# MINUTES OF A MEETING OF THE CITY COUNCIL APRIL 1, 2003

A meeting of the Fayetteville City Council was held on April 1, 2003 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

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

**CONSENT:**

**NOMINATING COMMITTEE REPORT**

**APPROVAL OF NANCY L. BOLIN TO THE FAYETTEVILLE HOUSING AUTHORITY BOARD**

**APPROVAL OF NEAL CRAWFORD TO THE ADVERTISING AND PROMOTION COMMISSION**

**Alderman Marr gave a report from the nominating committee as to their selection from the applicants to fill the vacancies on the Board's and Committee's. A copy of the Nominating Committee report is attached.**

**Alderman Davis moved to approve the nominating committee report. Alderman Jordan seconded. Upon roll call the motion passed unanimously.**

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

Due to the Aldermen not having time to review the March 18, 2003 minutes, they will be approved at the April 15, 2003 meeting.

**MUSEUM OF NORTHWEST ARKANSAS:** A resolution to support the application of The Museum of Northwest Arkansas for formal affiliation with The Smithsonian Institution.

***RESOLUTION 41-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.***

**KUTAK ROCK, LLP AGREEMENT**: A resolution to approve a bond counsel agreement with Kutak Rock, LLP.

***RESOLUTION 42-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK***

**STEPHEN'S, INC**: A resolution to approve a bond underwriting agreement with Stephen's, Inc. for bond underwriting services of the Town Center bond issue refinancing if advisable.

***RESOLUTION 43-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK***

**WITTENBERG, DELONY & DAVIDSON CONTRACT:** A resolution to approve an architect contract with Wittenberg, Delony & Davidson in a not to exceed amount of $83,700.00 to design, complete the large scale development process and supervise construction of Fire Station Number 7 (West Side).

***RESOLUTION 44-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK***

**Alderman Davis moved to approve the consent as read. Alderman Jordan seconded. Upon roll call the motion carried unanimously.**

**OLD BUSINESS:**

**BUDGET ROLL-FORWARD:** A resolution to approve the budget adjustment for various capital projects to be re-budgeted from the 2002 budget to the 2003 budget. This part of the budget was not considered at the March 4, 2003 City Council meeting.

**Alderman Jordan moved to approve the resolution. Alderman Davis seconded. Upon roll call the motion passed unanimously.**

***RESOLUTION 45-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK***

**RZN 03-6.00 (Brophy):** An ordinance rezoning that property described in rezoning petition RZN 03-6.00: rezoning (Brophy, PP 291) as submitted by Bill Rudasill on behalf of Ralph Brophy for a parcel containing approximately 1.65 acres located north of Township and east of Highway 71B, Fayetteville, Arkansas from C-2, Thoroughfare Commercial to R-3, High Density Residential. The ordinance was left on the second reading at the March 18, 2003 City Council meeting.

Alderman Thiel asked Mr. Rudasill the possibility of rezoning the property to R-2 rather than R-3.

Mr. Rudasill said that was fine with him.

Dawn Warrick with the Planning department said they would be able to process the development for duplexes on the entire property with it being split zoned as long as both of the districts permit what is being requested.

Alderman Reynolds asked how long it was going to take for Mr. Rudasill to get this project through now.

Ms. Warrick said approximately 35 days depending on the type of project.

Alderman Reynolds asked Mr. Rudasill if he had talked this over with Mr. Brophy.

Mr. Rudasill said the Mr. Brophy is trying to sell the property and the commercial zone that cuts through the residential has been a problem with presenting this property for sale. This will allow him to proceed to present this property to a potential developer.

Alderman Reynolds said so you have been authorized by Mr. Brophy to make these changes.

Mr. Rudasill said yes.

Alderman Davis said with R-3 density he can have 40 units per acre and going to an R-2 will decrease the density to a maximum of 24 units per acre.

Ms. Warrick said that was correct.

**Alderman Davis moved to amend the ordinance from an R-3 to an R-2 and to suspend the rules and go to the third and final reading. Alderman Marr seconded. Upon roll call the motion passed unanimously.**

Mr. Williams said he would read the entire ordinance because of the amendment.

**Mr. Williams read the ordinance.**

Alderman Marr thanked the applicant.

**Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.**

***ORDINANCE 4471 AS RECORED IN THE OFFICE OF THE CITY CLERK.***

**NEW BUSINESS:**

**MOUNT SEQUOYAH:** A resolution to approve the offer and acceptance contract between the City of Fayetteville and Mount Sequoyah Assembly, Inc. for the purchase of about 67 acres of land for $1,300,000.00 and a budget adjustment in the amount of $600,000.00 as first year's payment.

