# MINUTES OF A MEETING OF THE CITY COUNCIL MARCH 4, 2003

A meeting of the Fayetteville City Council was held on March 4, 2003 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**PRESENT: Mayor Coody, Aldermen Marr, Rhoads, Davis, Lucas, Jordan, Thiel, Cook, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.**

**PRESENTATION: DPZ presentation on new urbanizing and smart growth principles.** Mayor Coody announced the DPZ presentation has been cancelled. They will make the presentation at a later date.

**Alderman Davis moved to pull the Berry V. City from Consent and accept items 1 – 7 on the Consent as read. Alderman Jordan seconded**.

**Alderman Marr said page 19 of 30 of the February 18, 2003 minutes under Resolution 28-03 the word unanimously needs to be added. It does not designate how the vote came out.**

**Mayor Coody asked if there were any other changes or modifications.**

**Upon roll call the motion passed unanimously.**

**Berry V. City will be moved to the last item under new business.**

**CONSENT:**

**APPROVAL OF THE MINUTES:** Approval of the February 18, 2003 meeting minutes.

**BUDGET:** A resolution approving a budget adjustment which will allow for the roll-forward to the current budget of all projects or items in progress which were appropriated in the 2002 budget.

***RESOLUTION 30-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.***

**RECYCLE VEHICLE:** A resolution to approve the budget adjustment in the amount of $33,117.00 for the operation of a recycling vehicle.

***RESOLUTION 31-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.***

**CORPORATE HANGAR:** A resolution approving Task Order No. 14 with McClelland Consulting Engineers for engineering services to design and construct three small corporate hangars in the amount of $66,200.00 at Fayetteville Municipal Airport, Drake Field.

***RESOLUTION 32-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.***

**MANHOLE REHAB:** A resolution to approve a construction contract with T-G Excavating, Inc. for sanitary sewer manhole rehabilitation, Illinois Basin 1-5 and the Industrial Park, in the amount of $933,333.00 and to approve a 5% contingency in the amount of $46,667.00.

***RESOLUTION 33-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.***

**RULES OF ORDER AND PROCEDURE:** A resolution to adopt Mayor/City Council Rules of Order and Procedure.

***RESOLUTION 34-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.***

**FEMA FIRE ACT:** A resolution providing the Fire Department to submit a grant request for a FEMA Act Grant during the 2003 funding cycle.

***RESOLUTION 35-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.***

**OLD BUSINESS:**

**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. This was tabled at the December 3, 2002 City Council meeting.

Mayor Coody asked if Mr. Earnest or Mr. Dumas had any updates for the City Council on this.

Mr. Dumas said there is nothing new.

Mr. Williams said the only thing to report is that everything has been done properly now in relation to notices, that is the reason that we had to table it before, because it was difficult to get notices to them, they refused to pick up their certified mail. The police department has provided proper notice to them. Mr. Williams said at this point Mayor

you just need to open this up for a Public Hearing and part of that Public Hearing will not only be comments from the public but also comments from your staff to give information to the City Council so they can determine the proper amount that should be placed as a lien against this property.

**Mayor Coody opened the Public Hearing.**

Mayor Coody opened this to public comment.

Mayor asked if anyone wanted to address the Council on this issue.

There was no public comment.

Mayor Coody then asked if anyone from the Council wanted to ask anything.

Alderman Reynolds said he would like to know what Mr. Williams found out about charging some of the police department time to this.

Mr. Williams said he does not believe that is a cost of collection that is a cost of service. We did talk briefly with Chief Hoyt and there really wasn't that much use of the police force in the number of hours. I would recommend that we just stick with the cost that it cost us to cleanup this particular property.

Alderman Reynolds said $1,177.00

Mr. Williams said I do think we need to have some statements from the staff concerning that in the Public Hearing.

Mr. Dumas said this was a cleanup that Solid Waste was asked to pick up. Mr. Dumas said he did not have the bill in front of him, but it took several trips after the normal routes were done by a crew leader, two vehicles and two additional staff to clean this up. The bill is for the cost of that work for disposal, labor cost and overhead.

