Minutes
Of The
City Council Meeting
October 21, 2003

A meeting of the Fayetteville City Council was held on October 21, 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

Mayor Coody acknowledged Louise Schaper as receiving the 2003 21st Century Librarian award.

CONSENT:

Approval Of The Minutes: Approval of the September 2, 2003 meeting minutes.

Narendra Krushiker Change Order # 1 Hampton Inn: A resolution approving Change Order #1 to the cost-share agreement with Narendra Krushiker in the amount of $8,458.10 to install approximately 650 feet of 8-inch water main north from Sixth Street.

Resolution 154-03 As Recorded In The Office Of The City Clerk.

Crossland Heavy Contactors, Inc. Accelerated Water Line Replacement Projects: A resolution approving Change Order #1 to the contract with Crossland Heavy Contractors, Inc. in the amount of seventy thousand three hundred seventeen dollars and seventy cents ($70,317.70) to add the Locust Avenue Waterline Replacement to the accelerated waterline replacement project.

Resolution 155-03 As Recorded In The Office Of The City Clerk.

ADM 03-24.00 Master Street Plan Amendment, Technology Blvd.: A resolution amending the Master Street Plan to remove the portion of Technology Boulevard shown crossing the proposed springwoods Commercial-Planned Zoning District.

Resolution 156-03 As Recorded In The Office Of The City Clerk.

ADM 03-25.00 Master Street Plan Amendment, Truckers Drive: A resolution amending the Master Street Plan to remove the portion of Truckers Drive shown crossing the proposed springwoods Commercial-Planned Zoning District.

Resolution 157-03 As Recorded In The Office Of The City Clerk.

AEP/Swepco Reimbursement of Burial of Utilities: A resolution approving reimbursement in the amount of $101,806.00 to AEP/Swepco for burial of utilities along a portion of West Avenue near the New Fayetteville Public library.

Resolution 158-03 As Recorded In The Office Of The City Clerk.

Crossland Construction Company Contract Adjustments New Fayetteville Public Library: A resolution approving Change Order # 10 to the contract with Crossland Construction Company, Inc. in the amount of $206,701.00 to install low voltage equipment at the New Fayetteville Public Library.

Resolution 159-03 As Recorded In The Office Of The City Clerk.

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

OLD BUSINESS:

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. ***This Ordinance was left on the second reading at the October 7, 2003 City Council meeting.***

Alderman Cook moved to table this ordinance until the November 18, 2003 City Council meeting. Alderman Jordan seconded. Upon roll call the motion to table passed unanimously.

2003 Millage Levy: An ordinance levying a tax on the real and personal property within the City of Fayetteville, Arkansas, for the year 2003 fixing the rate thereof at 0.4 mils for the Firemen's Pension and Relief Fund, 0.4 mils for the Policemen's Pension and Relief Fund, 1.0 mil for the Fayetteville City library; and 1.0 mil for General Purposes and Operations of the City; and certifying the same to the County Clerk of Washington County, Arkansas ***This Ordinance was left on the first reading at the October 7, 2003 City Council meeting.***

Mayor Coody asked that this be deferred until November 12, 2003 and that a Special City Council meeting be held on that date so that the staff and the City Council can have further budget deliberations and come back with a more solid figure.

Alderman Jordan moved to table this ordinance until the November 12, 2003 Special City Council meeting. Alderman Cook seconded. Upon roll call the motion to table passed unanimously.

NEW BUSINESS:

Houses Development Company, LLC: An appeal of Large Scale Development proposal LSD02.29.10.

Tim Conklin, Planning: Mr. House is appealing the Planning Commission's decision to require that Center Street be extended. His appeal is about whether or not he has to construct Center Street from Olive to Walnut. We originally thought there was 30 feet of right of way but it is our opinion that only 15 feet of right of way exists between Olive and Walnut Street. This is a change that the city staff and the developer were unaware of. Mr. House would have to acquire additional right of way to allow the street connection to occur. If the City Council does not approve a cost share for this street improvement the developer would be required to construct the street. The property owners would have to sell right of way to allow the street connection to occur if that doesn't happen then the City Council would have to go forward and make a decision whether or not to condemn property to provide additional access in this area and make the street connection. The city could also participate in a cost share to help build that street. The preliminary estimates were around $100,000 for the project cost.

