Minutes
Of The
City Council Meeting
September 16, 2003

A meeting of the Fayetteville City Council was held on September 16, 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

Golden Acorn Award Presentation: The Fayetteville National Heritage Association presented Mayor Coody with a check in the amount of $15,000 for the preservation of Mount Sequoyah Woods. They also presented the Golden Acorn Award to Mayor Dan Coody and the City Council members for their outstanding leadership in preserving Mount Sequoyah Woods for future generations of Fayetteville.

Mayor Coody thanked them for the award and their partnership.

Fayetteville Town Center report to the City Council: The Fayetteville Town Center gave their annual report to the City Council.

Alderman Thiel: In your report what is the difference between a contract and an event?

Denise Bembenek, Facilities Manager Fayetteville Town Center: A contract is an executed contract an event is actually something that has already happened within that time period. A contract is for a future event, an event is a completed event that has taken place.

Alderman Marr: Your sales income is down about 11% from last year. Are there any factors that you attribute the decline in sales income?

Denise Bembenek: Competition from facilities up north, the bad weather in January and February, and the economy.

Alderman Marr: The expenses were down 5.7% over last year, if our revenue is down 11% do we try to identify expense items to try to get that same 11% in the expense side of the business or are there fixed cost so that you aren't able to do that.

Denise Bembenek: There are fixed cost, there were some challenges that we faced early on in the way of equipment and training staff and first time start up expenses that we didn't experience in the last year. We came out from under warranty this year on several items, so we have actually put more into the maintenance of the building.

Alderman Thiel: What is the reason that we are losing contracts to the neighbors up north?

Denise Bembenek: The Embassy Suites opened and the new convention center.

Alderman Marr: Is there any projected time frame that you think this will actually break even.

Denise Bembenek: I haven't put any projections to that, I will try to do that if you would like.

Nominating Committee Report: Alderman Marr gave a report from the Nominating Committee. A copy of the report is attached.

We are asking that the application period be extended to be no less than one month so we can allow a little more time to try to generate applicants. We are also asking for this next time period that the City Clerk's office advertise these positions in the paper, we haven't done that the last two times, we want to try to go back to that again to see if we can generate more interest as well as make the announcements at the beginning of the City Council meetings and encourage citizens to apply. If we don't see more applicants, we are going to recommend that the Council meet as group and discuss the continuation of the committees where we don't seem to have citizen interest and maybe look at an ad hoc concept to only deal with issues as they arise.

Alderman Marr moved to approve the Nominating Committee Report as read. Alderman Jordan seconded. Upon roll call the motion passed unanimously.

CONSENT:

Approval Of The Minutes: Approval of the August 19, 2003 meeting minutes.

McClelland Consulting Engineers Amendment No. 1 - N. College Ave.-Water Line Replacement Project: A resolution approving Amendment No. 1 to the Engineering Contract with McClelland Consulting Engineers in the amount of $139,020.00 for the North College Avenue Water Line Replacement Project; approving a 10% project contingency; and approving a budget adjustment for same.

Resolution 136-03 As Recorded In The Office Of The City Clerk.

Walker Park Multi-use Trails Contract: A resolution awarding a construction contract to APAC-Arkansas in the amount of $183,786.50 to build the Walker Park Multi-Use Trail; approving a 15% project contingency of $27,568.00 and approving a budget adjustment in the amount of $225,000.00 for same.

Resolution 137-03 As Recorded In The Office Of The City Clerk.

Time Striping, Inc. - Parking Lot Improvements Downtown Fayetteville: A resolution awarding Bid #03-43 and approving a contract with Time Striping, Inc. in the amount of $78,073.00 for parking lot improvements in Downtown Fayetteville.

Resolution 138-03 As Recorded In The Office Of The City Clerk.

Air Cleaning Technologies, Inc.: A resolution to approve a contract with Air Cleaning Technologies, Inc. in the amount of $107,176.00 to purchase and install exhaust removal systems for four Fayetteville Fire Stations.