Mayor Coody asked if there were any questions for Mr. Dumas.

Alderman Davis asked are we certain that we have included all the cost and that we have not left anything out.

Mr. Dumas said they did not leave anything out of the cost that they had, but other cost that the City had I can't speak to those, but these are the Solid Waste cost.

Mayor Coody said the Chief said he may have had two to three hours of police time in it.

Alderman Marr said he just wanted to confirm for the record that when we talked about the itemized statement that you gave at the Agenda Session that we do have the necessary

backup to show proof of time and hours worked should we be requested to provide that information.
Mr. Dumas said yes we do.

Mayor Coody asked if there were any other questions or comments.

There were no more questions or comments.

Mr. Williams said the Public Hearing needs to be closed and a determination by the City Council as to the proper amount that we should certify to the treasurer.

Alderman Davis said the amount should be $1177.57.

**Alderman Reynolds moved to approve the amount of $1,177.57 and to close the Public Hearing. Alderman Thiel seconded. Upon roll call the motion passed unanimously.**

Mr. Williams said that amount would be placed in section one of the Resolution. Section two of the Resolution allows the City a penalty even though by statue the penalty could be 10% our City Ordinance makes the penalty 5%. I would asked now that the City Council pass the Resolution that includes the $1,177.57 as the substantial part plus the 5% penalty, keeping in mind that we will have to pay the tax collector for the County 3% back, it is kind of an offset for that.

Alderman Thiel said Mr. Williams you said 5% but this says 10%.

Mr. Williams stated that has been revised because our Ordinances do not match and follow the State statue. I do not know why our Ordinance says 5%, but I think we need to stick to our Code of Ordinances because they are less then the State statue.

Alderman Marr said in the future we need to look at changing that so that it does match the State.

Mr. Williams said he hopes we will pretty quickly get the new code out and I will take that to the powers that be and we will see if we can get that changed.

**Alderman Davis moved to add 5% to the bill and approve the Resolution. Alderman Reynolds seconded. Upon roll call the motion passed unanimously.**

***RESOLUTION 36-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.***

Mayor Coody said we really do want to see Fayetteville get picked up and where we do have eye sores we are beginning to get more aggressive, this is our first exercise in this area. I would like for everyone that has a problem and that refuses to deal with it to

know, that we are serious about getting the area cleaned up. We can not let eye sores continue to define our wonderful town.

Mr. Earnest said the first meeting in April we will be bringing three separate items before the Council for Public Hearings and action by the Council.

**DICKSON ENHANCEMENT:** Discussion of Change Order #5 and approval of a resolution to the construction contract with Township Builders, Inc. for Dickson Street Enhancement Project. The resolution was tabled at the February 18, 2003 City Council meeting.

**Alderman Marr moved to remove from the table. Alderman Davis seconded. Upon roll call the motion passed 7-0-1. Alderman Reynolds abstained.**

Mayor Coody asked Mr. Earnest if there was anything new on this issue.

Mr. Earnest said he did add as per request, the addition of a fourth option which is brick pavers at four intersections and they are lined out on the paper in sub sequential order. Other than that there is no change from the information that you had at the agenda session.

Mayor Coody asked, for his information, which would be the two intersections left out.

Alderman Davis said he appreciated Mr. Earnest getting us this information; he approached Mr. Earnest on this and asked him to provide this for all the Council members. Basically the two intersections that I had thought about and I spoke to Ms. Ackerman yesterday and she agreed was looking at Powerhouse Avenue and East Avenue deleting those two and having the other four along with Arkansas Avenue have the brick pavers along with the logo that is going to go up at Arkansas Avenue which is being paid by the Razorback Foundation I believe. If we do that we are still looking at having a contingency fund or remaining fund for odds and ends that may be discovered during the course of the project of $108,525.00. When we started this project in my opinion it was a beautification situation for downtown Dickson Street. We receive a lot of our sales tax dollars from that area, it does attract a lot of people to the community, I think that is very important, I think we want it to look different from the rest of the streets in the community and if we just asphalt that street then there is really no different in that street than streets just around the square, because basically its all asphalt. I think there needs to be some distinction down there, I think this way we can add distinction. Now unfortunately any time you get into a renovation project you are always going to find infrastructure problems that nobody anticipated or that no one knew about because that area has been there for many years. I am not sure if there are plans showing all the water lines that were put in when the project was really started.

