Special City Council Meeting
Public Hearing
Meeting Minutes
December 30, 2003

A Special Meeting of the Fayetteville City Council and Public Hearing was held on December 30, 2003 at 4:30 p.m. in Room 326 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

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

ABSENT: Alderman Davis

Mayor Coody called the Special Council Meeting to order and opened the Public Hearing.

CONSENT:

OLD BUSINESS:

A Public Hearing concerning the adjustment of Sewer Rates

Amend § 51.137 Monthly Sewer Rates: An ordinance amending § 51.137 of the Code of Fayetteville, to adjust sewer rates.
This Ordinance was left on the first reading at the December 16, 2003 City Council meeting.

Mayor Coody: All right, I would like to welcome everyone to a Public Hearing for the Soil and Water Commission. I want to open this meeting right now, and I want to, Kit, did you want to say something?

Kit Williams: Well, this is of course a City Council Meeting, too. We're having a Public Hearing on the Sewer Rate Ordinance, but I need to probably read it for the second time, let me go ahead and do that. You want to call roll? Go ahead. The Clerk wants to call roll.

Mayor Coody: So I guess this is a Special City Council Meeting?

Kit Williams: Yes it is.

Mayor Coody: OK, so we're going to convene the Special City Council Meeting. We don't do very many Public Hearings, convene this Special City Council Meeting and would you please call roll?

Sondra Smith: Roll Call

Mayor Coody: Kit, would you please read the ordinance?

Kit Williams: Yes, I'll put this on the second reading.

An Ordinance Amending Section 51.137 of the Code of Fayetteville to Adjust Sewer Rates. Be it ordained by the City Council of the City of Fayetteville, Arkansas, Section I, that Section 51.137 of the Code of Fayetteville is hereby repealed and Exhibit A, attached hereto and made a part hereof, is inserted in its stead.

I should note for the record, Mayor, the rates have been published on December 19th in the local paper and I think we have an affidavit to that effect, so we're now ready for the hearing. I think Steve Davis wanted to make a statement at the start. Oh, okay, I guess you're handling it, Mayor.

Mayor Coody: All right, what we're going to do in the style of a true Public Hearing is we're going to open it up to public comment and let everybody speak their peace and then we'll close it to public comment and have Council discussion at that point, so right now we'd like to open this to public comment. I would ask everybody to please be civil and to be as concise and short-winded as possible. We will be sending a transcript to Little Rock to the Soil and Water Commission, so I ask your indulgence.

Geary Lowery: Good afternoon, Mayor and City Council, my name is Geary Lowery, a citizen of the City of Fayetteville. I have a prepared statement that I'm going to read but before I read that, I would like to ask a few questions of this body and of certain City Council members. If I recollect, back in 2001, we had several meetings pertaining to the sewer rates as the citizens were going to be charged and if I recall we also had concerns about the impact on senior citizens, people with fixed income, and single-parent families. My first question that I'll direct to Alderman Reynolds….

Kit Williams: Aldermen, Mayor, I know our rules of procedure do not allow the Council Members to be questioned. He can impose a question or ask you….

Mayor Coody: Then I direct the question; they always are addressed to the Chair.

Kit Williams: Yeah, the questions all need to be directed to the chair and then you can hold them till the end or do whatever you want to at that point, but all the questions need to be directed to the Chair.

Geary Lowery: You're afraid of the answers?

Mayor Coody: According to Mr. Davis, we have, since this is a Public Hearing with actual rules and procedures that are different than regular City Council meetings, we will take public comment and we'll listen to questions and then we have a week to ten days to respond to the questions, is that right?

Steve Davis: The staff would appreciate a week to ten days to draft a response.

Kit Williams: If needed.

Mayor Coody: If needed.

Geary Lowery: Then who's….

Mayor Coody: Why don't you go ahead and ask your questions….