Resolution 139-03 As Recorded In The Office Of The City Clerk.

Continue Federal Funding of Community Trails, Bikeways and Road Beautification: A resolution to restore full federal funding of the Congressional Transportation Enhancements Program to continue federal funding of community trails, bikeways and road beautification projects in Fayetteville and throughout America.

Resolution 140-03 As Recorded In The Office Of The City Clerk.

McClinton Anchor Contract - Taxiway A Extension and USDA Forest Service Ramp: A resolution awarding a construction contract to APAC-Arkansas, Inc., McClinton-Anchor Division in the amount of $2,146,906.20 to construct the Taxiway "A" Extension and USDA Forest Services Ramp; approving a 10% project contingency of $234,804.00 and approving a budget adjustment of $1,128,747.00 for same. **The cost to the City will be approximately $73,047.**

Resolution 141-03 As Recorded In The Office Of The City Clerk.

Crossland Heavy Contractors, Inc. - Accelerated Water Line Replacement Project: A resolution awarding a construction contract in the amount of $698,379.30 to Crossland Heavy Contractors, Inc. for the construction phase of the accelerated waterline replacement project; and approving a project contingency in the amount of $69,838.00 for same.

Resolution 142-03 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 passed unanimously.

OLD BUSINESS:

There was no Old Business

NEW BUSINESS:

Sale of Library Building at 217 E. Dickson: An ordinance to amend Ordinance No. 4358 in order to exempt the City Library Complex on Dickson Street.

Kit Williams read the ordinance.

Hugh Earnest: The Library Board is supportive of our efforts in working together to best dispose of this property for the mutual benefit of the city, the library board and the neighbors.

Alderman Davis: If we go through with this, the library will go ahead and get an appraisal. I assume they will get one for each building separately and then get one with them combined.

Hugh Earnest: That is correct.

Alderman Davis: I notice we are doing a 70/30 split, how was that determined.

Hugh Earnest: It was a best guess estimate based on some historical research.
Alderman Cook: I feel uncomfortable with waiving this ordinance. I think we should get appraisals and then move forward. I think it is too early to waive this.

Louise Schaper: We thought we would have to come to the City Council first. The ordinance requires two appraisals and if you don't sell within six months of that appraisal then you have to go back and get more appraisals. We are trying to be conscientious about the money.

Kit Williams: At this point in time if this is not waived, then what the City Council would have to do before they could ever offer for sale this property is pass a resolution by the City Council to offer it for sale, 30 days before that it would have to be advertised that we are thinking about passing a resolution to offer it for sale. There would have to be two simultaneous independent appraisals for the real property within six months. Once you go through all those steps and you look at the appraisals the City has to solicit sealed bids at a minimum price set by the City Council from all interested parties, bids must be equal to or exceed the minimum price. The owner shall sell the subject real property to the highest qualified bidder. The one factor the city will be looking at is money, nothing else, not neighborhood compatibility, not preservation of the exterior of the building. This ordinance was set up for most kinds of excess, surplus city property, not historic structures, that is what the difference is. Keep in mind no matter what happens no sale goes through without the City Council meeting in open session, discussing it, hearing from the neighborhoods and everyone else and then voting yes to sell it.

Mayor Coody: This expands our options.

Alderman Thiel: I commend Louise and the Library Board for considering the neighborhood, based on our ordinance that wouldn't be the case; it would go to the highest bidder. I support this ordinance to waive Ordinance 4358.

Alderman Cook: The other hurdle we have to cross on this is, is the city done with this piece of property, are we ready to put it up to sale, have we reached that point to where this property no longer serves a municipal purpose?

Mayor Coody: No, I don't think so. That would be the Council's decision.

Alderman Cook: Don't we have that option the way the ordinance is written now? The library could sell their part of the building and we could keep ours.

Alderman Marr: There is still a debate from citizens on how the city's part of this building can be used. I like waiving section F, but in terms of waiving the entire ordinance I don't know if I support that.

