Ozark Adventure for property located east of Futrall Drive, west of Baldwin Piano, and south of Hollywood Drive. The property is zoned R-O, Residential Office and contains approximately 17.70 acres. The request is to rezone to C-2, Thoroughfare Commercial. Ordinance was left on the first reading at the November 19, 2002 meeting.

Alderman Davis moved to suspend the rules and move to the second reading. Alderman Marr seconded. The motion carried unanimously.

Mr. Williams read the ordinance.

Alderman Jordan stated he would like to know how much revenue they expected to bring in.

Mr. Milholland stated he did not have that information for them tonight.

Alderman Thiel stated they were only looking at the rezoning and not this development.

Alderman Santos stated this was for the proposed water park on the southeast corner of highway 62 and I-540 intersection.

In response to questions from Alderman Marr, Ms. Dawn Warrick stated Traffic Division had preformed a traffic count on November 21, based on the daily totals it reflected that

approximately 3,450 vehicles would travel in that vicinity per day. Futrall in that location is classified as a collector on the Master Street Plan.

Alderman Reynolds stated he would like to leave this on the second reading because this was a large project and Hollywood was a two-lane street. He wanted to make sure that they would not have a parking problem near the fire station.

Alderman Santos stated this property was within the Overlay District and it would be developed with extra landscaping and screening requirements.

Mr. Gary Lowery, an area resident, stated he was concerned about the requirements and the standards and conditions that were going to be attached to this property in the future. Who was going to develop the roads and maintain the property when it was not open. The council needed to decide what they wanted before the proceeded.

Mr. George Weiss, an area resident, asked if this property were to be rezoned, did the City have any assurance that a water park would be built there or could they build anything that they wanted to.

Ms. Warrick stated that request that was before them was to rezone the property to commercial. C-2 zoning district provided for a variety of different uses.

Mr. Todd Jacobs, an area resident, stated he was concerned about the rezoning. He asked if this was the best use for the property. He thought leaving the property R-O would leave more opportunities in the future.

In response to questions, Mr. Knoxs thought the project would bring in approximately 3.5 million dollars the first year in gross revenue. They were projecting an average of 2500 and 3500 people per day during their peak season. During their off season they would be fully staffed with a skeleton crew to do their maintenance and improvements.

THE ORDINANCE WAS LEFT ON THE SECOND READING.

RZN 02-38.00: An ordinance approving RZN 02-38.00 as submitted by Alan Reid on behalf of Betty Ruble for property located at 625 N. 54th Avenue. The property is zoned A-1, Agricultural and contains approximately 2.12 acres. The request is to rezone to R-1, Low Density Residential. Ordinance was left on the first reading at the November 19, 2002 meeting.

Alderman Jordan moved to suspend the rules and move to the second reading. Alderman Marr seconded. The motion carried unanimously.

Mr. Williams read the ordinance.

Alderman Jordan moved to suspend the rules and move to the third and final reading. Alderman Davis seconded. The motion carried unanimously.

Mr. Williams read the ordinance.

Ms. Warrick stated the applicants would like to be able to divide the property. Under their current zoning they did not have enough area to further divide the property.

Alderman Santos asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

ORDINANCE 4444 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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. Ordinance was left on the second reading at the November 25, 2002

Alderman Santos stated that they had agreed at Agenda Session not to discuss this tonight, they were only going to read the ordinance and have public comment.

Alderman Jordan moved to suspend the rules and move to the next reading. Alderman Thiel seconded. The motion carried unanimously.

Mr. Williams read the ordinance.

Mr. Gary Lowery, an area resident, stated they were having a problem determining how to figure the charge, by square footage or size of meter. He suggested that they use the amount of fixtures.

Mr. Bill Burkheart, NW Homebuilders Association, stated there had been a lot of questions on the ordinance. They had a fully funded CIP for wastewater to double tax for the same Capital Improvements seems to be an error. They were already taxing on the sales tax. He suggested that they take this issue to the voters.

Alderman Young moved to table the item until the next regularly scheduled council meeting. Alderman Marr seconded. The motion carried unanimously.

THE ITEMS WAS TABLED UNTIL THE NEXT MEETING.

OLD MISSOURI ROAD: A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by JTK Trust, James T. Keenan and James F. Keenan, trustees, to secure the necessary easements and rights-of-way for Old Missouri Road improvements. The resolution was tabled at the November 19 meeting.

Mr. Boettcher asked that the council table this manner again. They had met with the property owner, they were trying to finalize an agreement.

Mr. Lowery stated the city could charge abutting property owners for improvements.

In response to questions, Mr. Williams stated the government could require money or dedication of land if the landowner has done an impact upon their infrastructure needs. The ordinance Mr. Lowery was referring to required the property owner to pay for improvements, if the city made the improvements. However, that was a violation of the constitution because the property owner had done nothing to impact the city. He thought they needed to go back and look at this ordinance.