**Alderman Davis moved to put brick pavers at those four intersections that he mentioned. Alderman Thiel seconded.**

Mayor Coody said he thought it was misleading to say that if we don't put the brick intersections in that they would be the same as all asphalt streets as the square and as all other streets in town. We are still putting in the brick crosswalks and I don't want anyone thinking that we are deleting brick crosswalks here, with or without the brick intersection pavers, the brick crosswalks stay at all intersections. This in itself would continue to be a distinction from every other street in the city. I wish we had brick crosswalks everywhere else but we do not have them anywhere else. Regardless of what happens on the intersections, I don't want the public to think that these pavers are the only thing to distincitify Dickson Street. This is the first that I have heard about having four instead of two or six intersections bricked. It seems to me that since East, Block and West are the thoroughfares around the square, East and Dickson gets a lot more traffic than Highland Street, is Highland Street in this four intersection scenario.

Alderman Davis said we are looking at St. Charles, Locust, School, and West Avenue.

Mayor Coody said if we are going to do four why not all six.

Alderman Davis said that's fine too but I thought we trying to have a little more money setup in the contingency fund and I got the impression that $16,000.00 would not be adequate, now whether $108,000.00 will be adequate or not I don't know but at least that gives us some additional cushion. We do not know how many other problems we will run into, it is my understanding that Mr. Earnest has gotten with the engineer and the contractor. We have already found out previously to this the engineer left off these brick pavers to begin with. We do not know how accurate his estimates may be.

Alderman Thiel asked the Mayor if he had the four options in front of him. I think what Alderman Davis is pointing out is that Option Three has two intersections and Option Two which has four intersections, there is not a significant amount of difference in those two amounts. Option One has brick pavers at six intersections and then you have only $16,400.00 of funds remaining, there is a considerable jump there and I am not sure why but if these are quotes that the staff got from the contractor then I certainly support the four intersections. You said no other streets in the city have these, what are the pictures we have here.

Mayor Coody said those are at the University. What he was referring to was city streets. We don't have brick crosswalks and this is all new at the University. I just do not want people thinking according to Alderman Davis's comments; someone could be lead to believe that the only thing distinctive about the street would be the brick intersections when the brick crosswalks have always been in the conversation. I just want to make that clear for everyone to understand.

Alderman Lucas said if we take Option Two and we go over, we have a request, a problem or an infrastructure problem or something and we go over the $108,000.00 where will we get the money.

Mr. Earnest said we would have to do back to the City Council and ask for a budget adjustment and the City Council would have to find monies in some available area to increase the funding for the project.

Alderman Lucas said would it come out of the general fund.
Mr. Earnest said it would not be out of the general fund. It would be out of sales tax capital as we talked about yesterday or other options that are available to this Council. There could be available monies depending on your desire to locate that money and we would just make a recommendation as to where it could come from. Through the most difficult portions of this project we have spent something in excess of $85,000.00 in looking at problems, so leaving $108,000.00 on the table, I think gives us some assurance that we may be able to deal with those problems that we have remaining. There is no assurance on this as Mr. Davis has said and everyone has pointed out this is a difficult area to work in. There have been some problems in mistakes in quantities and I think we have those problems resolved, but I am not going to assure you that $108,000.00 is enough. We think it is but we can not guarantee it will be, there are no guarantees in working in an old area like this.

Mayor Coody said there is no money budgeted for street furnishings, I would hate for us to finish the street and not have the street furnishings to complete the job, so if we needed to come up with money for street furnishings where would we come up with that.