Alderman Rhoads: Doesn't the proposal give us maximum flexibility to consider whether we want to split the building or not, and use it for city purposes or not.

Hugh Earnest: It does maximize our flexibility.

Alderman Rhoads: If we had an offer to sell our portion of the building and we didn't like that offer and we decided we wanted to use it for city services, we could still do that under this proposal, is that correct?

Hugh Earnest: That's correct. There is also interest in the city purchasing the larger piece of property from some revenue source and using it for continued municipal purposes.

Mayor Coody: What we have the option of doing is keeping it or selling it, if we sell it to whom and for what purpose and if we keep it how will we use it.

Alderman Rhoads: Is there any urgency at hand that we might not be aware of?

Louise Schaper: The urgency is next summer when we move from the building, the library will not be able to afford two buildings. The neighbors are concerned and they do not want a vacant building. There is one none profit group out there that is interested in the building. We don't want to have this discussion in April or May; it is going to take some time.

Susan Porter: We have two sellers, seller A and seller B. Seller A the Library Board is exempt from the city ordinance about selling their property. What we are talking about tonight is property B which is owned by the city. The Library Board is asking the city to change the rules in the way that they sell their portion of the building. Susan read a statement requesting the city to not grant the amendment to Ordinance 4358.

This ordinance was left on the first reading.

Sale of Animals from Public Property: An ordinance to prohibit the sale, distribution, or giving away of animals from public property and from private commercially or industrially zoned property (except from established animal business enterprises with permanent structures) by enacting a new §92.29 of the Fayetteville Code.

Kit Williams read the ordinance.

Alderman Thiel: I think giving away and selling animals needs to be stopped, it endangers the animals. There is no guarantee that these animals will be spade or neutered.

Alderman Rhoads: What is the recommendation of the administration?

Chief Hoyt: Our recommendation is to pass the ordinance that you have before you.

Alderman Jordan: How will this help the police department by passing this ordinance?

Chief Hoyt: We get calls almost every weekend to come out and check the animals being sold or given away, once we have an ordinance we will not have to answer those calls.

Alderman Lucas: Will this cover people who want to give away animals from their own property?

Chief Hoyt: This does not prohibit anyone from selling or giving away an animal from their own property.

Alderman Thiel: Rogers recently passed something similar to this and Fort Smith actually has an ordinance identical to this.

Alderman Reynolds: I support this ordinance.

Alderman Marr: In the Fort Smith ordinance that was given to us there is a statement in there about a permanent physical location owned or rented by such person or identity that I would like for us to consider adding to this ordinance.

Alderman Marr moved to amend the ordinance by adding: with permanent structures owned or rented by such person or identity to the ordinance. Alderman Thiel seconded.

Alderman Reynolds: Are we stopping anything by putting this in there.

Alderman Marr removed his amendment. Alderman Thiel withdrew her second.

Tonya Lewis: She spoke against the ordinance.

Alderman Rhoads: By passing this ordinance do we take a problem that might be open and obvious and drive it underground?

Donna Haynes: Spoke in support of this ordinance.

Tim Freeman: I think this is a wonderful ordinance but is this going to discourage people of getting rid of their animals in a legitimate way?

Alderman Thiel: I think if people know they can't give them away as a rule will surrender them to the animal shelter. I think two things will happen here, people will be a little more conscientious about having their animals spade or neutered if it is more difficult to get rid of those unwanted litters. When they are surrendered to the shelter and those animals are adopted out it is required that they are spade and neutered. I think this is a way of us addressing our over population problem we have with pets.

Nancy Calhoun: Spoke against the ordinance.

Lib Horn, representing the Humane Society of the Ozarks: At their last meeting the board unanimously endorsed this ordinance.

Alderman Thiel: One of the speakers mentioned that one of the pet stores lost their license; I think that shows there is state control over the pet shops. If I wanted to pay for an animal and buy it from an individual I would want to see the living conditions where that animal came from.

Alderman Marr: Do we have a process in place that when people sell their pets outside of an established pet business, we as a city are collecting sales tax on those sales as we would in a pet established business?