Tim Conklin explained the easements, right of ways, and the current ownership of property in the area of the proposed project. There was also discussion on how this would affect current property owners. Mr. Conklin said allowing this development without requiring additional street construction and connections would limit future development within this area.

Alderman Thiel: Was there a reduction on the improvements that were originally required on Olive?

Tim Conklin: Yes, staff did recommend a trade off with Mr. House, instead of developing Olive Street to a residential street standard; we recommended that it be improved to at least 20 feet and in exchange to building the street connecting Olive to Walnut, building a 20 foot street in that section and not a standard city street. The standard city street would only occur in front of his development which would allow some on street parking.

Alderman Thiel: If we approve this appeal is there any way to go back and acquire the things that were required before this trade off was made?

Tim Conklin: Yes.

Alderman Marr: We are asking a property owner to acquire right of way for off site improvements that do not adjoin his property, can we legally do that?

Kit Williams: There is some question about whether we legally can require that, constitutionality we can if we can prove the rational nexus in rough portionally of our demands. There is some question as to whether we can require him to go beyond his property limits to build infrastructure for the city.

Alderman Rhoads: The $100,000, did that include the purchase of right of way?

Tim Conklin: That did not include the purchase of right of way. A ball park figure for right of way would be around $2.30 per foot. The $100,000 is what the developer came up with; I have not had a chance to verify that.

Greg House: Mr. Conklin told us that improving Center Street to Walnut would be necessary for his support of our large scale development. We informed him that the project would not be economically feasible if we were required to do that so we would consider a smaller project that was less than an acre so that we would not have to go through large scale development. Mr. Conklin after some thought said if we would bring our project to large scale development he would back off of his request to improve Center Street and we would work to find an alternative means of ingress and regress by improving Olive. We went to large scale and then Mr. Conklin changed his mind; we objected but agreed we would go along provided that our company would not be forced to carry the whole burden of paying for these off site improvements. We would be improving traffic flow for developable property that is unimproved in the surrounding area that had nothing to do with our project. Mr. Conklin proposed that the city might be responsible for a certain portion of these improvements because they didn't completely benefit our property. We submitted our rational nexus cost sharing proposal as a means of trying to move this project forward. Our concern was provided the Planning Commission agreed and we were approved and we came before the City Council, we might not be approved for the cost share or if we were approved the city might not have funds immediately and then our project would be stalled until the city had funds. We felt the Planning Commission should look at this either or, if we get the cost share approved we go down Center Street, if not let us go out Olive and improve Olive to residential street standards. We submitted an alternative as to connecting with Center Street and that is by going out Olive, by improving Olive as a residential street. This is supported by an independent traffic engineer study that shows there is more than enough capacity on Olive to meet the demand that our development and existing homes will place on Olive. Should there be future development there may be a problem, but that is the time that we need to deal with someone buying right of way or putting in an extra street. Our development does not over burden the traffic on Olive, if it is improved to residential street standards. Now that it has been determined that there is not enough right of way to improve what use to be Center Street, Planning staff has suggested that we buy the right of way. That is economically unfeasible and from timing prospective, it is not feasible.

A discussion continued on the project.

Mayor Coody: What is the difference between the existing streets that is there now on Olive versus a residential street what is the difference between the two?

Greg House: Most of the street is already 20 feet wide in pavement; there are a few areas that are 18 feet wide which we could bring up to the 20 foot wide pavement portion. A residential street takes 24 feet back to back of curb. By us adding curb and gutter system it will bring it up to residential street standard as far as the street is concerned. We presented an independent study from a traffic engineer supporting the traffic loads. The city has yet to come up with why the engineer is wrong or some alternative study to show that our traffic is too much.

Tim Conklin: When we started this process there was a lot of unknowns as we progressed through the process and understood the issues that faced these neighborhoods, staff thought it was more important to try to provide additional access into these areas.

A discussion followed on this project.

Alderman Marr: I think the Planning Commission was very reasonable when looking at this request. The road should handle the number of units proposed.

Alderman Marr moved to approve the request for appeal. Alderman Rhoads seconded.

Mayor Coody: How do we deal with the storm water run off onto other property?

Tim Conklin: They would be required to meet our storm water ordinance and our city street standard ordinance.