Mr. Earnest said that would also be a capital issue. We might get some additional assistance from some of the various merchants or DDEP. I think this is something other people could pitch in on. I would hope that would happen.

Mayor Coody said he would hope that would happen too, we have not had a whole lot of luck with that so far I hope that luck might change.

Alderman Thiel said the fact that DDEP came up with almost $2,000,000.00 for this project, we have had a lot of help for this project.

Mayor Coody said he was talking about the merchant's end of it, and that is what Mr. Earnest was talking about.

Alderman Thiel said at last night's budget meeting Alderman Lucas brought up a good point that I have said various times. Some of this additional money has been for infrastructure that was long past due being fixed, it has been lumped into this project. I thought her question last night was a very good question why hasn't some of these things come from the Water and Sewer fund or another fund rather than coming out of this project. They were infrastructure projects that should have been dealt with, but were not known about, but they have been lumped into this project. I feel that because of the money the group has come up with and the grants they obtained I feel like that most of

them feel it is really important that we at least keep to the integrity of the four intersections. I think they have contributed a great deal to this project.

Mayor Coody said there is no doubt about that.

Mr. Pearson a property owner on Dickson Street commended the Council for the good work they are doing for our City. I know you are putting in a tremendous amount of effort and frequently your job is a thankless one. I am here because I am concerned about the project on Dickson Street. I know we have encountered some significant problems in the infrastructure as Ms. Thiel pointed out this is problem that would have been a cost to the Water and Sewer department and should not upset the plans of the enhancement project. This has been going on some time and many commitments have been made and investments have been made in anticipation of the project going through as it was planned. Most people may be able to live with four intersections but I submit really you should do the six that everyone has been counting on. I hope you will give consideration to doing what we need to do to alter the entrance to the University and to look to the future. Many years from now I hope people will come back and say look at Dickson Street its wonderful, the Town Center is wonderful, the new Library is wonderful, we must have had a great board.

Mayor Coody said Dickson Street is going to be wonderful there is no doubt about that and people not years from now but hopefully several months from now will be able to say that regardless of this intersection question. The big picture is that Dickson Street is going to be beautiful.

Ms. Ackerson said thank you to the Council and to Mr. Pearson for coming out and speaking for the property owners on Dickson Street, it is a beautiful project, you are right Dan. This City has always stepped up in its public projects and done everything that it can to make them special and to make this City the most special City in the Northwest Arkansas Region. The Downtown Dickson Enhancement Project will go a long way in doing that. It will make a statement about the intellectual community, the cultural community, it will compliment the efforts of the University of Arkansas and help them to achieve their goals in attracting and retaining students and it will help as our economy moves into the new economy. I am sorry that the new urbanization presentation could not be made tonight because this project speaks directly to that new wave. It is nice to see Fayetteville across the cutting edge of the country.

Mayor Coody asked Ms. Ackerman if we are using the Dickson Street model as a model for the Downtown area, where do we stand with the brick paver intersections for the other intersections in the downtown area?

Ms. Ackerman said she thinks the primary corridor Dickson Street and the connection to the square along Block Avenue are going to be the real defining areas for the business corridor. If we decide to make those same level of enhancements, as you know we are working on a plan right now looking at all the sidewalks, assigning them a level of

enhancement throughout the downtown Dickson area, some with all the enhancements of Dickson Street and Block Avenue, others might not have the brick intersection or brick crosswalks but they will be graduated down according to use and where they are in the area. Block Avenue and East Avenue were the original streets to create that connection and back and forth to Dickson Street. That was before we had a library project, now that we have a major library project along Mountain and West, we think the best corridor might be to come up Block Avenue go over to the new library and either at School or West Avenue go back to Dickson Street. That might be a more suitable priority than East Avenue since there is little to no retail business. That can all be determined as it goes along.

