MINUTES OF A MEETING OF THE FAYETTEVILLE CITY COUNCIL MARCH 20, 2001

A meeting of the Fayetteville City Council was held on March 20, 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 Davis, Santos, Jordan, Reynolds, Thiel, Young, Zurcher, and Trumbo; City Attorney, Kit Williams; City Clerk, Heather Woodruff, Staff, Press and Audience.

CONSENT AGENDA

APPROVAL OF THE MINUTES: Approval of the minutes of the March 6, 2001 City Council meeting.

LS 01-4.00: A resolution allowing a lesser dedication of right-of-way than required by the Master Street Plan for LS 01-4.00 submitted by David E. Lashley on behalf of Mary Pauline Reed Trust for property located at 2283 S. School.

RESOLUTION 34-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CONSTRUCTION MATERIALS: A resolution awarding bids for construction materials utilized by various divisions of the City.

RESOLUTION 35-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

WHITE RIVER BRIDGE: A resolution approving a construction contract with J&L Construction Company in the amount of $274,873.00 for the White River Bridge, Highway 45 E., water main relocation project; and approval of a 15% project contingency in the amount of $41,230.

RESOLUTION 36-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

WHITE RIVER BRIDGE: A resolution approving Amendment No. 1 to the engineering contract with McClelland Consulting Engineers, Inc. in the amount of $29,920.00 for the White River Bridge, Highway 45 E., water main relocation project; and approval of a 15% project contingency in the amount of $4,488.

RESOLUTION 37-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

000.97

LIBRARY: A resolution approving a contract amendment in the amount of $21,060.00 for architectural services for the new Fayetteville Public Library and approval of a budget adjustment funding the change orders.

RESOLUTION 38-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Davis moved to approve the Consent Agenda. Alderman Jordan seconded the motion. Upon roll call the motion carried unanimously.

OLD BUSINESS

CIVIL SERVICE: An ordinance granting authority to the Fayetteville Civil Service Commission to appoint and remove the Police and Fire Chief; and for other purposes. The ordinance was left on the second reading at the March 6, 2001 City Council meeting.

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

Mr. Williams read the ordinance for the third and final time.

Alderman Davis recommended that they table the item until they had a chance to review the Selection Committee information that had been provided to them tonight.

Mayor Coody stated he had written a letter explaining his plans for hiring the Fire Chief. The group would consist of two Civil Service Commissioners, two City Aldermen, a Public Administration Professor from the University of Arkansas, the Interim Fire Chief, Personnel Director, and the Administrative Services Director. He added as Mayor he would continue recruiting and hiring the most highly qualified candidate for any job they offered in this administration.

Alderman Davis moved to table the item. Alderman Trumbo seconded the motion.

Alderman Young asked if this process would be used for a Police Chief.

Mayor Coody replied, the process would remain virtually the same.

Alderman Davis stated the Mayor had the option of changing this at any time.

Upon roll call the motion carried unanimously.

Mr. Don Bailey, Personnel Director, stated they were looking, internally, at the job specifications. They knew the importance of this job to the citizens of Fayetteville. They had taken a

comprehensive look, not only at the administrative management required by a Fire Chief, but the Fire Science in today's environment. They had asked the Fire Department to take a look at the job description and to comment to him in writing or verbally what they believed the tasks and the requirements would be for this particular position. They had put together a new, highly detailed specification for this particular job. It is now in the Fire Department for review by the chief officers to give him a final look at what had been stated to see if there were any final changes. One of the dimensions that they had looked for was that they stated what they believed will be their critical things that this chief must address in the next few years. They can then provide the specifications to the committee for a basis for comparison in the analysis that they needed to undertake to evaluate the resumes. Knowing that everyone in the department had a chance to comment.

Mayor Coody stated they wanted to make sure that all the stake holders had a handle in some way in upgrading the staff at City Hall.

Alderman Reynolds stated he wanted to make sure they were legal as far as having two Civil Service members on the committee. This may be a conflict.

TABLED ON THE THIRD READING.

RZ 01-2.00: An ordinance approving rezoning request RZ 01-2.00 as submitted by Dave Jorgensen of Jorgensen and Associates on behalf of J.E. Lindsey Family Limited Partnership for property located south of Chamberland Square and east of Betty Jo Drive to Shiloh Drive. The property is zoned C-2, Thoroughfare Commercial and contains approximately 18.25 acres. The request is to rezone to R-2, Medium Density Residential. The ordinance was left on the first reading at the March 6, 2001 City Council meeting.

Mr. Williams read the ordinance for the second time.

Alderman Jordan stated they needed to address the drainage situation on Betty Joe Drive. It was a serious condition. He had a problem with this. If they put another apartment complex there, they were going to compound the problem of that drainage issue. He realized the apartments were going to drain back to the east. They still had the flooding problem on Betty Joe. He was not anti-apartments, but he was anti-people living in a flood zone. They needed to fix it.

Alderman Davis stated he was a property owner on Betty Joe Drive. That development was put in the year of 1977. There had been some problems with the way drainage pipes had been put in. It has gotten better compared to what it use to be. Back in 1978 and 1980 some water did get into some of the units. There had been some work done since that time that had relieved some of the problem. He was not aware of water getting into any units today. The problem was at the corner of Betty Joe and Jewel. He personally felt that by going ahead and having this other development to the east would possibly help the situation. As they looked at Rupple Road to the west, they may be

able to take some of the drainage off of Jewel back through there somehow. He would like to see them go ahead and approve this complex.