Alderman Davis moved to table until the first meeting in January. Alderman Thiel seconded. The motion passed 7-0-1, Marr abstaining.

THE ITEM WAS TABLED UNTIL THE FIRST MEETING IN JANUARY.

NEW BUSINESS

AUDUBON LEASE: A resolution authorizing the City of Fayetteville to negotiate an agreement with Audubon Arkansas for property within the Wilson Springs Business Park.

Mr. Williams stated this resolution talked about the business park and the council was authorizing the mayor to negotiate with Audubon Arkansas a lease agreement. The final lease would come back to the council for approval.

Alderman Thiel stated Don Nelms the chairman for the Arkansas Audubon and Ken Smith were here to give a presentation.

Mr. Ken Smith introduced Roy Fuller, President of the NW Audubon Chapter. He gave an overview of their programs. They wanted their centers to revolve around a protected place in the community. They were proposing the Wilson Springs park property for their center in NW Arkansas and the adjacent Clabber Creek watershed. It will be one of two Audubon centers that they are proposing for Arkansas. They wanted to be where the population was located. There was a very diverse population in NW Arkansas. They wanted to be close to an urban area which will allow them to met and work with as many people as possible. They wanted to be a recognized part of the community, like a library.

Alderman Davis asked how soon they were planning on developing the property and how much money would it take.

Mr. Smith replied they were looking at a span of five to ten years that it would take to develop the funding. They thought that they could do it in five year.

Alderman Thiel stated the city would be required to manage this wetland, unless they could get someone to do it for them. The Audubon would do that for them. They would also do the environmental study that was required by the task force for the area north of Clabber Creek. This was a long range plan. This resolution would authorize the mayor to start negotiating a lease with the Audubon Society.

Alderman Reynolds stated that he hoped that when they sold the seventy acres that they recoup the money that they had invested in this project. This would be a starting point for getting something going out there. Mr. Nelms has been the only one to build anything out there.

Alderman Davis stated he would like to see them delay this for a while to make sure that the administration had brought everything forward that was out there so that there would be no more surprises.

Alderman Thiel stated part of the negotiation process would be discovering any of those problems.

Mr. Nelms stated they were here as a friend to the city. He thought that they would work thorough some of the problems. They wanted to add to the community. He took this resolution tonight to mean that they were really serious about this. He and Ken were going to do a tremendous about of work to get the National Audubon Society and their people together. They were going to start a long term process that they thought was going to be an asset to the city. He wanted the resolution to be taken as a very serious step to getting this done.

Alderman Santos stated this resolution was to give the mayor the authority to negotiate and it did not bind them to anything.

Alderman Thiel stated it did bind the mayor to negotiate it. It was the intent of this council.

If the council was not in favor of this he would like to know tonight. He took this as the council was wanting them to go forward and the mayor to go forward to negotiate this.

Mr. Glenn Sowder, an area resident, stated he could not think of anything grander than having an Audubon center here. He suggested that before the negotiations got serious that they look at the other land that they had, like Lake Fayetteville and Lake Wilson.

Ms. Fran Alexander, an area resident, stated the birds on this land had chosen this area for a reason and they could not just relocate.

Alderman Thiel stated there were not very many important bird areas.

Mr. Tom McKinney, an area resident, stated if they were to look at the resolution that had been passed by the City of Fayetteville they would find that the possibility of the Audubon leasing and managing the 219 acres actually satisfies one of the provisions. Personally he supported this action. The Corp of Engineers stated that because of the acreage the city was setting aside they probably would not have to spend as much money in mitigation in developing the seventy acres. He wanted to make sure that the city was not going to lose that advantage. He was also concerned that the city might lose matching funds from federal agencies.

Mr. Jim Bemis, an area resident, stated he supported this item. He saw it as the beginning of their trails system and the development of a park area out there. He saw it as a real balance between the environmental community and the development community.

Mr. Smith stated that Audubon Centers attracted tourist. They attract people from all over the world. When Audubon establishes an area as an IBA it becomes a known designation point for people who were very serious about watching wildlife. The number of wildlife watchers has jumped five million from 1996 survey. The amount of revenue that was generated by wildlife watcher has also increased in tune of several billion dollars. In response to questions, he stated the reasons they needed more than a hundred acres was because small areas take a tremendous amount of impact. When they had a large number of people coming the same spot those areas become worn. The larger the area the more people they were able to accommodate. This location kept them close to people.

Alderman Davis asked if they had a problem sharing the land with the Fish and Game.

Mr. Smith stated they had to be very careful that they did not over develop it with buildings and parking lots. It was an option that they could work with. What he wanted to do tonight was work with them in securing that property and begin negotiations toward a lease so that they could start working out some of those details.

Alderman Thiel moved to approve the resolution. Alderman Jordan seconded. The motion passed unanimously.

Alderman Thiel asked Mr. Nelms to keep the council informed on any of the written negotiations with the mayor to keep them abreast of what was going on.

