

**Minutes Of A Meeting
Of The
City Council
July 1, 2003**

A meeting of the Fayetteville City Council was held on July 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, Lucas, Jordan, Mayor Coody, Assistant City Attorney David Whitaker, City Clerk Sondra Smith, Staff, Press, and Audience

ABSENT: Alderman Bob Davis and Alderman Robert Rhoads

Alderman Jordan moved to suspend the rules and add the Nominating Committee Report to the agenda. Alderman Lucas seconded. Upon roll call the motion carried unanimously.

Alderman Marr gave the nominating committee report: The committee met in June. The appointments are as follows:

Construction Board of Adjustments and Appeals: Kit Scmelzle
Sidewalk and Trails Advisory Committee: Jennifer Tracy
Walton Arts Center Council: David Banks
Walton Arts Center Foundation: Kathy Wade
Youth Activities Committee: Whitney Linebaugh
Fayetteville Housing Authority: Randy Coleman

Alderman Jordan moved to approve the nominating committee report. Alderman Lucas seconded. Upon roll call the motion carried unanimously

CONSENT:

Approval Of The Minutes: Approval of the June 17, 2003 meeting minutes.

2003 Community Development Block Grant Allocation of \$560,000.00: A resolution approving the grant agreement for the remaining \$560,000.00 balance of the 2003 Community Development Block Grant (CDBG).

Resolution 92-03 As Recorded In The Office Of The City Clerk.

Roberts-McNutt Company/Sang Senior Center: A resolution awarding a contract to Roberts McNutt Company in the amount of \$22,863.00 for a re-roof project at the Sang Senior Center; approving a project contingency in the amount of \$3,430.00 and approving a budget adjustment in the amount of \$19,151.00 for same.

Resolution 93-03 As Recorded In The Office Of The City Clerk.

McClelland Consulting Engineers/ FBO Hangar Task Order # 13: A resolution approving Amendment No. 1 to Task Order No. 13 with McClelland Consulting Engineers in the amount of \$3,983.50.

Resolution 94-03 As Recorded In The Office Of The City Clerk.

McClelland Consulting Engineers/Corporate Hangar Complex Task Order # 10: A resolution approving Amendment No. 1 to Task Order No. 10 with McClelland Consulting Engineers in the amount of \$6,937.50.

Resolution 95-03 As Recorded In The Office Of The City Clerk.

Motorola, Inc. Bid #03-35 Ruggedized Laptop Computers: A resolution awarding Bid #03-35 to Motorola, Inc. in the amount of \$106,126.09 for the purchase of 20 ruggedized laptop computers and 17 docking stations.

Resolution 96-03 As Recorded In The Office Of The City Clerk.

Ozark Regional Transit Expenses: A resolution approving the transfer of funds in the amount of \$15,232.00 to the Ozark Regional Transit Authority for the purpose of offsetting a drastic increase in insurance premiums; and approving a budget adjustment in that amount for same.

Resolution 97-03 As Recorded In The Office Of The City Clerk.

Standard Register Company/ADED: A resolution certifying that the City of Fayetteville endorse the Standard Register Company to participate in the State of Arkansas Tax Back Program (ADED).

Resolution 98-03 As Recorded In The Office Of The City Clerk.

Banc of America Leasing: A resolution authorizing the use of \$1,178,928.00 under amendment 65 Master Lease Agreement with Banc of America Leasing & Capital, LLC to reimburse the City for the purchase of residential solid waste vehicles.

Resolution 99-03 As Recorded In The Office Of The City Clerk.

Alderman Marr moved to approve the consent agenda as read. Alderman Reynolds seconded. Upon roll call the motion passed unanimously.

OLD BUSINESS:

NEW BUSINESS:

CEI Engineers Master Street Plan Appeal (Butterfield Trail Village): An appeal from Butterfield Trail Village of the Master Street Plan Right of Way dedication requirements.

Don Hunnicutt, representing Butterfield Trail Village: I would like to ask that this be tabled until August 5, 2003. We are going to amend our appeal; there are also some board members that we would like to be here.

Alderman Cook moved to table this until August 5, 2003. Alderman Reynolds seconded. Upon roll call the motion passed unanimously.

VAC. 03-1.00 (Kim Scott Mountain Mechanical Contractors): An Ordinance amending Ordinance 4466 to vacate and abandon the unopened portion of 9th Street, East of South School Avenue, South of Lots 2 and 8, Block 16 and North of Lots 1 and 24, Block 17 in the Ferguson Addition as depicted on the attached map and legal description.