Alderman Marr said he hopes that we look tonight at funding the intersections and not necessarily designating them. How we deal with Block Street and St. Charles because they are an offset intersection is something we need to do. I would like to encourage us to ask the design committee and the individuals involved in this project to give us feedback on how to treat that, whether that will be treated as one intersection or because of how it is offset it will be treated as two. I think our role in policy and funding is to decide how many we can get and addressing your concerns of contingency. In my conversation as an Alderman representing this area of the City many of the property owners in this area as well as others outside of the area want to see us to think in a long term manner, they want us to get as many as we can, they understand the financial position that we are in, in terms of how much contingency that we have used at this point and I do think it is physically responsible to try to leave some money in the contingency fund as you desired us to do. Trying to accomplish that with getting as many intersections as we can get and still have some financial protection is what I, as a representative of this area, am trying to accomplish. The reason that I would much rather personally vote for six but in respect of having some money set aside for the unexpected, when we have spent $85,000.00 on a side of the street where most of that infrastructure exists today, I certainly think having $100,000.00 set aside gives us at least what we have already done as a protection. There is no guarantee, there is no guarantee that I will be here tomorrow, I hope that we will do this, I hope that we don't micro the project that it is going to be these four, and I think we need to rely on the expertise of the people involved.

Alderman Davis said he agreed with what Alderman Marr said he would like to have all six also.

**Alderman Davis amended the motion to delete the portion where he named the intersections and to let DDEP and the City work together to determine the four intersections.**

Alderman Davis asked Alderman Thiel if she accepted that.

Alderman Thiel said she did not know the intersections had been specified.

Alderman Davis said he made a statement based on those four.

**Alderman Thiel seconded the amended motion.**

Mayor Coody asked Mr. Pearson, being one of the major landlord's of property owners on Dickson Street might we count on you and your support to help us fund things we might fall short on such as the street furnishing. I know we have talked about trying to raise public funds, but have not had much luck. Do you think we can count on you and get your help to support and get other property owners to support us on this?

Mr. Pearson said he would do his best in that regard, I may have to rely on my banker but I will do everything that I can.

Ms. Ackerson said one reason that we have not raised any money for furnishings is because we have not tried. We have not addresses that yet, we have not identified what furnishing will be there, we do not know what kind of cost there is so it is hard to go out and raise the funds. I am confident that there are a lot of business owners in this town who if asked if they would like to have there name permanently put on a permanent fixture on Dickson Street they would probably be happy to fund something such as a bench. I don't know about trash receptacles they may not want their name on a trash can. I think if we do run short we can raise money for the furnishings. If we don't use the contingency then I would hope we would be able to do more if not all of the original design. I think it would be money well spent.

Mayor Coody asked by that do you mean the doormats and the cross edging.

Ms. Ackerman said all the intersections at this point or we might look at some of the other deductive alternates that we took earlier. It would be nice to have the cross cuts on the sidewalks to give them some texture. I don't think it would be reasonable to think we should go back and tear out concrete and put in the doormats but we will find other ways to use that money.

Alderman Rhoads said that was the exact question that he had, if we end up with say $70,000.00 because it looks like the intersections appear to be about $35,000.00 a piece and we end up with $70,000.00 in our contingency funds can we then go back and build the other two intersections.

Mayor Coody said Mr. Boettcher pointed out early on that if we waited on the intersections, lets just say we did four now and we want to do two later we could probably get another contractor to do this for less later on. We may pay $3,000.00 for an asphalt intersection now, we could probably do it cheaper later, to where we could save much more than the $3,000.00 that we would lose.

Ms. Ackerman said one of the only problems we face in doing that is not ordering and having all the brick run in the same run, so there maybe some variation in the brick

colors. That is one of the issues you are facing in trying to do some now and do some later, is not being able to have those bricks made in the same lot.

Mayor Coody said since they are blocks apart I don't think that would be too much of a problem they are not right up against each other.

Alderman Jordan said as everyone knows I did support the money for this to begin with. The money is already there it is not like we are creating new money or anything like this, but what we could be cutting into is reserve funding for that project and that does concern me. I always rely heavily on the representatives of a Ward and I think if they feel that they want to use this funding for these four intersections I can agree to that. It will be like probably pulling teeth if we get down to where we have to come back for more funding from me.