Kit Williams: I think the pet stores do pay taxes but that has been a problem with itinerant merchants, it is more difficult to enforce.

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

Kit Williams read the ordinance.

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

Kit Williams read the ordinance.

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

Ordinance 4513 As Recorded In The Office Of The City Clerk

ANX 03-2.00 (Shiloh Community Church): An ordinance confirming the annexation to the City of Fayetteville, Arkansas, of 3.95 acres located North of Mt. Comfort Road and West of Rupple Road owned by Shiloh Community Church.

Kit Williams read the ordinance.

Dawn Warrick: Explained the annexations for Shiloh Community Church, James Coger and Carol Stephens. Staff is recommending in support of the annexations.

Alderman Jordan: This development will be on the Hamstring lift station.

Tim Conklin: Yes.

Alderman Jordan: You will have the figures as to how many units are on that pump station now?

Tim Conklin: We are working on those calculations.

Alderman Jordan: When will the new pump be on line?

Greg Boettcher: I will be providing a report at agenda session with a time line. When we looked at the Hamstring lift station that was a forward planning activity, we are not in any immediate danger, with dry weather overflows nor is the current loading posing a problem. We were looking at two years out before we really saw that they would be heavily taxed and we are intervening ahead of time to gain the benefit. We are on schedule.

Alderman Jordan: Tim what is the traffic count out there?

Tim Conklin: This week the Transportation Division will be out there to do a traffic count. That will be available at your next City Council meeting.

Alderman Thiel: Are there plans for a turn lane to turn to the school.

Tim Conklin: That is an identified project.

Alderman Lucas: That road is designated as a minor arterial so the easements will be there when and if we can afford to put the amenities in?

Tim Conklin: It is currently on our Master Street Plan as a minor arterial street when development does occur right-of-way is required to be dedicated by the development. In those areas that already have existing development the city will have to acquire right-of-way.

Alderman Lucas: The church is not planning to do anything other than the church.

Dawn Warrick: The 18.38 acres is what is being proposed for a single family subdivision.

Alderman Marr: Spoke of the developed and the undeveloped land that we have by ward. Only 43% of the total zoned land is developed, could we by the next reading get an update to see if that has changed in any way.

Tim Conklin: I can get that information to you.

Dale Schultz with Shiloh Community Church: We are trying to work within the guidelines of the city because we feel eventually we will be annexed. We are also supporting the Coger subdivision.

This ordinance was left on the first reading.

ANX 03-3.00 (James Coger): An ordinance confirming the annexation to the City of Fayetteville, Arkansas of 18.38 acres located North of Mt. Comfort Road and West of Rupple Road owned by James Coger.

Kit Williams read the ordinance.

This ordinance was left on the first reading.

ANX 03-4.00 (Carol Stephens): An ordinance confirming the annexation to the City of Fayetteville, Arkansas, of 1.08 acres located North of Mt. Comfort Road and West of Rupple Road owned by Carol Stephens.

Kit Williams read the ordinance.

This ordinance was left on the first reading.

RZN 03-17.00 (Shiloh Community Church): An ordinance rezoning that property described in rezoning petition RZN 03-17.00 as submitted by Geoff Bates of Keystone Consultants on behalf of Shiloh Community Church for 3.95 acres located North of Mt. Comfort Road and West of Rupple Road.

Kit Williams read the ordinance.

This ordinance was left on the first reading.

RZN 03-18.00 (James Coger): An ordinance rezoning that property described in rezoning petition RZN-03-18.00 as submitted by Geoff Bates of Keystone Consultants on behalf of James Coger for 18.38 acres located North of Mt. Comfort Road and West of Rupple Road.

Kit Williams read the ordinance.

This ordinance was left on the first reading.

Gary Lowery: You can not rezone something that has not been annexed into the city so why go through this procedure of reading these rezoning requests when it's mute.