Mr. Whitaker read the ordinance.

Tim Conklin, Planning: Mayor and City Council this is an ordinance to correct a legal description that was attached to the original ordinance. This is the correct legal description; City Council has already acted on this last year. This is to correct it before we go file it at the County.

Mr. Whitaker read the ordinance.

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

Mr. Whitaker read the ordinance.

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

Mr. Whitaker read the ordinance.

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

Ordinance 4498 As Recorded In The Office Of The City Clerk.

RZN 03-19.00 (Tom Broyles 14.66 acres): An ordinance rezoning that property described in rezoning petition RZN 03-19.00 as submitted by Jerry Kelso on behalf of Tom Broyles for

property located East of Beachwood Avenue South of 15th Street, moving the current zoning line to a new configuration with the subject property being R-2, Medium Density Residential.

Mr. Whitaker read the ordinance.

Mayor Coody: Mr. Jordan I think you want to leave this on the first reading is that right?

Alderman Jordan: I would like to leave this on the first reading. There has been some other letters and stuff that probably will be submitted in the next couple of weeks and I would like the Council to review that before we go ahead and move on with this if that is alright with everybody.

Alderman Reynolds: Did the staff get the signed Bill of Assurance on this project.

Tim Conklin, Planning: We have not received a signed Bill of Assurance. It has been faxed to Mr. Broyles, I do believe they do have signatures, but we have not received it.

Alderman Reynolds: Thanks Tim.

Alderman Jordan: I want to be sure that we have all the I's dotted and T's crossed before we pass this.

Julie Zimmerman, Crafton, Tull and Associates: I am here on behalf of Jerry who had a conflict this evening. I am more than welcome to answer any of the questions that you might have, but we would like to wait until the 15th when both Tom Broyles and Jerry can be here.

Mayor Coody: Do you know anything about the Bill of Assurance being signed?

Julie Zimmerman: I do have a copy; he told me that it may be just a draft.

Mayor Coody: What you might do is give that to Mr. Conklin. We are going to leave this on the first reading tonight so we will get a chance to iron all these details out before it comes back up.

The ordinance was left on the first reading.

RZN 03-20.00 (Tom Broyles 7.45 acres): An ordinance rezoning that property described in rezoning petition RZN 03-20.00 as submitted by Jerry Kelso on behalf of Tom Broyles for property located East of Beachwood Avenue South of 15th Street, moving the current zoning line to a new configuration with the subject property being zoned C-2, Thoroughfare Commercial.

Mr. Whitaker read the ordinance.

Mayor Coody: I suspect that you would like to leave this on the first reading as well, Lioneld.

Alderman Jordan: Please.

The ordinance was left on the first reading.

RZN 03-21.00 (John Nock): An ordinance rezoning that property described in rezoning petition RZN 03-21.00 as submitted by John Nock for property located at 4023 Wedington Drive, Fayetteville, Arkansas from A-1, Agricultural to C-1 Neighborhood Commercial.

Mr. Whitaker read the ordinance.

Mayor Coody: Since we have our fire department related with this rezoning, is this the one we wanted to ask that we get all three readings done tonight?

Alderman Jordan: I haven't had any calls or complaints; I don't see any problem with it.

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

Mr. Whitaker 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 passed unanimously.

Mr. Whitaker read the ordinance.

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

Ordinance 4499 As Recorded In The Office Of The City Clerk.

Mr. Earnest: Mr. Mayor if I may, just a point of information for the Council, Mr. Nock will close on the full four acres tomorrow afternoon and we will make an offer and acceptance on that portion of the property that we wish to buy immediately after that. We will be bringing you a formal Offer and Acceptance in the near future.

Zoning Map Adoption: An ordinance adopting a new official Zoning Map of the City of Fayetteville and incorporating the renamed zoning districts on the new official Zoning Map as adopted in Title 15; the Unified Development Code of the Fayetteville Code of Ordinances.

Mr. Whitaker read the ordinance.

Mayor Coody: One thing I would like to point out to the public is this zoning map basically doesn't change any thing it just basically very accurately reflects all the rezonings that have happened over the last 33 years because the old map did not accurately reflect all the changes, now we are going to be up to speed and if there are any mistakes on it now we have one person to blame.

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

Mr. Whitaker read the ordinance.

Jeff Erf: A couple of quick questions. What provisions have been made to provide the new zoning map on the city's web site and keep it up to date?

Mayor Coody: Do you have any other questions we will try to get them answered all at once.

Jeff Erf: How many properties did Planning find that were actually incorrect or they had to change? I was just curious if there was just a hand full or a lot.