Dr. Pete Heinzelmann spoke on behalf of purchasing Mount Sequoyah. The Fayetteville National Heritage Association has received over $18,000.00 in contributions to donate towards the purchase of Mount Sequoyah. The National Heritage Association is pledging to raise $300,000.00 over the next two years to be given to the City to help pay for Mount Sequoyah and to secure a conservation easement on this property so that it will remain preserved in its natural state. We are presenting $15,000.00 now as the first installment of this pledge. We are also pursuing grants for this project. The Fayetteville National Heritage Association also wants to work in partnership with the City, other citizens and business groups in Fayetteville to promote the identification and preservation of other areas of our national heritage. We feel it is important to develop a long range plan for carrying out this preservation effort. By saving Mount Sequoyah today we are making a tremendous investment in our future, by both preserving the woods and also by starting the process to preserve other valuable parts of Fayetteville's national heritage.

Mayor Coody thanked Dr. Heinzelmann for the work and the fund raising effort.

Alderman Davis said he would have to abstain from voting on this issue, he is on the Board of Directors for Mount Sequoyah Assembly.

Alderman Lucas said she was glad to hear than the money that is raised is going to come to the City.

Alderman Jordan said he would like to hear from the Ward I Aldermen.

Alderman Reynolds said he had a phone call from a lady that belongs to the Methodist Church her concern was why the Methodist Church is giving up this land. She was also concerned that since the City gave this land to the Methodist that the Methodist should give it back to the City in good faith without a price tag.

Mayor Coody said Charles Wallace could answer the debt structuring question. Mayor Coody said he did not believe that the City of Fayetteville gave the land to the church, he thinks it was deeded to the church by some of the City fathers privately back some time ago.

Mr. Williams said he believes that is correct. Individuals that were leading citizens of Fayetteville donated it not the City government itself. They were doing it in the name of Fayetteville.

Mayor Coody said the question about Mount Sequoyah needing the money is a question for the Mount Sequoyah staff. Mayor Coody asked Dr. Wallace if he could address the issue.

Mr. Charles Wallace, president and CEO of Mount Sequoyah asked what is the question.

Alderman Reynolds said why are the Methodist selling this property rather than gathering the money from the Methodist from the Southwestern United States and paying the debt and keeping the land for the church.

Mr. Wallace said we are carrying some old debts that have been around for a lot of years; in the last two years our trustees have assessed our assets looking toward the future as to how we can best use those assets. The acreage we speak about is one of the assets for which we do not have an immediate plan. We are pleased with the idea that this might be a win/win situation. We can use the money to pay off some debts and move forward. We are pleased with the idea that the property would still be assessable, available, conserved and natural for the public.

Alderman Reynolds thanked Dr. Wallace. He said seeing no opposition he was surprised because he had had phone calls to that affect.
Alderman Thiel said she is excited about the private/public partnerships that are being created here and that the National Heritage Association is committed to funding a major portion of this purchase. The property owners that adjoin this preserve want to buy areas by their back yards to place in conservation easements, that is a good partnership with the community and with this organization. I think we need to continue to seek these kinds of partnerships with organizations and individuals. I think this is a way we can continue to preserve areas of natural beauty and still remain an economically viable community. There is a lot of support for this and I certainly want to maintain this area as it is for our future generations.

Alderman Marr said at the agenda session one of the items that came up was in the staff presentation of how the initial down payment would be made included an allocation of monies remaining from the tree settlement of approximately $174,000.00. The Trees and Trails Task Force asked that this money be removed from the itemization of the down payment. I would like some clarification from Steve or the Mayor on how we replaced that money in our initial down payment and if there has been any further discussion of the Task Force on future criteria of applying any of that money towards this.

Mayor Coody said we would like to make this a land for land swap.

Steve Davis said staff went back to the capital projects that were cancelled that were on the roll forward list and identified approximately $185,000.00 and removed any reference to the Tree and Trail Task Force funding for this project. The money was taken from the budget planning software and the employee parking lot. Both projects combined were about $297,000.00.

Alderman Rhoads asked where the parking lot was.

Mr. Davis said it was an employee parking lot. We have made an arrangement with the Town Center parking garage to use some of that space and we have relieved some of our parking pressures in that direction.

Mayor Coody said the plan is to replenish this money with the sales of other property later on.

Mr. Davis said that is correct.

Alderman Marr thanked the National Heritage Association for stepping forward and helping us with this, I think it is a great item that we should all be working together on. The fact that the City's name is the name on the line for payments should the group not be able to come forward and not be able to find the $300,000.00, have we begun any type of process that would help us identify how we would pay for this should that not come through.

