

**MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
JANUARY 2, 2001**

A meeting of the Fayetteville City Council was held on January 2, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Mayor Dan Coody, Aldermen Reynolds, Thiel, Young, Zurcher, Trumbo, Davis, Santos, and Jordan, City Attorney Jerry Rose, City Clerk Heather Woodruff, Staff, Press and Audience.

OATH OF OFFICE

Judge Rudy Moore swore in the new Mayor, Aldermen and City Clerk.

CONSENT AGENDA

APPROVAL OF THE MINUTES

Approval of the minutes from the December 5, 2000 City Council meeting.

ROLLFORWARD

A resolution approving a budget adjustment which will allow for the rollforward of all projects or items in progress which were appropriated in the 2000 budget. The items which are approved will become a part of the 2001 Budget.

RESOLUTION 1-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

TRAFFIC SIGNAL

A resolution expressing the willingness of the City of Fayetteville to utilize Federal Aid Monies for the signalization of State Highway 112 and Drake Street.

RESOLUTION 2-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Young moved to approve the resolution. Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.

OLD BUSINESS

WIRELESS COMMUNICATION

An ordinance approving an amendment to the Wireless Communication Facility Ordinance 4178. The ordinance was left on the second reading as amended at the December 19, 2000 City Council meeting.

Alderman Trumbo moved to suspend the rules and move to the third reading. Alderman Young seconded the motion. Upon roll call the motion carried unanimously.

Mr. Rose read the ordinance.

Mr. Conklin stated this was an ordinance amendment to clarify the section with regard to replacement towers. The intent was to clarify the section to allow tower providers to replace their towers and to leave their current towers up for a certain period of time and replace it as close as technology feasible. Also, during this process they talked about adding into the ordinance sections that dealt with screening of the tower equipment, fencing, colors, height requirements. They had clarified the original height by amending the ordinance stating that the original height is the height of the original tower structure and not including antennas. This ordinance only applied to guide towers. It allowed guide towers that were less than thirty-six inches wide to be replaced with a guide tower up to thirty-six inches wide. The height has been clarified. This will allow Arkansas Western Gas to replace their existing facility on Rockwood Trail.

Alderman Young stated the neighbors had wanted more information. He assumed they had received the information because he had not heard from them.

Mr. Conklin stated Arkansas Western Gas had given out a packet of information. They had also held an open house on December 27 for the property owners.

Mr. Dangeau, Arkansas Western Gas, stated they had scheduled the meeting, but no one had been able to come because of the weather. They had sent out an informational letter explaining everything that was relevant to the tower, the ordinance and the amendment. They also included photographs.

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

ORDINANCE 4285 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

GRADING AND DRAINAGE

An ordinance approving amendment to the City's Grading and Drainage ordinances. The ordinance was left on the second reading as amended at the December 19, 2000 City Council meeting.

Mr. Rose stated Ms. Gaston had requested to submit some things in writing to them so they could consider amending the proposed ordinance. He had talked to Ms. Gaston and she had requested them to table the ordinance until the following meeting.

Alderman Trumbo asked how it would work procedurally.

Alderman Zurcher stated the decision the Committee had made was not without controversy.

Alderman Davis stated the hang up appeared to be on the number of submittals. The Committee had been formed to determine if grading was allowable or permissible before the drainage calculations were finalized. Everyone on that Committee basically agreed that was okay and not a problem. The problem at this point in time was on the number of submittals and the number of days. He thought they could give the Engineering Department a couple of weeks to see what they felt was workable and doable.

Mr. Richard Maynard, an area resident, stated the Committee had been formed to determine if they wanted phased permits or the partial permits at all. It was near unanimous and they decided it was a good policy for both developers and the City. He did not think that there was any point to sending it back to the Ad Hoc Committee. The Committee had made its decision. Their difference was on what kind of conditions that they wanted to give it out. Did they want to focus on the number of days or on the number of submittals. He hoped the public would accept the idea that phased permitting was a pretty good thing and that they should continue with it. By their next agenda meeting they would offer them another alternative to what kind of deadline they wanted. They were going to provide them another way to look at this. The length of time before allowing the grading ordinance and approving the grading permit was the result of the problem and was not the problem itself. The problem itself was the number of submittals. At some point was there going to be a mandatory stop work order that went beyond the discretion of the engineer.

Mr. Beavers, City Engineer, stated the one hundred and twenty days came from the estimates that he had formulated trying to allow for their review time which was the average time for them to review a submittal. This would put the burden back on the private engineer to get the revisions back to them.

Alderman Trumbo moved to table the ordinance. Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.

ORDINANCE WAS TABLED ON ITS SECOND READING.

HMR TAX

An ordinance amending Section 35.20 of the Code of Fayetteville regarding the HMR Tax. The ordinance was left on the first reading at the December 19, 2000 City Council meeting.

Ms. Marilyn Johnson, A&P Commission, stated the A&P Commission had been considering this since late summer. The City of Fayetteville's ordinance had been passed in 1977. They have not

updated that ordinance since. State law has changed many times. This was originally considered a luxury tax when people use to eat out for the fun of it. Since that time it has somewhat become a necessity for many families. The A&P Commission believed it was an issue of fairness. Those businesses which had six seats or more are having to pass this tax to their customers and those which do not have six seats do not have to collect the tax. She asked the Council to update the ordinance to reflect State law. The A&P Commission would be willing to eliminate the Deli's in the grocery stores.

Mayor Coody asked how could they do a better job of collecting the tax from the people who have not paid their taxes.

Ms. Johnson stated they had been working with City staff and at the State allowable procedures for collections. HMR Tax was a specialized tax, set up by a special code. They were currently working with the Prosecuting Attorney.

Alderman Young suggested they leave it on the second reading.

Alderman Zurcher stated he believed this tax was set up to get tourist dollars. It would be hard for him to look at some of them and believe they were getting most of their income from tourist. He thought most of them were places that Fayetteville residents went to more than anyone else.

Alderman Thiel stated she felt sales taxes were regressive, however, she felt HMR Taxes to be luxury taxes. They were paid by citizens who could afford them and tourist. Most citizens agreed with this because they had voted for the HMR Tax twice. Most people had not realized there were some exceptions to that. She had not realized that. She thought she was going to be paying the tax on all prepared food that she bought. To her a prepared food was a luxury.

Alderman Santos stated he felt the ordinance needed a lot of work. He preferred sending it back to Ordinance Review Committee to get some definitions in the ordinance.

Ms. Johnson stated to the best of her knowledge their proposed ordinance was directly from State law. To the best of her knowledge they were the only ones with an on-premise limit with six seats.

Alderman Santos stated just because State law allowed it did not mean that they had to do it.

Mr. Rose stated the problem was, did they have good reason for excluding some. It became an equal protection of the law questions. They would need a good reason for singling out people.

Alderman Santos moved to send the ordinance to Ordinance Review Committee.
Alderman Thiel seconded the motion.