Alderman Davis: I hate to see Olive Street extended to where it would connect with Center at a future date in this point in time. The land to the south of the area we do not know what is going to happen there, I would hate for someone else to latch onto your extension. I think we have to be careful of the length of the extension.

There was a discussion on future development in the area and the length of the extension of Olive Street. There was also a discussion on the drainage issue.

Kit Williams: Was your motion simply to eliminate the need for the Center Street right of way construction, but all other conditions as required by the Planning Commission would stand as approved?

Alderman Marr: It was that but also to get Olive Street built to the original residential street standard requirements.

Kit Williams: I thought there was some discussion at Planning Commission that with the driveways coming down into Olive that if they built a sidewalk, that might affect some of the property owners?

Tim Conklin: That is correct; there would be some transitional issues with driveways in order to get that sidewalk in, with regard to the sidewalk you would have to redo driveways also in most likely in those areas. I think the motion needs to state what the recommendation was by Planning Commission for Olive Street if Center Street wasn't constructed.

Alderman Thiel: If Center Street moves within a few feet of Mr. Bryant's home, are we obligated then to buy the entire property, we can't just destroy the property for the street and not go ahead and buy the whole property.

Kit Williams: If we acquire right of way on the Bryant side, certainly the impact on their property would be part of what we would have to pay. If we are acquiring right of way on the other side so that we are using existing right of way and then buying right of way farther away from their house I am not sure since we don't adjoin their property they would be entitled to the diminution in value to their home because of having a street right next to it.

Alderman Marr: Is the primary concern the property owners on Center, or is it the drainage to the west side of Olive.

Alderman Thiel: I am not concerned about the drainage so much. My concern is for the Bryant's and the Center Street condemnation possibly and the people that live on Olive.

Kit Williams: If this appeal is turned down we can not put on a developer an impossible condition, only the City Council has the power to condemn property. We can only require a developer to pay that amount off site work, his cost share, we can't require anything more.

Alderman Marr: My motion was to grant the appeal not requiring Center Street and requiring Olive built to residential street standard and all other conditions of the Planning Commission.

Alderman Rhoads: Is this the type of infill that we would be looking for?

Tim Conklin: You could develop multi-family within these areas, it would probably be built a little differently, maybe a little less dense in order to meet some of the standards they are looking at right now. This type of parking design does meet our current regulations.

Alderman Jordan: Mr. House would you consider less density on your property?

Greg House: I would consider that if we could make an agreement this evening and not have to start the process over. I have offered to reduce the bedrooms to 42 and change the configurations from mostly one bedrooms to two bedrooms and have 26 units instead of 39 and keep the parking the same as we have it now. I think we are going to aggravate the problem on Olive if we have to curb and gutter it on the down hill side.

Tim Conklin: I do not approve development the Planning Commission does. What he is suggesting does not change what the Planning Commission looked at to the point that it would have to go back to the Planning Commission.

Kit Williams: Do you have enough from what Mr. House has described, that would be the final approval in this process.

Tim Conklin: Yes.

Alderman Marr: Do you still support curb and gutter on Olive?

Tim Conklin: Residential street standard does require curb and gutter. It would require additional work with regards to the driveways.

Alderman Lucas: Would it also include storm water control and drainage?

Tim Conklin: We would have to address that. It would have to meet our residential street standards because anything less without looking at it in detail, I am not prepared to make that recommendation.

Alderman Marr: I would like to change my motion to reduce the density to 26 units, 42 bedrooms, eliminate the requirement for Center Street to be built and to have Olive Street evaluated by our City Engineering and Planning staff for the appropriate design that addresses traffic flow and drainage for this development. Alderman Davis seconded. Upon roll call the motion passed 7-1. Alderman Lucas, Jordan, Thiel, Cook, Marr, Rhoads and Davis voting yes. Alderman Reynolds voting no.

Resolution 160-03 As Recorded In The Office Of The City Clerk.

Use Of Skateboards And Skates Upon Sidewalks: An ordinance to repeal § 74.08 of the Fayetteville Code and enact a replacement § 74.08 to clarify and expand the prohibition of using skateboards and skates upon sidewalks next to commercial, religious, governmental and industrial buildings and most City streets.