Geary Lowery: Here's the question then, at that point in 2001, Alderman Reynolds and Alderman Jordan were two members of the Water and Sewer Committee, along with the chairman, who at that time was Alderman Trent Trumbo, and Cyrus Young, at that time it was agreed upon that there would be a certain percentage rate that would be given to the citizens for the sewer rate charges, period. Now my question is this: Does these aldermen recall that amount, point one, point two was how was it going to be taken care of as far as the percentage were, because there were several discussions on the percentage rates and how they would be adjudicated and point three is, was it not determined then that that committee would go ahead and propose to the City Council entirely, and the Mayor, a certain rate? Now that's the questions I have for that. Secondly, I have a point of order whereby the City of Fayetteville is required under §51.137(4)(b): "the City shall notify each user at least annually in conjunction with a regular bill of the rates being charged for the operation, maintenance and replacement of the treatment works." I've asked a lot of my neighbors, I've asked a couple of Councilmen here, sitting here today, and I've asked some people from the media have they ever recalled receiving a notice with their sewer and water bill that notifies them of the current charges for operation, maintenance and what replacement of treatment works was going to be necessary and the fees thereof, all of them said no. My question is why haven't we received this? I know for at least three years I have not received anything like this. The only thing that I have received is a report on our water treatment facilities and the quality of our water, period. By law you're supposed to notify the people of this. I have not and most of the people that I have talked to have not also. When we were discussing this issue, it was stated that we were going to be increasing our sewer rates, period, period, not sewer fees, not sewer charges, nothing else, just sewer rates. Then comes along the Mayor and his staff and decides that it's going to be sewer charges, sewer rates, sewer fees, and anything else connected therein. I don't think that's fair, I don't think that's equitable, and I don't think that's honest, because the citizens were only told about sewer rate changes, not sewer fees and not sewer charges. Now, to finish up, my statement is thus: in the summer of 2001 this Mayor and several members of this City Council came before the citizens stating there was a need for us to upgrade our present sewer plant, replace sewer lines, and build a new sewer plant on the west side to accommodate our growing City. The cost of all of this would require an increase in sewer rates of 134%. That got our attention, we, the people of Fayetteville. "There is another way," the Mayor says, and the City Council chimed in, if you will vote for a ¾% sales tax increase which will be used toward the sewer upgrading, we promise that your sewer rates will only be increased 27% and there will be no other costs to you. That ¾ cent sales tax and the 27% increase in sewer rates will cover all the costs of improving the sewer system as we have outlined." Of course, the citizens felt this was a good bargain and overwhelmingly supported the Mayor and City Council by voting this item in. The contract was then made between the citizens and the City, and it was simple, clear in terms. The citizens voted for the ¾ cent sales tax increase and the Council would not vote in more than a total of 27% increase in sewer rates that would cover the total cost of implementing the sewer improvements. Part of the negotiations documented was hitting the citizenship with a whole 27% increase at one time. Alderman Trent Trumbo, who was Chair of the Water and Sewer Committee at the time, along with Aldermen Reynolds, Young, Davis, Jordan, and Zurcher were concerned about increasing the rates all at once, for fear the citizens on fixed income, seniors, and single-parent families would be hard-put to handle a big hit like this on their sewer bill all at once. The consensus of the Committee, however, in agreeing, excuse me, let me go back here. So it was agreed as part of the contract that the 27% increase would be strung out over three years. The consensus of the Committee, however, in agreeing to this was that no matter how it was divided between the three years, the total in the end would not be more than 27% increase. Also, nowhere in these negotiations with the citizens was there a mention of increasing the sewer service charge, and nowhere was it agreed by the parties that the cost of these improvements would include a 29.5% increase in the sewer service charge, the service charge along with the increase in sewer rates. In fact, the citizens were assured that the 27% increase in sewer rates and the ¾ cent sales tax increase would be more than sufficient to handle all the costs of the improvements, and no other cost burden would be required of the citizens of this project. The citizens have honored their part of the contract, but it seems the City is now trying to hedge on their part of the contract. The bill they introduced at the City Council Meeting last month passed called for a 29.5% total increase in the sewer rates and a 29.5% increase in the sewer service charges. The vote last month was only supposed to formalize the 27% agreed to increase and the form the increase was to take over the three-year period, but whatever form it took, the final increase at the end of the three years was to be more than 27%. This oral contract with the citizens is actually quite well documented, with minutes and tapings of the City Council meetings, interviews and newspaper articles, and if the City does not rectify the inconsistencies in this bill passed last month when they vote tonight, I believe they will be in breach of contract and the citizens of Fayetteville should come together and file a class action lawsuit to force the City to abide by the terms of the contract that they've made with the people and have the court enforce the terms as they were set out in 2001. So in closing, I ask you to weigh all the issues, all the promises, the terms of the contract, and the bond you made with the citizens before you vote on this matter. I, for one, would hate to see this body disgrace the name of our former and present aldermen, who believe so much in the people and are trying, were trying to do the right thing. Before you do this, as my grandpa used to say, a person is only as good as their word, if their word ain't no good, neither is the person. Thank you for your time.

Mayor Coody: Thank you for your comments. Who else would like to address us tonight?

Heather Woodruff Dumas: Good evening.

Mayor Coody: How are you?

Heather Woodruff Dumas: I'm just fine. I'm walking with both feet now.

Mayor Coody: Very good.

Heather Woodruff Dumas: Heather Woodruff Dumas. I'm here to speak on behalf of John Harris, our mayor; he's out of town today and was not able to be with us. We have three points that we'd like to make, and I understand that this record is going down to the Soil Service, so I would like you to be sure to get all of our points. There are three major points, number 1; we disagree with the methodology used by Black & Veatch. We don't believe that Black & Veatch understood our contractual agreement. We don't believe Black & Veatch understood how the

City of Farmington would be using your facility in the future; therefore, we don't believe they calculated our rates correctly. The second point we'd like to make: we disagree with the rate of return and how it was calculated. We don't even agree that a rate of return is even allowed by the contract that we currently have. The third point is that we do not believe the City of Fayetteville has currently lived up to their contractual agreements to date. Those are the three major points that we would like to make and have on record, and in conclusion we ask one thing from Fayetteville aldermen, that you honor your promises from the last City Council; that you would meet with us and discuss our current rates. We have sent letters, phone conversations, and meetings with staff and have received no response. We have been totally ignored by this administration. We would like to meet with the City of Fayetteville, discuss our current rates, and have the opportunity to do so. We would like to be placed on your agenda for the City Council to determine if and when the City of Farmington can enter into mediation with Fayetteville. That is all I have to say.

Mayor Coody: Thank you. Thank you for your comments. Who else would like to address us tonight? How are you?

Teresa Clark: Teresa Clark, City of Farmington. I just want to repeat a little bit of what Heather just said. I went back and reviewed December 2nd meeting, sat just today with my videotape and watched the promises that were made for the open-door policy that you commented on or the statements if we go ahead and pass this it will force Farmington to come to the table. We're beating on the door, we're standing out there trying to get in, trying to sit down, and trying to make some sense of this, and we're getting nothing back, and then I read in the paper where you're not really showing an interest in mediation and I want to know what your intention is, Mayor. I came to you once and said, will Farmington have a voice in this and you said, yes. Then you said, my door is always open and then we said, we'll pass it and we'll come to table and we'll talk about it and we'll try to find a better solution. Now we're beating on the door? What is your intention? What are you going to do, are you going to, are you going to honor that, are you going to meet with us?