RZN 03-27.00 (Carol Stephens): An ordinance rezoning that property described in rezoning petition RZN 03-27.00 as submitted by Geoff Bates of Keystone Consultants on behalf of Carol Stephens for property containing 1.08 acres located North of Mt. Comfort Road and West of Rupple Road.

Kit Williams read the ordinance.

This ordinance was left on the first reading.

Fayetteville Municipal Property Owners' Improvement District No. 5 – Appleby Landing Professional Center: An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 5 – Apply Landing Professional Center.

Jim McCord, Representing Investors Realty, LLC: The petition for a Municipal Property Owners Improvement District the only issue is whether the petition is signed by the record title owner of all the property proposed for the District. I have filed an abstractor's certificate certifying that the petition is in fact signed by the sole property owner, so by status I would request that the ordinance establishing the District be adopted tonight. The formation of a Municipal Owners Improvement District is merely a financing vehicle by which a developer can finance the infrastructure for a subdivision, in this case a commercial subdivision.

Alderman Thiel: Does this Improvement District have to adhere to all the development fee requirements that an individual business would?

Kit Williams: It is my understanding that they do, this is mainly a financing instrument to finance the improvements, but they still have to comply with our developmental ordinances.

Alderman Thiel: You have checked into that, you are sure of that.

Kit Williams: I guess I could ask our Planning Department. We have dealt with this sort of project in the past have we not Mr. Conklin?
Tim Conklin: Yes, we have, this has gone through the preliminary plat process with regard to onsite improvements.

Jim McCord: The answer to your question is yes.

Kit Williams read the ordinance.

Alderman Marr moved to suspend the rules and go to the second reading. Alderman Jordan seconded. Upon roll call the motion passed 7-0. Alderman Rhoads recused.

Kit Williams read the ordinance.

Alderman Davis moved to suspend the rules and go to the third and final reading. Alderman Marr seconded. Upon roll call the motion passed 7-0. Alderman Rhoads recused.

Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Rhoads recused.

Ordinance 4514 As Recorded In The Office Of The City Clerk

Environmental Consulting Operations Contract – Wastewater System Improvement Project: An ordinance to waive the requirements of competitive bidding and to approve a contract with Environmental Consulting Operations, Inc. in the amount not to exceed $376,409.

Kit Williams read the ordinance.

Greg Boettcher: This contract is related to environmental permitting of wetlands mitigation on our wastewater improvement project. The reason for the bid waiver is Environmental Consulting Operations provides technical services that are not exempted from competitive bidding, due to the fact that they have been involved in this project since its commencement, we believe it is prudent for us to continue with them, we believe the amount of time, effort and money we have invested in building their experience in the project we need to continue with them and reap that benefit.

Alderman Cook: It is specified design phase only, is there anything that would happen after the design phase that would be required of this organization?

Greg Boettcher: That is a very good question, yes there are continuing services for all of our consultants, but what we are doing because there will be many phases of the project that over laps the different contracts, we believe it will be more prudent to negotiate construction phase services with each firm as their work comes into play.

Alderman Reynolds: I know you are going to be carrying a heavy load and we are counting on you, thank you very much for what you have done so far.

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

Kit Williams read the ordinance.

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.

Kit Williams read the ordinance.

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

Ordinance 4515 As Recorded In The Office Of The City Clerk

Mt. Comfort Road and Shiloh Drive Property Purchase: A resolution approving an Offer and Acceptance Contract between the City of Fayetteville and Donald R. Williams and Sharlene Williams, and James R. Williams and Neeley J. Williams for the purchase of property located at the Northeast Corner of Mt. Comfort Road and Shiloh Drive for the amount of $331,893.65 to allow for future intersection improvements; and approving a budget adjustment in the amount of $337,659.00 for same.