Mr. Conklin: With regards to the first question staff did put this on our geographic information web site, FAYGIS.org that has been available. We did advertise and list it that it was available for review. We originally had the digital zoning map on the web site in the past in the last half of the 90's, it was during this time that we discovered that there were some corrections that need to be made and took it off the web site. The plan is to adopt an official new zoning map, place that onto the web site and then update it as rezonings are made. With regards to the corrections that were made, we went through hundreds of ordinances, we cleaned up and adjusted lines based on those ordinances, once again we went from a hand drawn map adopted on June 29, 1970 to a digital map, so there were many, more than a hand full, there were many adjustments to be made to follow those legal descriptions. Once again the intent of this is not to rezone property it is to show accurately what the zoning is on pieces of property.

Mayor Coody: Jeff does that answer your questions?

Jeff Erf: Yes

Alderman Cook: I want to thank Tim and his staff for their hard work because I know it took a long time and there were many boxes to go through and hopefully this will put to bed finally any problems that we have had in the past.

Mayor Coody: Tim and his staff have really done a lot of good work.

Alderman Marr: Just so we get this in the record how long has the map we are approving been available for review and comment?

Tim Conklin: We took it to the Planning Commission on June 17, prior to that, 15 days before that, four or five weeks.

Alderman Thiel: I am a little reluctant to pass this, I would rather hold this until the next meeting, is there an emergency?

Tim Conklin: I think that would be okay to hold it to the next meeting, this does incorporate the new residential zoning titles that we adopted as part of the Unified Development Code, that

becomes official this Friday. It would be nice to have the map with the correct titles on that, but once again I want to make sure that if you would like to have more time to review it and another two weeks that's fine with me because I do want to make sure that it is correct. If you want to give the public that opportunity, we are available in the Planning office to go back and research back through those files that we have down there.

Alderman Thiel: I just want to give the public the opportunity of two more weeks we have discussed rushing through ordinances.

Alderman Marr: I understand the concern, the reason I asked the question was I do think there has been a lot of discussion about zoning and the whole Hendrick situation that came up really made the public aware of issues that were out there and I think it was a time that people could review it and I think that's what we've done. I don't necessarily want to hold it up, my point was to make sure that there had been at least a month that people had to review it in case they had a question about it, so we get it set. My understanding is that once this is approved this is the map, even if there is a mistake that is found later.

Tim Conklin: This becomes the new official zoning map and once again I don't want to stand here tonight, if you would like two more weeks, if someone has a question or wants more time to review it, let's get it correct and get it adopted. I want everybody comfortable on the City Council with this map so I am not opposed to waiting two weeks.

The ordinance was left on the second reading.

Mayor Coody: Thank you very much Tim and thank you for doing such a good job for the City of Fayetteville.

Unified Development Code, Chapter 174: Signs: A ordinance amending Title XV: Unified Development Code, chapter 174: Signs, of the Code of Fayetteville, to provide amendments to and clarification of various provisions to conform with the judgment and memorandum opinion of the United States District Court for the Western District of Arkansas issued in LA Tour v. City of Fayetteville; and declaring an emergency.

Mr. Whitaker read the ordinance.

Mayor Coody: This is basically is a result of the lawsuit that we had filed against us and the Judge basically asked us to clarify some issues in the ordinance and I think that the City's legal staff has asked us to move as quickly as possible on this.

David Whitaker: I do also want to point out that when you arrived tonight there was a corrected version on the desk in front of you I will point out that, that was corrected and inverted omission on what is strangely numbered (C)(D)174:9 that page numbering system is a result of the ongoing effort to get the new code finished and ready for you and adaptable to HTML graphics for eventual posting on the web site. I think that's why that odd numbering system is there. On (C)(D)174:9 what we did, what is currently (H) speaking about offsite signs we have gone back and added in on the new copy that you have you will see on the top of the next page

(I) has been added back in because during the revisions the ban on roof signs was inadvertently deleted.

Mayor Coody: That was a typo and you just put this back in.

David Whitaker: That was brought to my attention by Mr. Conklin and his able staff late this afternoon.

Mayor Coody: Any questions on this addition?

Alderman Thiel: On 174:5, I discussed this briefly with David this morning about the fact that the election campaign signs, there is no mention, all of that has been scratched out and I understand looking at the brief and everything, some of that is case law that dictates that we do that, however you've left the election campaign banners. I am wondering why you left that and of course it is a state law that campaign signs are removed within 72 hours. There is no mention of that in this ordinance, other than the mention of election campaign banners. What did you come up with?