RESOLUTION 192-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

VA -02-14.00: An ordinance approving VA 02-14.00 as submitted by Karan Sander for property located at 1385 Wimbledon Place. The request is to vacate a section of the utility easement.

Mr. Williams read the ordinance.

Alderman Marr moved to suspend the rules and move to the second reading. Alderman Davis seconded. The motion carried unanimously.

Mr. Williams read the ordinance.

Alderman Jordan moved to suspend the rules and move to the third and final reading. Alderman Reynolds seconded. The motion carried unanimously.

Mr. Williams read the ordinance.

Alderman Santos asked shall the ordinance pass. Upon roll call the motion carried unanimously.

ORDINANCE 4445 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 02-18.00, 19.00, 20.00, 29.00, 30.00, 31.00 and 32.00: Ordinances approving rezoning requests as submitted by the City of Fayetteville Planning Division on behalf of the Mill District Neighborhood Association.

Mr. Williams read the ordinance.

Ms. Shelly Rushing, Planning Department, stated the Mill District project had been a project to implement a portion of the General Plan 2020 and presented the highlights of the project.

Alderman Davis moved to suspend the rules and move to the second reading. Alderman Thiel seconded. The motion carried unanimously.

Mr. Williams read the ordinance.

Ms. Warrick stated the staff felt it was appropriate to take this to at least two different meetings to allow enough time for public comment. This has been an eight month process.

THE ORDINANCE WAS LEFT ON THE SECOND READING.

FRISCO: A resolution certifying to the tax collector of Washington County the costs of abating unsightly and unsanitary conditions upon the property located at 922 North Frisco Avenue in the City of Fayetteville, Arkansas.

Mr. Williams stated the land owner was entitled to two notices. One of those was thirty day notice before the council meeting. That had not been done in time for this meeting. He suggested that they table it until January to allow enough time for notice to be given.

Alderman Davis moved to table the item. Alderman Jordan seconded. The motion carried unanimously.

FRANCHISE FEE: Approval of the changes to the Franchise Fee Ordinances between the City of Fayetteville and Arkansas Western Gas, Southwestern Bell, City of Fayetteville Water Utility, City of Fayetteville Sewer Utility, City of Fayetteville Solid Waste Utility, SWEPCO, and Ozark Electric Cooperative to increase the franchise fees to 4.25% of gross revenues.

Alderman Santos stated the ordinance that they had before them tonight was setting the franchise fee on the gross revenues of the city's solid waste and water and sewer funds.

Mr. Williams read the ordinance.

In response to questions, Mr. Davis stated there were no public service commission prohibitions. City's had complete control over city franchise fees for utilities in their city. There were no limitations from the public service commission.

Alderman Jordan and Reynolds expressed concern over the lower income families that lived on a fixed income. If they were going to look at the residential, then they needed to look at the commercial end of it.

Alderman Young stated he did have a problem, because in the budget that had been presented to them he did not see any big reductions like he had anticipated. The council reaction had not been to cut the budget, but to pass the franchise fees. The rest of the country is having to tighten their belt. He did not see why the city government did not have to tighten their belt. When the city's government started to tighten their belt, then they could look at something like this.

Alderman Jordan stated they were putting it on the backs of the people.

THE ORDINANCE WAS LEFT ON THE FIRST READING.

2003 BUDGET: A resolution adopting the proposed 2003 Annual Budget and Work Program.

Mr. Davis presented additional information to the council.

A special work session was scheduled to discuss the budget.

Mr. Davis stated the deficit spending would be moved from 1.715 million to 2.447 million without the franchise fees.

Ms. Bootsie Ackerman stated the funding for DDEP had not been included in the budget for 2003. They have been a partner with the city for a number of years. She asked that they revisit their request for funding. DDEP was funded for planning, design and economic development of their target area.

Alderman Thiel asked if they could find some cost cutting measures and what did they do last year.

Ms. Ackerman stated they generate a report each year that describes their activities.

Alderman Marr stated this was a very bad time to cut funding now. There were performance issues. They needed to make it clear what was expected.

Mr. David LaRue, an area resident, suggested that they consider using college students to do some of the work.

Mr. Lowery stated they needed to appreciate their city employees more and to give them a raise and to add more employees.

Alderman Young moved to table the resolution. Alderman Davis seconded. The motion carried unanimously.

PUBLIC ACCESS: A resolution accepting a contract for public access television services from January 1, 2003 until March 31, 2003.

Alderman Davis stated he wanted to pull this because there were three providers wanting to provide this service to the city. He could not see any reason to extend this contract for ninety days.

Alderman Thiel and Davis suggested a thirty day extension.

Alderman Davis moved to extend the contract to January 31, 2003. Alderman Marr seconded. Upon roll call the motion carried unanimously.

Alderman Jordan moved to approve the resolution. Alderman Davis seconded. The motion carried unanimously.

Meeting adjourned.