Mayor Coody: This is a hearing, this is for us to listen and not respond right now. I think we've made that pretty clear.

Teresa Clark: I thought I could direct my questions to you.

Mayor Coody: You can direct your questions, but I'm not, we'll have time to formulate answers to send to you later on.

Teresa Clark: OK.

Mayor Coody: And as the meeting closes, we'll be able to discuss this a little bit.

Teresa Clark: All right. We have some pretty valid points. Black & Veatch pointed out very clearly, very clearly, cost of service is the same for everybody. What we are being charged and what her exact quote is on that tape is the difference we're talking about is the return on investment, words that do not exist in our contract that I'm told by your attorney are implied, assumed by people in the past. Maybe they were; maybe they weren't. I don't know, but I've never been held to a contract that was assumed before. I've never been held to wording in a contract where someone said, that's what I meant to say or what I mean to charge you. The wording isn't there and that's the difference we're talking about, and although she said to you that you deserve a return on your investment, I don't doubt that for a second. What you deserve and what's in that contract are two entirely different things and the amount you deserve and the way it's calculated, that should be negotiated by somebody, it shouldn't just be decided. We shouldn't be paying a return on your entire $120 million investment. Maybe we should pay your return on investment for the portion of it that we use. None of this has been talked about and so we have very, very valid reasons to be concerned and to be upset and want to sit down at the table and discuss it with you. If it makes you feel any better, I wasn't even one of the ones included in the mediation plans for the next time. You won't have to see me again, but someone does need to sit there. Somebody needs to say what does this mean, where did it come from, how was it calculated and how do we get to charge you return on investment that's not even mentioned in your contract and I think that's very valid. I ask you to consider that and please respond to us.

Mayor Coody: Thank you for your comments. Anyone else like to address us? How are you tonight, Ernie?

Ernie Penn: Just fine. I'm Ernie Penn. I'm a citizen of Farmington, former mayor, and I'm representing the Farmington Chamber of Commerce tonight as a board member. I just wanted to share with you a comment that I made at the last meeting was that I think it's very important for Farmington and Fayetteville to be good neighbors and to do what's right. Mayor Harris has asked me to serve or be, actually be the chairperson of a mediation team that at such time when the City of Fayetteville and the City of Farmington goes to mediation that we can discuss these issues and get some of these things resolved. I think one of the things we ought to consider or one of the things I'd definitely consider is the economic impact it's going to have on our citizens in Farmington. We have several elderly people who live in our town, we also have a lot of single family income people, and if our rates increase 131%, it's definitely going to impact everyone there. It's going to impact myself along with everyone in our town and I think it's very important that the representation that we as public servants give to our citizens, I mean, we could sit back and say, oh well, we don't have any choice. Yes, we do have a choice. We're going to go out there and we're going to do what's right for our city, and we're going to do what's right for our citizens. The only thing I ask of you is to do what's right for your citizens and to do what's right for us and we are partners in this entity. We share in the same common goals, and just like Alderman Teresa just said was that Fayetteville probably does deserve a rate of return. I disagree on the methodology of how that rate of return is being calculated. When you're a 4½% user of the whole system, but yet we're being charged a fee, a rate of return on a $125 million investment, and we're only using 4½% of that investment, it's a little bit hard for me to swallow that. That's just one of the issues that I think we can come together as common people, sit down at a table and discuss. We have our experts, but the definition of an expert is someone who lives 50 miles away from your home city. I'm just going to say I appreciate the opportunity to be here today. I hope you all make some good decisions. I hope that we can come together and either meet in a mediation format or in some other format and discuss this issue and make some good decisions for both of our citizens. Thank you.

Mayor Coody: Thank you, Ernie. Anyone else like to address us tonight? Going once, going twice, I'm going to close it to public comment. So I'm going to conclude the public part of this hearing. I do want to point out a couple of things to which there won't be any, this is now just a meeting among Council people. On a couple of points, this news article that was reprinted from the *Times*, Friday, September 7, 2001, the first two sentences say, "even if Fayetteville voters pass a ¾% sales tax to pay for wastewater treatment improvements including construction of a new sewage treatment plant, rates will still be increased by 29% and phased-in over time beginning in 2004, that news came Thursday at a meeting of the City's Water and Sewer Committee", this is September of '01. When it comes to the open door that we haven't come to, this letter from Farmington says, "I hope you will consider this proposal over the holidays", so we do plan on responding to Farmington, but we are using the timetable that you asked us to consider, so we, the holidays aren't over yet, so as soon as they are we'll get down to brass tacks, but we are thinking about this, so we haven't ignored you. For the 131% increase for Farmington, our wastewater paperwork that we have from '01 basically goes into the pros and cons, this was printed up even before we passed the tax; we were discussing how to pay for the system. The impact on typical bills of payment options, we go from current rates to the ¾, rates what they would be with the ¾ cent sales tax. Both, all these rates are 29.3% increase in rates plus the fact it lets folks know in Fayetteville that if we have to rely on rate increases, it would be 134.34% rate hike for Fayetteville citizens, yet Farmington's getting a 131% increase; that's less than what we would have expected to see ourselves or roughly the same, so basically we passed the tax to keep from having to pay this, so this 134 and a third percent increase has been a real number for a long, long time, and everybody in the system has had an opportunity to review all this information for years. We do want to be good neighbors with Farmington, there's no doubt about that. The rate of return was 8% up until this last go-round with Black & Veatch; it was reduced from 8% down to 6% rate of return. We talked, when I met with the Mayor of Farmington a while back, we talked about reducing that even further for a short term if Farmington would ante up with the same sales tax and impact fees that Fayetteville has produced for itself, if Farmington would do that, we could look at a shorter term rate of return which would allow us to have a lower rate of return than 6%. We discussed some particulars there, but it was not received very well, so we, this is where we are, and after the holidays are over we'll get, we'll be back in communication. We want to let you know that we do consider you good neighbors and I'm sorry that we're having these bad feelings, but when all the facts are weighed, if we didn't pass the ¾ cent sales tax, Fayetteville rate payers would be paying exactly the same increase that Farmington is paying and that was advertised very, very, very well, so this shouldn't be a surprise to anybody. All right, is there any other business that we have on the hearing on this?