Mayor Coody said yes we have looked at that. While we are hopeful and optimistic that the Heritage Association will be able to raise the funds we know that we can't sign the contract and just hope for the best, so we are planning. When the Heritage Committee comes up with the money the City can sell them the conservation easement to the property. We can not give that away, at that time we would dedicate back the conversation easement to make sure that future government could not decide to sell it. We have five years to pay this out at 3% interest and we are collecting 4% on our investments so we will be bringing in more than we would be paying out in interest.

Mr. Davis said as we prepare the five year capital plan 2004-2008, we will set up a capital project that would have those annual payments in it. It would be part of the five year capital plan.

Fran Alexander asked about money that is to be land swapped from the Water and Sewer Fund, it was mentioned property on Highway 45, I believe that is the 13 acres.

Alderman Thiel said that is in the Water and Sewer Fund and cannot be put into the General Fund.

Ms. Alexander said would this land be sold to pay for the debt we now have.

Mr. Davis said we are talking about an agenda item that is two weeks in the future. The 13 acres is the land that the City tried to sell in 2001 that the citizens said we do not want it sold, so the City Council said we are not going to sell it. That property is Water and Sewer Fund property and we are swapping that acreage for acreage that Water and Sewer can use in the Industrial Park. The 13 acres is not being sold, it is not up for sale, unless City Council decides it is going to be up for sale at some point in time. We are going to swap approximately 61 acres of Industrial Park property that is in the General Fund. General Fund will purchase from the Water and Sewer Fund the approximately 20 acres on Cato Springs and the approximately 14 acres that is on 45 East. There is a difference of approximately $105,000.00 between those two acreage values that Water and Sewer Fund will pay the General Fund.

Ms. Alexander wanted to remind the Council that the citizens came forward to save that 13 acres and Mr. Coody said that in his administration it would not come up for sale. A swap is fine, but that 13 acres is under protection.

Alderman Jordan asked if we purchase this land tonight are we going to make it a City park or is it just going to be tree preservation.

Mayor Coody said it has trails on it, his vision would be that we would be able to use it as part of a low impact nature area with trails, perhaps a place to sit and enjoy a great view, maybe a few parking places on the east end down by the Cliffs and maybe another access point on the top, but I do not see it being heavily developed.

Alderman Jordan asked about the parking issue, are we going to have to develop parking and how much is that going to cost.

Mayor Coody said we do not have any plans to develop any parking right now, on the east side there is a four lane highway on the bottom end that goes into Happy Hollow Road, if someone wants to go there and hike and park right now you can have plenty of access to it.

Alderman Jordan said if we are going to make this a City Park then we have to expect that the people of the City will be much more aware of it and tend to use it much more than they have probably in the past, which means that I think we could have some parking problems. That is one of my concerns.

**Alderman Marr moved to approve the resolution. Alderman Thiel seconded the motion.**

Alderman Reynolds asked for someone to elaborate on the $174,000.00 that was pulled.

Mayor Coody said $450,000.00 was set aside as a settlement to a lawsuit over the downing of some trees at the Kohl's Department Store, half of it was spent on the Gateway property on I-540. The remaining money is still in that account. The Trees and Trails Task Force was offering $200,000.00 to the owners of 40 acres of floodplain and some other land adjoining that on Clabber Creek Road west of our property on I-540. I wondered if there was a better way to acquire that property and the new owners agreed to dedicate that land to us as a tax deductible donation so we could acquire the land and not have to spend any money on it, which would save us $200,000.00. The new owners are buying the property in two half's, the first half they have closed on and we have the first 20 acres. The second half of their purchase they will close on in June. We are getting the 40 acres for free instead of having to pay $200,000.00 for it. I asked the Trees and Trails Task Force if we can get these 40 acres for free would they consider donating the money over to Mount Sequoyah, the impression I got was if we were able to do something like that, that certainly would be a strong consideration. The current status is that we have the 20 acres in our hand, the other 20 acres is coming and now the decision of what to do with the money is up to the Trees and Trails Task Force and I have not heard from them.

Alderman Davis said the Trees and Trails Task Force has a meeting April 11, 2003 to discuss the issue.

Alderman Rhoads asked can this deal on Mount Sequoyah property wait until you have your meeting and hopefully vote to assign the money to this project.

Mayor Coody said we have 60 days after tonight to close the deal with Mount Sequoyah. We should know very shortly what the Trees and Trails Task Force is going to do. If they decide to use the money someplace else then my perspective is that we still need to purchase this property and we will just need to come up with the money from someplace else.