Mr. Williams read the ordinance.

Larry Olsen, a Fayetteville resident asked the council to reconsider the part of the ordinance that would not allow the skater to skate on the sidewalk or along the side of the road. He also asked the council to consider installing lights at the skate park to allow skating at night.

Rob Sharp a Fayetteville resident: It is already illegal for people to vandalize other people's property with a skate board or anything else. We just need more common courtesy between the skater, property owners and city officials. Skate boarding and roller skating should not be discouraged. I am concerned that if we pass this law people are not going to stop skating, they are going to go somewhere where they are not supervised. Streets belong to everyone. I really appreciate the new skate park. The skate park is great but it is not a substitute for skating on the streets it is just an extension of that.

Brian Casino a resident: Spoke against the ordinance.

Alderman Reynolds: We are not trying to discourage skateboarding. I am willing to drop section A from the ordinance and leave B, C and D.

Kit Williams: The current ordinance says no person upon roller skates or riding in or by means of any coaster, toy vehicle or similar devise shall do upon any roadway. That was passed in 1965. If you repeal this section and repeal Section A of the proposed ordinance you will be making a significant change in the law.

There was a discussion on Play Streets.

Tim Conklin: Our traffic superintendent said his authority to designate play streets was removed from his duties several years ago, because there are no play streets in Fayetteville.

Kit Williams: I would recommend that play street be deleted then.

Alderman Marr: I understood that it would be a significant policy change if we struck section A. I would support elimating Section A from this.

Alderman Reynolds moved to remove section A from the proposed ordinance. Alderman Thiel seconded. Upon roll call the motion to remove section A from the ordinance passed unanimously.

Alderman Cook 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.

This ordinance was left on the second reading.

Skyler Place Subdivision Cost Share: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with M.P. Construction Inc. in the amount of $18, 900.00 to construct approximately 370 feet of 8" water main associated with the Skyler Place Subdivision.

Mr. Williams read the ordinance.

Alderman Davis 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 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.

Ordinance 4522 As Recorded In The Office Of The City Clerk.

C-PZD 03-8.00 Planned Zoning District (springwoods – Collins Haynes): An ordinance establishing a Commercial Planned Zoning District titled springwoods (C-PZD 03-8.00) located South of Highway 112 and West of I-540, containing 289.28 acres, more or less; amending the Official Zoning Map of the City of Fayetteville; and according to the Associated Commercial Development Project as approved by the Planning Commission.

Mr. Williams read the ordinance.

Tim Conklin gave a brief summary of the request, the proposed land uses, the density and acreage of each lot.

Alderman Thiel: Section 3 of this ordinance states this ordinance will not take effect and be in full force until the approval of the final plat of the subdivision.

Alderman Cook: We will not see this again at council. I always felt like the spirit of the PZD was to bring the entire review process through at once. I understand this section 3 that Brenda mentioned somewhat satisfies that to some degree, but we don't see that again.

Tim Conklin: That is correct. A final plat will be required to be filed.

Alderman Thiel: Permits have to be applied for from the state and Mr. Haynes cannot apply for those permits until he has ownership of the property. He really can not proceed with his final development until all that permitting process has been gone through.

Kit Williams: We have a final contract, you are probably asking when he has to pay the money and that would be when he gets final approval on his developmental process.

Collins Haynes: Our goal is to get approval of the PZD and to finalize the sale contract with the City of Fayetteville. It is a problematic situation for any developer or potential developer not to be the land owner of record of a piece of property and try to get federal, state or local approval of anything for the property. What we are asking for tonight is for you to grant approval of this PZD. That is all I need to consummate from my side the contract for the sale of property from the City of Fayetteville. I need to be owner of record on this property to move forward from this point.

Alderman Cook: What happens if we pass this ordinance and the 404 permit comes back and it potentially changes some of the items?

Collins Haynes: That would be my problem. I am not going to get a 404 permit until they are satisfied and if it does revise the layout that layout will go back to council and the council will review it. It's not me to design the 404 an agency will do that for me.

Alderman Davis: I think once we approve the PZD he has to go ahead and keep the districts as shown here unless there are some changes due to what we just discussed.

Alderman Cook: I have no qualms with Mr. Haynes, my problem is with the process the city has gone through. I thought we were going to see the rezoning and the development review come through at once.