Kit Williams: Well, we'll need to go to a third and final reading and pass the ordinance, once the City Council is ready for that.

Mayor Coody: So does somebody want to make a motion and suspend the rules and go to the third and final reading? I'm going to ask for no comments from the audience please.

Alderman Cook: Is there a rate of return in the contract?

Kit Williams: Rate of return language, saying rate of return is not found within the contract. However, the contract included a rate of return when it was passed and signed by Farmington, because their rates were higher than our rates at the time, and the only difference was basically the rate of return. The cost of service must include the cost of new capacity that's required. I mean, if you're, you can tell any businessman, I only want to pay this, I don't want to pay for your new plant that's going to have to be built. That's not your cost of service, if you're going to serve customers, whether they be in Fayetteville or anywhere else, new plants have to be paid for. Taxpayers in Fayetteville are paying for a lot of that through sales tax, some of it through sewer rate increase too. The citizens in other cities have to pay their share, and their share is figured in this rate of return for the cost that the Fayetteville taxpayers are doing in investing in new plant and equipment, so, this is a, it's not just presumed in the contract, but there are certain accepted legal doctrines, course of dealings, usage of trade. What do you do in the industry? What's understood when two entities contract with each other? Well, what's understood is the whole context of what they're contracting in. This is a sewer capacity, a sewer rate sort of ordinance. We had the experts who do this kind of rate studies from all over the country come in and tell you that that's a component of every sewer rate when you're dealing with two customers out there. I think I would go with the experts who say, yes, rate of return is included. I would also just look back at the original contract which impliedly had it because there were two different rates there. The contract possibly could have looked, stated it even more clearly, but I don't think the contract needed to do it because I think everybody understood at that time, back when it was done again in 1997 when rates were raised back then, their rates were higher than they are now. No one threw up big hands and said, oh, it's not in there, someone better sue Fayetteville, that wasn't the case; it was accepted because that is the standard way of doing business throughout the United States.

Mayor Coody: Any other questions?

Alderman Marr: I've got a couple of questions. Mr. Lowery who spoke about the oral contract or the commitment made to the citizens of Fayetteville at the time that the ballot initiative was written, could we get a legal opinion or an understanding of what, if any, requirements were there on what the number would be? Did we have the flexibility to do something that we're talking about doing, or was it limited to a lower number?

Kit Williams: Number one, of course as the news report back from 2001 stated, it was at 29-point-something percent then before the election, and that was some of the numbers given out before the election, but even if it wasn't, even if the number had been 27, obviously you're making your best estimates. Our experts are making their best estimates of what is it going to cost in the future to run the entire sewer disposal system, sometimes things change. We can no longer put our effluent on our hayfield any more, where we used to be able to dispose of it. We had to buy some drying apparatus in order to truck effluent and put it into a landfill now. Those are additional expenses that are not always anticipated on the front end, so the rate studies that are done, they try to figure out everything, but sometimes they can't be exactly correct. I would say between 27 and 29% is not a big variance, but I think even then, back then in 2001, it was stated it was going to be 29%. Another thing I might bring to your attention is back in '97 when I was sitting where you all did, we raised the sewer rates and we were told they would be good through 2000. Well, they haven't been raised now, until next year, 2004. We're not being sued because we didn't raise the rates in 2000 like we thought we were going to have to. You make your best estimates, and if you overshoot the mark and you have enough resources, well then you don't have to raise them, if you don't estimate everything in, then you sometimes have to raise them a little bit higher than what you originally anticipated. There's not this kind of firm, promise and contract, basically what the City Council has to do is raise enough money from some source or sources to run the sewer plant and pay the bonds, that is your responsibility, and how you exactly get there, part of it was the citizens who voted the sales tax. They helped you keep the rates down, but the rest of it is up to you and how you get there.

Alderman Marr: What about the charges for items other than just the sewer rate, the service fees, I mean, would the same argument apply?

Kit Williams: Well, I guess two arguments would apply on that. Number one, I think when most people say "sewer rates," they're thinking about their sewer bill, that's what I'm thinking of when I look at a sewer bill, but regardless, you have to find the money from somewhere. If you're saying, we're not going to increase the charges any, then all the money that would have been garnered from increasing the charges, must be gotten from somewhere else, which means the rates are going to have to go up higher. My understanding when I heard the election is that your sewer bills are going to go up 134% or 29%, if you add the tax, now maybe other people understood things differently, and that's your interpretation and what you think.

Alderman Marr: I'm asking that question based on the fact of what is our legal risk, as I say, if any, that we were taking, if we do 29 ½ and it's on all of it versus sewer rates?

Kit Williams: I think our legal risk is virtually nil, now it doesn't mean that we cannot be sued, because you can get sued for the cow jumping over the moon, but I think any court's going to understand that the discretion on this sort of decision must lie with the City Council and if the City Council hasn't acted arbitrarily and capriciously in making this legislative decision, then you're going to be sustained.