David Whitaker: On the banners that are mentioned simply as one type of banner, but you will notice the durational requirements for election or campaign banners are the same as they are for special events, so there was a situation where no differential treatment because it was a political sign is called for in the new language. The signs were deleted because it specifically gave a different set of rules for a political sign that other temporary signs had and case law, not just the LaTour case but a circuit law makes it clear that you cannot impose a greater burden on the political speech than you do on your others. In general durational time limits on political sign have been struck down in just about every circuit in many states supreme courts throughout the land. I understand that there is such a State Statute, what we are trying to do is conform to the federal standard since that's what we were corrected by the courts on, was the federal constitutional standard. If someone was to challenge the State Statute I am certain that the Federal Judge in that case would also follow a circuit law which at this time does not allow for durational limits on political speech and that's what a political sign is, basically the case law comes down to an idea, who is to decide when a campaign begins and ends, it is not the government. Particularly in this day and age the election cycles seem to blend into each other so how can government pick a day when it is no longer appropriate to express your political opinion and they also say for a while there had been greater protection given to what was known as cause signs, like I want a balanced budget amendment, for a while the court said that is just a cause so that can stay up forever but the campaign signs can't because there is only one election. Subsequently higher courts said no you can't even make that distinction because suppose you have a resident that wants John Smith to be governor and John Smith loses, but that citizen still believes that John Smith would be the best governor in the world, the courts say that's his right to express that.

Alderman Thiel: So in other words yard signs can stay up indefinitely.

David Whitaker: On private property if a citizen is expressing a belief that is not somehow accepted from first amendment protections other wise, but if it is protected speech, it is protected

speech and the government shall make no law. It does still regulate but it regulates it just like any other non-commercial sign and that's the rule now, it can be regulated but it has to be regulated like every other non-commercial.

Alderman Marr: Is there a definition of what is a banner and what is a sign?

David Whitaker: For better or for worse in the Unified Development Code all definitions for all chapters are combined in alphabetical order under Chapter 151 and you have to pick your way through to find one that applies to the ordinance that you are reading at the time.

Alderman Thiel: I actually have that with me. A banner is any sign printed or displayed on cloth or other flexible material with or without frames.

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

Mr. Whitaker read the ordinance.

Alderman Thiel: On 174:8 (D) Revolving, Rotating or Moving Signs, it shall be unlawful for any person to erect or to continue using any sign the exterior of which revolves, rotates or otherwise moves in whole or part. How does that differ from a banner because I think this has been an issue in Code Enforcement?

David Whitaker: I would have to say that just from the plain meaning of the words that unless it speaks to a banner or it would include the legal definition of banner which we have in Chapter 151; one has to read them as two separate things. Legislative intent would have been and I believe this is carry over language, it has been in there for many years, when you are trying to determine legislative intent the courts give words of plain and ordinary meaning and one would assume that if the Council at the time had one section regulating banners and another regulating revolving, rotating and moving signs, they intended for them to be regulated differently and separately as two different categories.

Alderman Thiel: I know that has been an issue in the sign issuance.

David Whitaker: I believe I remember writing a memo to that effect.

Alderman Thiel: That is why I thought this would have been a good time to have maybe somehow separated that so whoever is interpreting this would have understood it better in the future.

David Whitaker: To address those concerns, I can tell you that I happen to know that Mr. Conklin and some others have some proposals for other changes that we will hopefully be bringing to you some time later in the summer. They were not included here because of the time constraints and the necessity of getting past the Hobson choice that we were faced with either having a constitutional sign ordinance or no sign ordinance at all, is basically the choice the Judge left us.

Alderman Thiel: Good, I am glad that we will be getting some more revisions maybe that will make it a little easier to enforce and interpret.

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. Whitaker read the ordinance.

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

Ordinance 4500 As Recorded In The Office Of The City Clerk.

Alderman Jordan moved to pass the emergency clause. Alderman Cook seconded. Upon roll call the motion passed unanimously.

Meeting Adjourned at 6:45 PM

Sondra Smith
City Clerk

INFORMATIONAL:

City Staff Work Session with Mr. Sumek tomorrow at the Airport.
Set up a series of meetings next week on the Citizen Survey.
DBO Workshop will be July 8th, information to follow this Thursday.
Senior Center Grand Opening, July 11, 2003 at 11:00 AM

Alderman Reynolds thanked Code Enforcement, Solid Waste and the Police Department. He said we had a cleanup in Ward I this weekend and we cleaned up two properties and we got eight tons. I want to thank those guys for helping us be successful.