Tim Conklin explained the reason that the PZD was recommended instead of regular zoning.

Collins Haynes: One of the reasons for doing this PZD was for me to determine the economic utility of the site and the ecological utility of the site; they have to be in balance. I do not want to buy this piece of property unless I know that it has some economic end result that I will at least get my money back. The PZD was the most reasonable vehicle for me to do that and to determine what I was going to donate to a non-profit, which was part of the contract that stands right now as 43% of the site.

Manual Barnes with EGIS Environmental explained the project, the wetlands, the ecological enhancements and what 43% of the land will be used for. He also stated that for Mr. Haynes to move forward he does need to own the property so the 404 permit can be completed in the name of this project.

Collins Haynes: This project means a lot to me it is a chance to do something that is totally out of the norm, to work on giving away as much property as possible at the inception of a project is definitely not where we normally start. We can still see an economic return and have a model project here. To develop the property and keep the ecological balance in tact and even improve it is a once in a life time opportunity. Thank you for allowing me this opportunity.

Mayor Coody: Thank you Mr. Haynes because I do not know of any other developers that would put this kind of effort into doing such a balanced program between environmental preservation, commercial development and residential development. This is a rare case when someone is willing to pay full price for a piece of land like this and then give so much of it away.

Alderman Thiel moved to suspend the rules and go to the second reading. Alderman Davis seconded. Upon roll call the motion passed 6-2. Alderman Lucas, Reynolds, Thiel, Marr, Rhoads and Davis voting yes. Alderman Jordan and Cook voting no.

Mr. Williams read the ordinance.

Alderman Davis: There is only about 57 to 58 acres that is commercial and about 60 acres that is residential.

Alderman Marr: I understand why we are phasing it, Section 3 makes me feel comfortable but I feel impelled to say two things. On October 14, 2003 at the Planning Commission our Planning staff explained the PZD process as used to bring zoning and development review process together. I thought that Alderman Cook's explanation of a visual process was a great explanation of how I understood it to be when we brought forward and I realize that it doesn't make sense to do that. The reason I want this in the minutes we have this great ability to throw up a project that we dealt with differently for the next person that comes along and says well you did it for this so you need to do it for that. I can't speak for the rest of you, but I would like for there to be a sub-committee or someone look at how we deal with large units that requires you to do more phasing. The thing that came to my mind was St. Joseph's, if we had brought St Joseph's through this process and done it this way without having the visual review of it I can tell you that it would not have worked. There is a size that we need to stay committed to the spirit of the PZD process. I want to make it clear to people that go back and read minutes about what happened to this, it is the intent of what the PZD was that I think we need to maintain and I agree that we have identified a problem in our current ordinance about how to deal with extremely large pieces of land, but that doesn't waive what our original spirit was.

Mayor Coody: It does identify a problem. It was a catch 22, a developer could not spend millions of dollars in engineering on a piece of land that he didn't own and had no guarantee of owning. We had to find some middle ground.

Alderman Marr: I am not being critical of the route chosen, what I am saying is, I don't think it needs to be used as a future model of the PZD process. It is not what we intended the original PZD to be nor was it how it was presented to us or the Planning Commission.

Alderman Jordan: I agree with what Alderman Marr is saying. I think the planning Commission does a really good job.

Alderman Thiel: I understand the discussion about the PZD, but I am anxious to move on with this. I was a very strong proponent of having Audubon part of this and I really must commend Mr. Haynes, Don Nelms and Ken Smith for working together to bring the possibly of a national Audubon to Fayetteville. Their presence will not only enhance Mr. Haynes project but I think it will also help to preserve and protect the wet lands that are there. I feel this is probably the best thing that could happen to that property. That's why I am supporting moving forward. Section 3 states that this ordinance shall not take affect and be in full force until approval of the final plat for the subdivision.

Jeff Erf: After the city and Mr. Haynes close on the property when does the city make available to Mr. Haynes the $700,000 grant that was awarded by the Economic Development of Arkansas Fund?

Kit Williams: That grant can only be used to offset cost of construction of the streets and other infrastructure within that project. That money can only go to Mr. Haynes as he completes various infrastructures as required in the grant.

Jeff Erf: It is not going to be immediately after closing?