Mayor Coody: One thing I might add is that this chart down here which we all, we passed out a million of these things, and this headline says, "Impact on typical bills of payment options 29.3%"

Alderman Marr: Does that have service fees in it as well?

Mayor Coody: Typical bills. So when I say typical bill, I open it up in the envelope and look at it that to me is a typical bill, so this wasn't broken down into, well your bill equals all these different things. It just says typical bill. That's just from that perspective, I don't know. Yes, ma'am.

Alderman Marr: I just have, but I'm changing, the last question I had is several people commented about mediation, and yet I've not seen anything to that, and I'm just wondering if you can update us on what are they talking about and where did that come about?

Mayor Coody: Kit? Does the contract say that….

Kit Williams: Well, no, you could certainly, the contract only calls for arbitration in one circumstance not relevant to the particular rates we're talking about. Mediation is something that would be simply if this body and Farmington wanted to attempt to mediate, you certainly can do that; it's within your power. Nothing in the contract says you shall do it. It's just, nothing in the contract even mentions mediation in relation to sewer rates, so that's just totally whether this body wishes to enter into some sort of mediation with a body from Farmington.

Alderman Rhoads: Is it this body, or is it the administration that would make that decision?

Kit Williams: Well, the, well, this body would have to be the one that would pass on any results or any agreements or anything else, because for one thing, if you're going to reduce someone's rate, if you mediate, you get to a point where Farmington's rates are being reduced, then you're going to have to determine where you are going to increase the rates. Who are you going to increase them on in order to make up the deficit in order to run your system? So that would be this body having to make that final decision.

Alderman Marr: But at the last meeting, where we actually approved this the first time….

Kit Williams: Yes

Alderman Marr: We talked about having discussions with each other and we thought that passing the rates, I remember making the statement that I thought passing the rates might gain movement or at least further discussion. I don't remember actual discussions about mediation and things of that nature, so it wasn't a result of that meeting. That's something that you all are doing outside of our meeting, is that right?

Mayor Coody: Yeah, how I recall that, of course my memory is just like everybody else's, how I recall that statement is that if we passed the rates that night it would make Farmington more, increase the sense of urgency to see what they could do to do what it would take to match Fayetteville's rates. We were talking that evening, as one of the Aldermen said, ¾ cent sales tax, impact fees, if they'd pass those, would those make the fees more commensurate with Fayetteville's? We said yes, and the question was asked if Farmington did those things would we be open to renegotiate these numbers, and my response was absolutely, so we've, but I don't know there's been any movement in Farmington on those two subjects. There may have been; there may not have been. I don't know. Brenda, did you have something to ask?

Alderman Thiel: Yeah, I just wanted to go over, because of some of the questions that Geary had, Geary Lowery had, about the service charges. That they are also going up and you've pointed out that it was just basically the bill would go up 29%. What exactly are the service charges for?

Kit Williams: Well you probably need to ask our Water and Sewer Director.

Alderman Thiel: No one services, we don't have a, you don't go out and check a meter on sewer, so I'd just like to know why that, what that goes for, and why that was increased 29%?

Mayor Coody: Steve, do you have an answer for that?

Kit Williams: Why don't you come up here where you can….

Steve Davis: The sewer service charge is primarily to cover fixed costs of the system that's not volume-related, things like I & I, inflow and infiltration is an element that goes into the service charge. A portion of the meter and backflow operation is allocated to the service charge cost category. It's more cost associated with a customer. The maintenance folks are more, their costs are more allocated toward, based on the gallons of flow, but in the business office in the meter function, it doesn't matter how many gallons flow through, it takes the same amount of effort to provide service for that customer and while there is no meter to go out and monitor, there is all of the conversations and the data that has to be maintained on each customer. The calculation of the sewer averages is a good example.

Alderman Thiel: And that's gone up?

Steve Davis: Yes.

Alderman Thiel: Why?

Steve Davis: It's part of, if your volume, I can't really explain why it's all gone up, but it is all part of the system, because the 29.3 or 29.5% number that was originally discussed in 2001 was a revenue need for the sewer system, and it was not intended to be, as I recall it, it was not intended to be class-specific, that for instance the industrial group or the residential group should have expected a 29% increase or 29½. It was that based on the cost, the new system, operating costs for the wastewater plant coming online, another $4.2 million, when you factor in the additional operating costs of that new plant of $4.2 million and the debt service coverage requirement of, I think it's 1.15 or 1.25 of debt service, you add those two numbers together. It said that we needed to increase our sewer fees from roughly $10 million a year to $14 million a year, which is how rates are derived, and then they further break them out into fixed costs and volume-related costs, and the service charge is related to the fixed cost.

Alderman Reynolds: Mayor, I just, I want to stand up a little bit, I guess, for Geary Lowery. He quoted it just like we did it, because when we first talked about it in the Water and Sewer Committee, they wanted to go up like 13% the first year, and we sat and discussed it and we talked about laying it over three years, and we said we'd do it 9% a year for 27%, and where this other 2½% come from, I don't remember it ever coming through the Water and Sewer Committee for the sewer fee, so it was 27. It was the agreement between the Water and Sewer Committee members, and Lioneld was at that meeting, we made it three nights, but the 2½, I don't remember that ever coming through the Water and Sewer Committee. I don't know if it was done at staff level or where that comes into play, but it wasn't approved through that committee, our committee.

Mayor Coody: Now if you increase something 9% and then you increase it the next year at 9%, and the next year at 9%, those increases accumulated don't add up to 27%; you realize that, don't you?

Alderman Reynolds: You're talking about a 2½% service fee increase that we never talked about at the Water and Sewer meetings.

Mayor Coody: Well, I wasn't at those meetings so I don't know.