Tim Conklin: Approximately two years ago city staff was approached about the potential development of this property, it was discovered at that time that it was located outside the city, part of Washington County and that it was an island. We worked closely with the applicant for a couple of years encouraging the development to come into the City of Fayetteville and comply with our city ordinance. Staff had a lot of concern about developing this piece of property without any regulations, this property happens to be within our design overlay district, however without this property within the city they would not have to comply with any of our design regulations. Last fall we hired a firm to develop a transportation study, the result of their study included improvements at the intersection by this property that would include this property. In order to go forward and develop this site there will be some long term consequences, we would have to go back and acquire property once it's developed and that would be very costly. You have in your packet what they paid for the property and their cost.

Alderman Davis: Tim, the design of the new road, is there any way the design can be changed to allow the development.

Tim Conklin: We have looked at that and that does not look feasible to do because of additional property that would have to be obtained. Staff feels the best long term solution is to acquire this property and preserve it for future intersection improvements.

Alderman Jordan: I noticed the money is being moved from the Betty Jo drainage project, which I understand has already been completed, is that true.

Tim Conklin: That is correct.

Alderman Davis: How did we have that much surplus on that one project?

Tim Conklin: This money was identified as a capital improvement project; the Transportation Division did that project in house.

Alderman Jordan: Do we have any plans for that intersection?

Tim Conklin: That will be up to the City Council how we prioritize our projects and which ones we want to try to complete first and the funding that is available. Staff has identified that intersection and Mount Comfort Road as needing improvement with all the development that is occurring out there, it is a high growth area.

Alderman Thiel: Can the intersection be routed a different way.

Tim Conklin: We have looked at that and do not think it can. The current plans show a two lane road, that would have to be widened.

The Council discussed the intersection and different ways it could be laid out.

Tim Conklin: I appreciate your comments, again it is staff's recommendation that this property be acquired.

Alderman Thiel: There was not a guarantee that this would happen when they purchased this property. I question this being thrown back on the Council to reimburse this.

Alderman Davis: I think you need to look at the do right rule. I feel the City has said things along the way that put us in this situation.

Alderman Lucas: I agree with Brenda, when someone is looking at a business they assume the responsibility of having these expenses before the authorization by the City to develop it. I think the Planning Department was following our code. The traffic study came through and it showed that we needed that property, in the long run I think the City is doing the right thing by purchasing this property; the cost of purchasing after it is developed would be a lot more.

Alderman Marr: Was this one of the priorities listed in the traffic study?

Tim Conklin: Yes, it was a priority project.

Alderman Marr: Do you remember what this particular item was?

Tim Conklin: Over $3 million including rebuilding streets in this area.

Alderman Marr: Did that incorporate this land acquisition or is that purely building it after we had the land?

Tim Conklin: That incorporated acquiring right-of-way. This right-of-way would go towards reducing that cost estimate.

Mayor Coody: If we go through with this purchase tonight and work with the traffic design consultants, doing the roadway as it needs to be done but minimizing the impact on this piece of property could we turn around and consider that surplus property, put it back on the market and get most of our money back out of it.

Kit William: Certainly if the City Council determines that property that the City owns is no longer needed for municipal purpose then they can choose to sell it.

Alderman Marr: Did the Street Committee have any dialog related to this particular area within your last Street Committee meeting. Did the Street Committee support this land acquisition?

Alderman Davis: We talked about Mount Comfort Road along with Rupple going back to Wedington; you are going to have to do something with that intersection. We asked the staff to get back with us a priority line. Yes, this is a project that the Street Committee feels is a high priority.

Alderman Marr: Would you have looked at this if we were not looking at it now because of our situation?

Alderman Davis: Yes, due to the traffic on Mount Comfort.

Alderman Jordan: That was one of my issues when we were talking about the priorities at the Street Committee.

Alderman Marr: I am going to move that we approve this resolution. I don't think it is unreasonable to pay that for this land where it is located on I-540.

Alderman Thiel: Are we setting a precedence for giving this price?

Mayor Coody: We could cut two checks, one for the land and the other for reimbursable.

Kit Williams: No, we could not do that. The only way the City Council can pay more than the appraised value of the property is to avoid a court case. We can only pay for the value of the land plus if there is a risk you can pay more.