Alderman Thiel said we may not know after the meeting on the 11$^{th}$, because one of the key people on this Task Force has stated that this organization wants the 20 acres North of Clabber Creek to be secured, which it is not yet. Property owners that adjoin this property want to buy a buffer around their yard and add it into a conservation easement, which if that is the reason we are buying this, to conserve it as a nature area, then I think that is a perfect win/win situation. That will offset the cost of this too.

Alderman Rhoads asked what did the Trees and Trails Task Force commit to in regards to the $175,000.00.

Alderman Thiel said they did not make a commitment.

Alderman Marr said there has not been a vote, there has been discussion with the Mayor working with the developer to get a land that would met the criteria of wetland area, they would like to have both pieces of land before they relinquish this money. I would like for them to release part of the money for the 20 acres of Clabber Creek.

Alderman Jordan said there is no iron clad commitment yet. I can't say they will give any of the money.

Alderman Davis said we are looking at two pieces of property, Clabber Creek and Mount Sequoyah, once Clabber Creek is secured that more than likely the money will go to Mount Sequoyah.

**Mayor Coody said** I would hate to put this vote off tonight because Mount Sequoyah needs some kind of commitment from us that we are going to move forward with this so they will know what to do with this land.

**Upon roll call the motion passed 7-0-1. Alderman Davis abstained.**

***RESOLUTION 46-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.***

Dr. Heinzelmann thanked the Council.

**JED DEVELOPMENT, INC.:** An ordinance waiving the requirements of formal competitive bidding and authorizing the City to pay JED Development, Inc. up to $55,095.43 as the City's portion of a cost share for the construction of about 300 feet of a 28 foot wide street with storm drainage and sidewalks.

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

Greg Boettcher, Water and Sewer Director said this is a project that is associated with the development of Crystal Springs, the connecting road goes across City property, it is a cost share arrangement that the Council entered into some time ago. The engineering staff has reviewed the cost and I would like to compliment them, the first cost proposal from the developer appeared a little high, they were able to bring that down $27,000.00 so we believe the cost is reasonable. It is very efficient for us to partner with the developer on this as we do on other developments. The road is being built in the corridor dedicated by the Council; it is a little more costly because of the nature of the sub-soils.

Alderman Thiel asked why we are not doing the normal competitive bidding.

Mr. Boettcher said it is more economical for us to cost share with a developer that will have a contractor on site already building the other streets and roads. It is more efficient for us to partner with the developer.

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

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

Alderman Jordan asked if anyone would like to comment on this.

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

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

**Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.**

***ORDINANCE 4472 AS RECORDED IN THE OFFICE OF THE CITY CLERK.***

**VAC 03-3.00 (Mee):** An ordinance approving VAC 03-3.00 to vacate and abandon a portion of the most easterly 8' of a 20' utility easement located at 3305 N. Southridge Drive as described on the attached map and legal description.

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

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

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

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

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

**Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.**

***ORDINANCE 4473 AS RECORDED IN THE OFFICE OF THE CITY CLERK.***

**NEW WORLD SYSTEMS:** An ordinance to waive the competitive bidding requirements to enable the City to purchase computer software from New World Systems.

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

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

*Mr. Williams read the ordinance.*

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

*Mr. Williams read the ordinance.*

Rick Hoyt, Police Chief said the City has purchased New World software and it is in use throughout the City. There is no other software that can be interfaced with this software, by waiving competitive bidding we will not have to trouble the Council every time we need to purchase something from New World for under $20,000.00.

**Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.**

*ORDINANCE 4474 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**CONSTRUCTION MATERIAL BID WAIVER:** An ordinance to approve a bid waiver for the purchase of asphalt and aggregate materials and to approve a bulk purchase contract with McClinton Anchor.

*Mr. Williams read the ordinance.*

Mr. Dumas said this is the only vendor in town.

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

*Mr. Williams read the ordinance.*

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

*Mr. Williams read the ordinance.*

Alderman Reynolds thanked Mr. Dumas and his department for a great job.

**Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.**

*ORDINANCE 4475 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**ORGANIZATIONAL CHART:** An ordinance amending §33.001 City Organizational Chart.

*Mr. Williams read the ordinance.*

Mayor Coody said a few months ago we reorganized a lot of departments here at the City, I have seen a lot of benefits from it and I understand from people in the community they have seen an increase in productivity as well.

**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 carried unanimously.**

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

**Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.**

***ORDINANCE 4476 AS RECORDED IN THE OFFICE OF THE CITY CLERK.***

Meeting Adjourned at 7:15 PM

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Sondra Smith
City Clerk