Alderman Jordan: Well, I was, the only thing I can remember is that we got into a long, lengthy discussion about low-income and fixed-income people. Wait a minute, Steve. I think Steve presented it that night, you presented what we needed to do and we talked to you and you said, no, we think it would be better to string it out over three years.

Steve Davis: The original proposal as I remember it was a flat was a 29½% increase one time, and then the discussion on the committee level was that's too much of a burden to place on anybody.

Alderman Jordan: That's what I recall, now the exact figure, whether it was 27 or 29, I cannot remember, honestly, I'll just be honest with you, I can't, I just don't remember that, but I remember that we was talking about three nines, or we might have talked about nine-point-something to bring it to 29. I don't know.

Mayor Coody: A 9% increase and then the next year you have a 9% increase that increases that first 9%.

Alderman Jordan: Because it comps. it.

Mayor Coody: And then the third 9% compounds the first two 9%'s, so 27, if you just add 9, 9, 9 you get 27, but if they compound, it turns it to 29.4869 pi somewhere out there.

Alderman Jordan: That may be what we're dealing with, I don't know.

Steve Davis: That's what we're dealing with.

Alderman Jordan: I'm being honest with you, I just don't know, I just remember that we talked about the three nines.

Alderman Reynolds: So is that compounded fee, is that what you're calling a service fee?

Steve Davis: Well it's a part of the total system revenue requirement, is 29½% and we get there by, some of it is allocated to volume, some of it is allocated to the customer service charge and it's, the system has to have 29½% more revenue to operate and meet the bond indenture requirements, and it really doesn't make any difference from the utility standpoint whether it comes out of the volume charge or the customer service charge. It's either a variable charge based on the number of gallons that flow through, or it's a part of the fixed charge.

Alderman Reynolds: So is it going to be 29½ plus 2½% service fee?

Steve Davis: No, sir.

Alderman Thiel: Now the service charge has gone up 9%.

Steve Davis: The service charge has gone up the same.

Alderman Thiel: It's gone up 9% and the usage rate's gone up 9%, they've both gone up 9%.

Steve Davis: That's correct, they're done in tandem.

Mayor Coody: Your bill is going to go up 9% per year for three years. Your bill will be increased 29½% over three years.

Alderman Jordan: That's the way I kind of remember this all coming down, but again I'm not going ….

Mayor Coody: When was the last time we had a sewer rate increase?

Kit Williams: It was '87 I think,'97, Ninety-seven, sorry.

Steve Davis: '97

Mayor Coody: So '97, '98, '99, 2000,

Steve Davis: It's been six years.

Mayor Coody: 2001, two, three, four, basically six, seven years, what's inflation, if you accumulate inflation over the last seven years, what does that number look like?

Steve Davis: It's going to be, I don't know.

Mayor Coody: Yeah, all right, even if we, we've aren't even keeping, if we're losing with inflation every year, this 29½%, a lot of that's going to be just keeping up with inflation, as we all know, inflation does happen. People with a fixed income, if they make a hundred bucks a month for the next hundred years, that hundred bucks isn't going to look very good ten or fifteen years out down the road, so inflation eats at a fixed number, so we can't keep fixing a system, fixing a 2004 system on 1997 dollars.

Steve Davis: I can go back and look at my records on the, from the Water and Sewer Committee meetings that have happened from 2001 forward and give the City Council a report on what my records indicate.

Alderman Jordan: I would appreciate that.

Kit Williams: Of course, we have a report from the newspaper at that time reporting on that meeting.

Steve Davis: That is correct.

Mayor Coody: Does everybody want copies of this stuff that I have? I'd be glad to make copies, no, OK.

Alderman Thiel: Apparently there were different newspaper reports. Some say….

Mayor Coody: This is, Adam brought this to my attention, I didn't even, wouldn't even have thought to go back to the newspaper reports, but he said that he remembered seeing that, and I asked him to send me a copy of it, so I just got this when, this morning, I guess. It says, "Water and Sewer Committee talked about the 29% increase phased in over time beginning in 2004," which is exactly where we are.

Alderman Marr: And what day was that?

Mayor Coody: September the 7^{th}, 2001 and this was before, when was the election? Do you remember?

Steve Davis: It was in November.

Geary Lowery: November 6, 2001.

Mayor Coody: So the election was after this was talked about.

Kit Williams: But right after, within a couple months you have the election.

Mayor Coody: So everybody knew before the election what the numbers were and how it was going to play out and it's playing, I'm going to remove the person speaking if they violate that one more time, but two months before the election everything was spelled out and it's unfolding just exactly like it was described in September of 2001. All right, any other questions or comments?

Kit Williams: I have one other comment, not about this, but I did talk with Greg Betcher who contacted the Soil and Water people, they did give us an extension, so there's no concern or danger to the City, however I would request that you go ahead and pass this ordinance tonight so that time can start running for the ordinance to be effected.

Mayor Coody: All right, so we would entertain a motion to suspend the rules to go to the third and final reading. Is there a motion? So we're going to leave this on the second reading? How will this affect the Soil and Water Commission and our $120 million ….

Kit Williams: Well, it'll just kick it back a week, because we have another meeting of course in a week from now, I'd like to get it passed tonight, but if the City Council doesn't want to pass it tonight, they certainly don't have to. They don't ever have to pass it.

Alderman Thiel: Mayor, I guess my only reason to hold off a little bit is because the staff has said that they would respond to questions proposed by people, there has been a public comment period and public question period and I guess we'd all kind of like to wait and see what those responses are to make sure….

Mayor Coody: You realize, this is the same thing we passed once.