Alderman Davis: Do we have to do this tonight or can we look at rerouting that intersection.

Tim Conklin: They had to assemble two pieces of property together in order to make it work to develop a gasoline service station under our regulation in the City of Fayetteville. I have had our traffic consultants and engineers look at this and they really felt this property would be needed for any intersection improvement.

Alderman Lucas: Not all of the property had to be annexed into the city right?

Tim Conklin: There was a small house that was already in the City; however it was purchased to assemble with the other piece that was in the County.

Alderman Thiel: Mr. Williams are you still interested in developing this.

Rex Williams: The property is worth more than what we are asking if we went out and bought it we would pay that much or more, but we have been told there is no way we can do it by the City. That is the ultimate, it would be an excellent location, if there was a way we could build it there. It would not have any impact on the traffic, the traffic would be local traffic.

Alderman Marr: The risk associated with the cost greater than the appraised value could you give us legal advise on how you would access our risk to have to pay more than the appraised value based on the history of this project.

Kit Williams: You heard Mr. Williams say that he thinks the property is worth more than that. This is our appraisal and they could get there own appraisal. The legal test for the value of the property is what a willing seller will pay a willing buyer. I think our appraisal is pretty good, I can't tell for sure what a jury would do.

Alderman Marr: You don't have a concern that based on conversations that they had with the Council previously about their loss business opportunity or things of that nature that there might be a risk that they could come back and that would far exceed the $64,000 difference if they did.

Kit Williams: Assuming we wanted to condemn the property and get the property ourselves we have to pay the appraised value, they have the right to say the property is worth more than that. All of their other damages would be speculative. It has not been rezoned so they could not use it for that. There is some risk; we certainly could pay more than the additional $64,000.

Alderman Marr: There is no risk of an implied verbal contract between our Planning Department and their communication with the applicant and the applicant relating to this development.

Kit Williams: I always hate to say there is no risk of anything, but I don't think there is in this case. The risk is the value of the land.

Alderman Marr: I agree with Bob, we talked to the applicant about having a solution that would be equitable to them and to the City.

Alderman Thiel: The question is not whether we condemn this or pay this price for it, the question is whether or not we really need this, our staff is telling us we do, based on a traffic study that we have not approved. It's looking at that intersection a little differently and maybe finding a different solution.

Alderman Jordan: Do we need to table this then?

Alderman Marr: I think the difficult thing is that we annexed it and now we are not dealing with the zoning of it, if we were not going to do it we shouldn't have annexed it.

Alderman Thiel: We could still look at the rezoning of it if we decide not to buy it for this intersection.

Alderman Rhoads: You would want to postpone this on is the notion that we wouldn't use it for this intersection?

Alderman Thiel: That we might look at a different scenario.

Alderman Rhoads: What we would need is a good faith look by the engineers and let them tell us if it will or will not work. Mr. Conklin haven't you said we need this property for the intersection.

Tim Conklin: The last thing I wanted to do in June was to change a staff recommendation in front of the City Council on a rezoning. I made a good faith effort to set down with the engineers and our consultants to ask those questions. I am relying on them.

Alderman Davis: Have you looked at a number of different ways to route that intersection or are these the only two ways you have looked at.

Tim Conklin: The issue is how to take the curve out of the intersection, how to redirect traffic and remove the curve.

Alderman Davis: If we reroute that I don't know that it is going to be any less expensive.

Alderman Marr moved to approve the resolution. Alderman Lucas seconded. Upon roll call the resolution passed unanimously.

Resolution 143-03 As Recorded In The Office Of The City Clerk.

Amend Chapter 51.136 Monthly Water Rates: An ordinance amending Chapter 51, Water and Sewers, of the Code of Fayetteville, to change nomenclature; and adjust water and sewer rates consistent with the recommendations of the Black & Veatch Rate Study.

Kit Williams read the ordinance.