Alderman Lucas said she agreed with Alderman Jordan it's been a tough decision because of the concern about more cost, more money, but I think we have got to look at Dickson Street as an industry. When we bring an industry into Fayetteville we help them out and promote that industry. Dickson Street is one of our industries, it brings money into Fayetteville, not only is it going to be really pretty and really nice and we all enjoy that, but it basically is an industry for Fayetteville.

**Upon roll call the Resolution passed 7-0-1. Alderman Reynolds abstained.**

***RESOLUTION 37-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.***

Mr. Earnest said there have been a couple issues raised during the past several weeks about how exactly we are going to seat the bricks in the intersection. Let me assure you that we are going to pull together a bunch of engineers and we are going to make sure that it is done right. If that is done improperly then there will be a lot of upset folks, so we are going to make sure that doesn't happen. The Council needs to remember that the number that you are looking at is the financial summary of the Downtown Dickson Street Enhancement Project, this City spent another 1½ million in water and sewer improvements, so the total cost on this project is something in excess of 4.8 million. That is a number we all need to keep in mind as we go through this. There has been a significant public investment thanks to this Council on issues before we got started on what everyone calls the Enhancement Project.

**VA 03-1.00:** An ordinance approving vacation request VA 03-1.00 as submitted by Kim Scott of Mountain Mechanical Contractors on behalf of Gary Harvey of AMC Land Associates and Mountain Mechanical Contractors for property located west of S. School Avenue on 9th Street. The request is to vacate a section of the street right of way as shown and described on the attached map and legal description. The ordinance was left on second reading at the February 18, 2003 City Council meeting.

**Alderman Davis moved to suspend the rules and go to the third and final reading. Alderman Jordan seconded. Upon roll call the motion passed unanimously.**

***Mr. Williams read the ordinance.***

Mr. Harvey said he has one thing that he needs to add. I think the Council is well informed on what is happening down there and what I am trying to do and what I have asked you folks to do. I have learned from visiting with you folks that there has been some concern about the green space where this easement would join School Avenue. I agree with you that that should be left as a portion of green space. I have obtained a Bill of Assurance from Tim in Planning, in the Bill of Assurance I assure that no development will take place but some landscaping within 50 feet of the curb line of School Avenue. Mr. Harvey presented the Bill of Assurance to the City Clerk.

Alderman Reynolds thanked Mr. Harvey for his development on South School, it is much needed and thanked him for helping to clean it up.

Mr. Harvey said he has been a part of a business down there since 1975 and there is more energy now being spent down that way in positive thought recently. I think this Council has been responsible a lot for that. That is going to be a great place to go.

Alderman Thiel said her initial concern was the green space, that is a heavily wooded area and there are not many left on that section of South School but the City Attorney informed us we can not keep land like that for that purpose. I appreciate the efforts of the owner to present this Bill of Assurance that the front part of that will still remain wooded. I will support this at this time.

**Mayor Coody asked shall the ordinance pass.**

**Upon roll call the ordinance passed unanimously.**

***ORDINANCE 4466 AS RECORDED IN THE OFFICE OF THE CITY CLERK.***

**NEW BUSINESS:**

**RZN 03-9.00:** An ordinance approving rezoning request RZN 03-9.00 as submitted by Richard L. Miller, Attorney, on behalf of Dodi Nichols for property located at 2800 Old Farmington Road. The property is zoned A-1, Agricultural and contains approximately 1.88 acres. The request is to rezone to R-1, Low Density Residential.

***Mr. Williams read the ordinance.***

**Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Marr seconded. Upon roll call the motion passed unanimously.**

***Mr. Williams read the ordinance.***

Alderman Jordan said he had not had any calls on this he asked Alderman Lucas if she had any calls on this.

Alderman Lucas said no.

Alderman Jordan said he thinks it is a pretty good thing. The response time of the fire department is four minutes. I think that is very good and very important. I don't have a problem with it.

**Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Davis seconded. Upon roll call the motion passed unanimously.**

***Mr. Williams read the ordinance.***

**Mayor Coody asked shall the ordinance pass.**

**Upon roll call the ordinance passed unanimously.**

***ORDINANCE 4467 AS RECORDED IN THE OFFICE OF THE CITY CLERK.***

**EATING ESTABLISHMENTS:** An ordinance to amend the Unified Development Ordinance to allow Use Unit 13, Eating Places, as an allowable use in a Residential Planned Zoning District.

***Mr. Williams read the ordinance.***

Mr. Conklin from Planning said we are adding restaurants, Use Unit 13, Eating Establishments as part of our residential planned zoning district this was discovered as we are beginning to implement that ordinance. We have a mixed use residential development that will have offices, restaurants and additional multi-family dwelling units, this was discovered by the staff and the applicant and we just need to amend the ordinance to allow it to happen.

**Alderman Marr moved to suspend the rules and go to the second reading. Alderman Jordan seconded. Upon roll call the motion passed unanimously.**

***Mr. Williams read the ordinance.***

**Alderman Marr moved to suspend the rules and go to the third and final reading. Alderman Jordan seconded. Upon roll call the motion passed unanimously.**

***Mr. Williams read the ordinance.***

**Mayor Coody asked shall the ordinance pass.**

**Upon roll call the ordinance passed unanimously.**

**BERRY V. CITY OF FAYETTEVILLE:** A resolution to refer defense of Berry v. City of Fayetteville to City's Insurance Carrier.

Mr. Williams said the City has Fed-xd a copy of the compliant that was filed against the City by Mr. and Mrs. Berry last week, we have yet to hear from our insurance company. I pointed out that our policy makes it look like it is possible that they will not defend this, they might defend this, I am not sure. The last few days I have been working on a motion to dismiss on some various grounds, I will give you a draft copy of that after the meeting tonight so you can see what we are doing. I will file that as your City Attorney in plenty of time so we will not lose by default. In this particular case I think the City had several good defenses including the fact that the judge has already ruled that the ordinance on motor vehicle racing facilitates is constitutional. That was one of the main agreements in the compliant against us that the ordinance was not constitutional. That is a significant issue that we have already prevailed on, there were some procedural problems also in this compliant that I am going to point out in my motion to dismiss. Once we get this back from the insurance company I will come back and let you know what their position is and I will take my guidance from you at that point in time. At this time I would like for you to indefinitely table the proposed resolution.

**Alderman Marr moved to table the resolution indefinitely. Alderman Jordan seconded.**

Alderman Rhodes asked is there any allegations in the compliant that are certainly coverable under the policy.

Mr. Williams said there are some that are certainly arguably coverable. They are not the primary ones. Many of the allegations are declaratory judgments and of course that is another part of the insurance policy that looks like maybe they don't cover all of it. I have been talking with one of the attorneys that does represent the law firm because they are defending us in two other cases right now as we speak. There is a broad duty to defend in Arkansas even broader than to pay so it is possible that they will still present defense coverage to us, if they do make that offer I will let you know at that point in time.

Alderman Davis said he would suspect that the City Attorney will receive a rights to reservation letter which means the company is not going guarantee to make any payment should we lose, but it will also state when they give you that letter that they will also pick up some defense cost.

Mr. Williams said that would be up to the Council at that point in time, what you wanted to do with that. We do pay the first $50,000.00 of defense coverage.

Alderman Thiel said she thinks our City Attorney should be commended for the excellent job that he did defending the citizens of Fayetteville. I think he did a very good job and I think a lot of citizens appreciate it.

Alderman Reynolds said being the other part of Ward 1 I think you from my heart also. **Mayor Coody asked shall the motion to table pass. Upon roll call the motion passed unanimously.**

Alderman Marr stated the Council is currently seeking applications for various openings on Boards and Committees. You can see these openings on the Government Channel and the Public Access Channel. I would encourage citizens to apply and get involved. The deadline for applications is Friday, March 7, 2003. Interviews will start after that.

**The meeting adjourned at 7:55 pm**

_____

**Sondra Smith**
**City Clerk**