Kit Williams: No, it is to pay for completed infrastructure improvements.

Jeff Erf: The contract doesn't say completed infrastructure construction.

Kit Williams: The grant is for money to aid in construction of the water, sewer lines and streets. That is the only way the money can be used.

Alderman Davis moved to suspend the rules and go to the third and final reading. Alderman Reynolds seconded. Upon roll call the motion passed 7-1. Alderman Lucas, Jordan, Reynolds, Thiel, Marr, Rhoads and Davis voting yes. Alderman Cook voting no.

Mr. Williams read the ordinance.

Don Nelms, Chairman of the Arkansas Audubon spoke of the process to establish a center in the City of Fayetteville. He said this process has proven that people can work together in this city and he said that Mr. Haynes had been wonderful to work with.

Ken Smith, Executive Director of Arkansas Audubon: Don has brought the site to my attention and I would not be here today if it was not for Don Nelms. I think you need to give him a round of applause. The project has the key ingredients that we have looked for all along.

He spoke of the habitat at the site and that Northwest Arkansas was an area they wanted to be in. He said this site is a good visible site located off of I-540.

Don Nelms: Brenda Thiel has helped us from the very beginning on this and has been a big part of this, that is not to exclude anyone else on the Council you have all been helpful and we appreciate it very much.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-1. Alderman Lucas, Jordan, Reynolds, Thiel, Marr, Rhoads and Davis voting yes. Alderman Cook voting no.

Ordinance 4523 As Recorded In The Office Of The City Clerk.

Collins Haynes thanked the council for the opportunity.

Covenant Presbyterian Church Cost Share Waiver: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with Covenant Presbyterian Church in the amount of $77,570.00 to construct a concrete swale and drainage pipe from Wedington Drive to 46th Street; and approving a budget adjustment in the amount of $12,080.00 for same.

Mr. Williams read the ordinance.

Alderman Jordan 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 passed unanimously.

Mr. Williams read the ordinance.

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

Ordinance 4524 As Recorded In The Office Of The City Clerk.

TCA Cable Partners Franchise/Cox Communications: A resolution authorizing TCA Cable Partners, providing services as Cox Communications, to continue to operate the Cable Communications System.

Hugh Earnest: We are asking for an extension of this through December of 2005. There is now a consensus between representatives of the company and representatives of the city because of the rapidly changing nature of the telecommunications industry to look at this and think out of the box as how we can best position ourselves for the foreseeable future. They have began to exhibit a much better willingness to cooperate. They have completed the rebuild which they had not done to any level of satisfaction a year ago. They have now completed their installations across the city, we are only extending a franchise we are not approving a new franchise. We will establish a task force that will look at the broader issue of how we position ourselves for the future with telecommunications. We will discuss renewal or non-renewal of the franchise itself, we will continue negotiations on franchise terms, we will investigate a tie into a regional scope, we will look into identifying alternatives to Cox as a franchise holder and we will consider how the city positions itself with respect to rates. We certainly intend to protect the current PEG channels. We hope to get this completed well before December of 2005.

Alderman Jordan: I have had a lot of questions about what is going on and the change in the audit.

Hugh Earnest: We have asked our internal auditor to do a complete audit of the correct amount of money that the company is paying us. This is not an audit as to the satisfaction of customers but rather to make sure they are paying us appropriately and properly.

Alderman Reynolds: How many people live in the City of Fayetteville that do not have cable television?

Hugh Earnest: Within the limits of the city they have approximately 22,000 customers. There are approximately 3,000 to 4,000 customers that are probably not served. Cable service is not mandatory.

Alderman Thiel: They have run it to my area; they have not notified me that I can hook on. I have discussed this for many years the fact that they are always fine in going outside the city limits and covering areas, but they are a monopoly in the City of Fayetteville. They have never been required to furnish cable to everyone within the city limits of Fayetteville. I think it is very important that a task force be set up. Why are we continuing to extend this? Can we not just go ahead and appoint a task force and dedicate the funding or whatever is necessary to get that done and in place and just wait until we get something worked out with the franchise.