Alderman Thiel: Yes, Mayor, I realize that.

Mayor Coody: OK, just checking.

Kit Williams: What questions do you want response for, because I think that we….

Alderman Thiel: Well, I mean, it seems kind of, I mean, I guess I don't understand the statement to the public, then, that was made. That we'd respond, that the staff would be given up to a week to respond.

Kit Williams: That was said if necessary and I think staff has pretty much responded to it, but if you have some question, if one of those questions you feel like was not properly responded to.

Alderman Marr: I feel like that, I mean at least the questions that; I don't think that the questions from Farmington were questions as much as they were statements. That they disagreed with the methodology, didn't understand how, doesn't believe our consultant understands how they use the system; they disagreed with the rate of return and whether the contract even allowed for it. They disagreed with the City of Fayetteville living up to its terms of the agreement of the contract and I guess the only request I heard is they'd like to be placed on the City Council agenda regarding mediation. So I don't know, I mean, I'm sitting here going, we did do this and when Mr. Lowery called me, as I'm sure he called the rest of you, the things that I was concerned about is was there promise in the voting of 27 versus 29. I think we've, I'm relying on you and the information you provided in that it's accurate so that that answers that question and I think our other question is do we have legal risk? I heard that basically we can't, we can't keep from being sued, but our risk is very low in terms of the risk to the citizenry.

Alderman Marr: I'm actually going to move that we suspend the rules and go to the third reading. Alderman Cook seconded the motion.

Mayor Coody: We have a motion to suspend the rules and a second to go to the third and final reading.

Alderman Marr: Can I make a statement though?

Mayor Coody: Yes.

Alderman Marr: I really do think that at the last meeting that there was strong consensus on the Council to have discussion with Farmington, since we had passed it and to see if there were alternatives that should be put in place and I sure would like to see that happen. The only thing that concerns me, a piece of new information that we heard today is that if we mediate something different, then it requires a change and a charge to something else of which is why I was hesitant to move this forward. Because if we do something there that has an impact on another rate customer, then I don't think we ought to be passing something and then a month later coming back changing it, if we think that's going to happen, if our adjustments are going to be related to, we're going offset their charges by money that they choose to implement an impact fee or they choose to do a sales tax and so we use that revenue in replacement so we don't have to affect another rate customer, then I'm OK moving forward.

Kit Williams: The only way it'd affect a rate customer is if there was a change in the rate of return figure, now if they're making up the money lost by reducing their sewer rates by another source like a sales tax or impact fee, then that would have no effect on any other. It wouldn't have effect on the system because the system would still be getting the money and the system has to have a set amount of money.

Alderman Marr: But that's my question, I guess, to the administration is, is that the route we're going when we talk about discussions with Farmington, because if you're talking about further changes to rate customers, then I don't think we should move it tonight.

Kit Williams: Well, I am concerned about the Soil and Water Commission and our $100 million loan that we're going to get from them. We have to have some rates, even if we eventually adjust them. We have to have rates showing that we can operate this plant that they're going to finance for us, so we do need to move forward fairly quickly. That's the only thing I'll say.

Alderman Marr: I heard that.

Steve Davis: If I might, in 20 months, there will be another rate study, there will be another operations report, and there will be another rate study in front of the City Council to consider. Twenty months, October or August 2005, so yes, we're passing rates that have a nine, that ultimately don't go into effect until January, sometime in 2006, is it 6 now?

Kit Williams: Some of them.

Steve Davis: Some of them.

Kit Williams: Four, five and six.

Steve Davis: But in the interim, in 20 months, we will have another rate study that will be before the City Council that will supplant, or could supplant some of those rates that we're enacting today, if we enact them.

Alderman Marr: I completely understand that. The point I'm trying to make is there's a hell of a difference between 20 months and two more meetings, or one more meeting, or a month of negotiation, so I don't want to risk $100 million. I understand that, that's why I'm sitting here making a motion about it, but at the same time, I don't want to have a different citizen sitting at that microphone going, "two weeks ago you passed and this is what the rate was." We need to get our act together. We either need to know that this is what it's going to be….

Mayor Coody: Excuse me. Excuse me. Excuse me. Will you please remove Mr. Lowery from the room? Thank you very much.

Alderman Marr: We need to get our act together and we need to know that the rates are going to stay constant for some time period. That's what I'm frustrated about. I voted for it last time; I'll vote for it again this time, but I'd like to know that we don't have legal risk and we don't, we're not going to come back a month later because we talked to another city changing the rate now on our industrial customer. That's all I'm asking, but I think we have a motion and a second to go to the third reading.

Mayor Coody: Before we go, let's just, let's see, we have everybody except Bob Davis here, right?

Kit Williams: It requires six affirmative votes.

Mayor Coody: All right, so we have motion and a second to go to the third and final reading shall the motion pass.

Sondra Smith: Rhoads?

Alderman Rhoads: Yes.

Sondra Smith: Davis?

Sondra Smith: Lucas?

Alderman Lucas: Yes.

Sondra Smith: Jordan?

Alderman Jordan: Yes.

Sondra Smith: Reynolds?

Alderman Reynolds: No.

Sondra Smith: Thiel?

Alderman Thiel: Yes.

Sondra Smith: Cook?

Alderman Cook: Yes.

Sondra Smith: Marr?

Alderman Marr: Yes.

Upon roll call the motion to go to the third and final reading passed 6-1. Alderman Rhoads, Lucas, Jordan, Thiel, Cook and Marr voting yes. Alderman Reynolds voting no. Alderman Davis was absent.

Kit Williams: An Ordinance Amending § 51.137 of the Code of Fayetteville to Adjust Sewer Rates.