Greg Boettcher: A rate study was submitted to the Arkansas Soil and Water Conservation Commission, who is our financier of the wastewater improvements. They have approved the rate study submitted by Black and Veatch. The water system is looking at a 10% revenue increase, we have not seen a rate increase since 1997 and this rate study is predicted to hold rates through 2006. The wastewater rates we are looking at are three 9% rate increases, the first one begins in January, then one percent the following years in January.

A representative with Black and Veatch gave a brief overview of the rate changes methodology.

Alderman Thiel: There are several recommendations that the administration doesn't seem to be following in their plan. The tier rate provides no incentive for saving water; the only incentive is for the factories. Your recommendation is that Fayetteville customers would be charged considerably less per thousand gallons than outside the city.

Greg Boettcher: The ordinance follows the rate study, we will check that. The rates that are being considered are in Exhibit A that goes with the ordinance.

A discussion followed on the rate study.

Greg Boettcher: The bench marking study was prepared independent of and prior to the rate study, we wanted that as a tool to look at some of our cost and look at where we could try to improve and maybe look at where there were differences. The cost of service connects is what the DMG Maximus study is doing currently. We were concerned that we were not recovering our cost and that is in the works now to look at that and perform that on a break even basis. The breaks per mile that is a problem, we have corrosive soils, problems with our pipes and real high pressures because of our valleys, we know that is a problem. The bench marking study is the start of looking at where do we focus our resources to try and solve some of our problems and where are our problems compared to other communities.

A discussion followed on the rates.

Mayor Coody: We are setting up the accelerated water line replacement program.

Alderman Thiel: Connection fees need to match our cost, I hope that is addressed soon.

Greg Boettcher: When we receive the study we will be coming forth with recommendations to change the connect fees to recover actual cost.

Alderman Thiel: Can you look at a way to provide a basic lifeline rate that sets a reduced price for people that conserve water or that do not use as much.

Black and Veatch: Lifeline rates are used in some cities; personally I am not a proponent of lifeline rates. There are a number of inequities using lifeline rates.

Alderman Davis: Every year we get dollars back from the Beaver Water District, where do those dollars go and why don't the consumers see the refund?

Greg Boettcher: Those refunds go back into the system to fix some of the problems with the system. We are far behind in reinvesting back in our water system, so when those monies came in we used them to try to improve the reliability and quality of our system.

Alderman Jordan: How much do we pay Beaver for the water?

Greg Boettcher: $1.16 per thousand will be the new rate.

Alderman Jordan: How does that compare nationally?

Black and Veatch: You are a little above average.

Alderman Jordan: It seems like we pay more in sewer than we do in water.

Black and Veatch: Yes, you pay more in sewer.

Alderman Jordan: Why is that?

Black and Veatch: The cost of cleaning the water and putting it back into the receiving stream cost more. It cost more to remove the pollutants in wastewater.

Greg Boettcher: Wastewater treatment is very energy intensive.

Alderman Jordan: What is the eight dollar service charge on the monthly bill?

Black and Veatch: That covers meter reading, billing and collection.

P.S. Reddy with Superior Industries: Spoke of the burden the increase would cause the industries.

Gary Lowery: Spoke against the water rate increases.

Bill Ramsey, Chamber of Commerce: Spoke of his concern for the industry if the rates are increased as proposed.

Mayor Coody: The Beaver Water refunds has gone back into infrastructure improvements.

Greg Boettcher: It has gone back into operations and capital improvements.

Mayor Coody: If we had refunded this money to the rate payers, we would have to have gone up on taxes to pay for the improvements. Do we make a profit in the water department?

Greg Boettcher: We have cost of maintenance, pumping repairing leaks, etc.

Alderman Rhoads: Do we have a legal obligation to refund the Beaver Water District refund back to the citizens.

Kit Williams: No, the only legal requirement is that we must maintain that within the water system.

Greg Boettcher: We have a reserve policy of 60 days or 20% is what our target is to maintain cash reserves, as long as we are not growing way above that and we are reinvesting in projects, I don't see that as a problem.

Meeting Adjourned at 10:05 PM.

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Sondra Smith
City Clerk