Hugh Earnest: We have changed on our side, we are using a different attorney, on their side they are using different negotiators and there is a recognization on their side to put this to bed. This is a competitive business for them; they have a high obligation to satisfy their customers. We are also benefiting from their more aggressive marketing because we get a higher rate of return from the right of ways that they use to deliver their services. It is a benefit for both parties for us to work aggressively to come to some agreement. I want to be able to suggest as part of this some mechanism so that if anyone wants cable within this city we can find a way to fund it or subsidize it so we can get cable to every possible part of this town.

Jim Bemis: Spoke on the lack of progress over the past seven years with Cox and the lack of access to the Cox data. The auditors were not even allowed access to the Cox data and he does not see any way a regional task force will help.

Alderman Marr: The establishment of a task force is it a regional task force or a city task force.

Hugh Earnest: I would like to call it a task force that is going to look at city issues related to telecommunications and also think out of the box to talk about those issues of regional interest that would allow us to tie together.

Alderman Marr: How is the task force being appointed, how many people will be on it, what will be the makeup of this task force?

Hugh Earnest: Mrs. Cromwell and I have been talking about that. We have not decided how to best form that task force.

Alderman Marr: If this extension is not passed is there a drop dead date?

Hugh Earnest: No, this gives us a drop dead date. I will never recommend another extension. There was a needs assessment in 1997 on this. The negotiations between Cox and other entities are not as complex as those that occur here in Fayetteville, because of the three channels that were assigned to the city, this complicates the whole relationship.

Alderman Marr: I am going to support this because I do think we need to support a drop dead date. I am most interested in identifying alternatives to Cox as a franchise holder if we can't get to an agreement, until they realize it is an open market and maybe there are other alternatives then maybe we will get an agreement.

Alderman Lucas: Do we need to extend it two years; if people have been working on this since 1997 do you think it is going to take two more years to reach an agreement. What if we set a sooner cut off date.

A discussion followed on a regional proposition.

Alderman Thiel: Do we have to extend this.

Hugh Earnest: No.

Alderman Marr moved to approve the resolution approving an extension of the franchise agreement until December 31, 2005 as presented by staff. Alderman Davis seconded.

Cyrus Young: Who is going to appoint this task force, Mrs. Cromwell or the City Council? Are the members of the task force going to be Fayetteville citizens?

Alderman Davis: Are you certain there are other cities coming up with franchises due in 2005.

Hugh Earnest: The franchises expire in subsequental order I don't have that with me. We have checked that.

Alderman Reynolds: It sounds like we need a regional task force.

Mayor Coody asked shall the resolution pass. Upon roll call the resolution failed 3-5. Alderman Marr, Rhoads and Davis voting yes. Alderman Lucas, Jordan, Reynolds, Thiel and Cook voting no.

Kit Williams: This is not a very detailed agreement but I did note in paragraph 1 that it is clear what the franchise agreement, our 5% fee is going to cover and continue to cover. I am somewhat concerned about the city having no franchise agreement and counting on over half a million dollars in revenue which might be questionable about enforcing if we have absolutely no agreement with Cox. This is not the kind of thing that any of us need, at one point we had a very detailed agreement, potential agreement with them that we don't have now. I am concerned about not having any franchise agreement to enforce the revenue stream that we currently have with the city.

Alderman Thiel: We are not under a franchise agreement right now.

Kit Williams: That concerns me. We should have a franchise agreement either extending our previous franchise agreement or some sort of franchise agreement even if it is a bare bones franchise agreement like what has been presented here.

Alderman Thiel moved to reconsider the resolution. Alderman Rhoads seconded. Upon roll call the motion to reconsider passed unanimously.

Alderman Thiel moved that we amend the resolution to a one year extension, until December 31, 2004. Alderman Jordan seconded. Upon roll call the amendment to the resolution passed unanimously.

Alderman Davis moved to approve the resolution as amended. Alderman Thiel seconded. Upon roll call the amended resolution passed unanimously.

Resolution 161-03 As Recorded In The Office Of The City Clerk.

James Anderson the Director of Public and Governmental affairs for Cox Communications: I want you to know that we did hear your concerns tonight. I wanted to thank the City Council and the Mayor for adopting the extension tonight. I look forward to working with you in the future and creating a proposed franchise agreement that is a win win for the city, the citizens and also the company.

Meeting Adjourned at 9:14 PM

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Sondra Smith
City Clerk