Mayor Coody: All right, so we're going to have the ordinance right now in its third and final reading, if we, here's the drawback if we string this out. We've already voted on this once and approved it once, if it weren't for the legal glitch that was overlooked, we wouldn't be having this meeting again. The thing that I fear is that if we do change our rates with Farmington, we'd have to raise them someplace else and we have basically opened up the entire discussion again for I don't know how long, anybody want to venture to guess, and who would be the rate class that would have to make up the difference? Would we have to bring in Black & Veatch to restructure the rate study again, is Sewer and Water going to wait for six more months while we determine all that, would the numbers be any differently if Black & Veatch came in to do another study, would we be making arbitrary decisions, fifteen percent here, ten percent there, without any expertise to verify that we're doing something that's fair and equitable? I'm having to rely on Black & Veatch's study as the foundation for all these figures and percentages and everything else. I don't know any better. I don't make the big bucks from Black & Veatch to determine what individual in one location should pay compared to another individual in another location. We're having, I'm having to rely on that expertise. I would not feel comfortable going to Farmington saying, we'll cut you 20% off and we'll just make it up, mm, over here somewhere. Sorry, I can't, I don't want to be in a position to do that, that's not right, so what are you, if this Council votes down this third reading, then I'm going to need a clear direction on where to go, because all the directions from here don't look good if we do something differently than just approve this. When we negotiate with Farmington, they've got some things they could put on the table that would help them and would get them where they need to be, we know what those are, we've talked about that. They brought that to the table themselves. Those are the things we do have some negotiating points, but as far as arbitrating just to lower the rate? I don't see a future in it without some real good *quid pro quo* from Farmington to justify it. All right, yes, sir.

Alderman Reynolds: If Farmington comes to you in negotiations and they're willing to go to their people and put that ¾ cent sales tax and impact fee forward and it passes in Farmington, and they get it done in 90 days, how are we going to be able to give them relief at that time?

Mayor Coody: What would that take City Council action?

Kit Williams: Yes. It would not be too difficult. We would have to consult again with our rate people in order to determine how much they would be able to generate for our system through their sales tax and their impact fee. That would offset the amount of money we would have to get from rates, so their rates could go down, but as was pointed out by the expert at the meetings you all had, they won't go down probably as low as what Fayetteville rates are, because we're generating a lot more sales tax than they are, but their rates could be impacted without making any other increases for anybody else. It would just reduce their rates because they would be generating income for the system, revenue for the system, from another source besides rates.

Mayor Coody: And as we stated at the last meeting, it wouldn't come down to the same rate Fayetteville rate payers are paying, but it would come down to something considerably closer. That was discussed at the meeting, that if impact fees and the ¾ cent sales tax were approved in Farmington, that would put all of us on a lot more equitable footing.

Alderman Reynolds: I don't think they expect to get it for the same price. I think they want a chance to lower it from 131%. I think we ought to give them that chance.

Mayor Coody: Sure. They can, they could have done it two years ago, they can do it next week, they could do it right now, they could do it any time. They would like….

Kit Williams: Their citizens have to do the sales tax.

Mayor Coody: That's what I mean. We took ours to the citizens in '01 and all cities have that option to take that to the citizens. We did this work two years ago, two and a half years ago.

Alderman Reynolds: I just hope that they do that and get it done, they come back to us, and this Council's open to give them some relief.

Mayor Coody: Oh, you bet, I would assume that we would.

Alderman Marr: And my comments, or at least that night, were not to affect other rate class customers but we're to give them the option if they so choose to pass to do what the citizens in Fayetteville did, which is, if they, if the Council implements an impact fee, then that goes toward reducing it, whatever that amount may be and if their citizens decide to initiate a sales tax, then that be applied and we'd come back and reduce the rate because we're getting the money out of a different bucket at that point. We still have the cost of the system and I think the one thing the lady described that night is that doesn't change.

Alderman Reynolds: I'll vote for this if you guys will all agree we'll give them a fair shake if they go through the process and they come up with the same funds that we came up with.

Alderman Rhoads: It's sort of stating the obvious.

Mayor Coody: I think that's all understood. Alright we have a motion and a second to approve….

Alderman Jordan: Let me say just one thing. On the 27 or 29% increase, I'm sorry, I do not remember and I will say that publicly. I don't remember, but I know that the figures that have been kicked around for the last year have been 29%, that much I can tell you, so if we had discussed something else that night, I do not recall that. What I remember at the City Council meeting is that the door would always be open to Farmington to negotiate even if we passed it that night, and right now I don't see that anything has changed that much, so I will probably support this, with the same as, you said we were stating the obvious, that the door's always going to be open and we will look into it later on, I think.

Mayor Coody: All right, anything else? We have an ordinance and motion to support the ordinance shall the ordinance pass?

Sondra Smith: Rhoads?

Alderman Rhoads: Yes.

Sondra Smith: Lucas?

Alderman Lucas: Yes.

Sondra Smith: Jordan?

Alderman Jordan: Yes.

Sondra Smith: Reynolds?

Alderman Reynolds: Yes.

Sondra Smith: Thiel?

Alderman Thiel: Yes.

Sondra Smith: Cook?

Alderman Cook: Yes.

Sondra Smith: Marr?

Alderman Marr: Yes.

Mayor Coody: Is that it?

Kit Williams: We get to adjourn.

Upon roll call the ordinance passed 7-0. Alderman Davis was absent.

Ordinance 4536 as Recorded in the Office of the City Clerk.

Mayor Coody: All right. Thank you all very much. This public hearing is adjourned.

Meeting Adjourned at 5:30 P.M.

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Sondra Smith
City Clerk