Alderman Santos stated this had given them a good chance to talk about the drainage problem. These apartments would not add to or take away from it. It was a separate issue. He asked when they had flooding. Did they need to make a commitment to include this in the CIP for next year? Mr. Don Bunn, Assistant Public Works Director, stated he thought there was flooding even when the pipes were clear. The Street Superintendent did check it regularly to make sure they were clear. He suspected it flooded even when the pipes were clear. He did not know what the fix to the problem would be. There was the possibility that it could be partly fixed by diverting some drainage from further south on Betty Joe across the property being developed. He was not sure this could happen and he was not sure how much it would help if they did. The other thing was to go in and re-evaluate the drainage and create a drainage project. They were talking a lot of money to do that, several hundred thousand dollars, to fix the problem. It was something that could be placed in the CIP. It would have to be evaluated along side other projects and a decision made about the priorities.

Alderman Zurcher stated this was going to cause more people to go down a one-way street when Betty Joe was flooded and to come around and go back. It seemed strange to put a whole bunch more people living there, that were going to have to live there, without the City fixing the problem. There were only three or four inlet structures built into the curbs. He asked if they could put some more inlet structures in the street.

Mr. Bunn replied it was not the number of inlets. It was the pipe sizes. They could have as many inlets as they wanted, but if the pipe was not big enough it was not going to do any good.

Mayor Coody stated if they were going to add pipes they could add larger ones.

Alderman Jordan stated he was not against the apartments, but he could not see them trapping another two hundred and sixty eight units in that area. They had people who were trapped in their homes when it rained heavily. They could not even back out of their driveways.

Alderman Davis stated he would like to see it corrected also, but he did not want to see them hold up this project for that. The drainage from this unit would not be going to the Betty Joe intersection. It should be going to the east.

Alderman Jordan stated that was true, but they would be trapping those units in there if it rained.

Alderman Davis stated that was true, but it did not flood with every rain. It had to be a substantial rain before they began to have that problem out there.

Alderman Zurcher stated he did not want to hold this up, but if they were going to move it on, could they have some kind of commitment that the City was really going to do something.

Alderman Santos suggested putting this in the CIP for next year. The rezoning was appropriate. The land use was appropriate, but it did give them an opportunity to discuss an unrelated problem.

Mr. Conklin stated they could not make the developer go over and beyond the requirement and make him fix the problems on Betty Joe Drive.

Mr. Bunn stated they did not know if this development's drainage would do any good and how much good it would do.

Mr. Gary Lowery, an area resident, stated in this city they had a lot of problems with grading and drainage and with water getting away not only in the streets, but in the subdivisions. They could not take a small pipe and expect it to get a lot of water out. The City needed to start taking a hard fast look at what they were doing to this city. They had to plan for the future. They could not build and get the funds for a four lane bridge and only build two lanes. They could not go in and build a road then go in and put four inches of asphalt into the gutter. They were defeating the engineering and the flow of the gutter. They needed to do it right the first time, so they did not have to go back and redo it.

Mr. George Weiss, an area resident, asked how the economic impact was for having a new resident come to Fayetteville.

Mr. Conklin stated their impact study was due back any day for Phase I. They were going to set up a policy and direction workshop in April. They had hired Duncan and Associates to do an impact fee study for Fayetteville to look at how to fund capital improvements. It went along with his question. He did not have that information available tonight.

Mr. Weiss stated he had made a rough calculation. In his estimation, it cost the City four hundred dollars per person. This was the kind of thing they should all know about.

Mr. Conklin stated the information should be to them within the next two to three weeks.

Mr. Weiss asked how they reconciled the new sewage treatment plant and the addition of new people and businesses into Fayetteville. On one hand they were saying they were going to need a new sewage plant because they were going to have new people coming in. Yet, they had new people coming in, the cause of the problem. How did they balance these things?

Alderman Trumbo stated over the last three years with the City's programs on stormwater runoff, it had been a net/net affect on new hook ups off setting the amount of stormwater runoff not getting

into their system. They were getting real close to the overall capacity of the existing treatment plant, but with the rehabilitation of their existing system, there had been a net/net affect. They were still looking at a new system.

Mr. Weiss asked if they should slow down the pressures on the system by slowing down the development.

Alderman Trumbo stated they had discussed a moratorium in the past.

Mayor Coody added even if growth were to stop and not another new person moved into town, they still had to build a new plant, because they were maxed out with the plant that they had. The proposed plant would help solve all their problems.

Alderman Santos stated they could not stop growth. People had the freedom to travel in this country and anyone who wanted to move here had the right to move here. They could not tell them they could not come here. The could put a moratorium on new building, but only if they had an answer on why they needed the moratorium. If they had a solution designed then that would be the end of the moratorium. But they had to have a plan in place and they had to justify that they could not accept any new citizens in Fayetteville.

Alderman Zurcher stated the City had a lot of vacate residential structures in town now. It would not be keeping citizens from coming in as much as keeping new developments from going up until they knew what they were going to do with the wastewater.

Alderman Trumbo stated a lot of the multi-family complexes had been providing affordable housing with new everything for the same amount of rent that some people were paying to slum lords. Not only had it brought new people in, but it has relocated people who had substandard housing into better housing conditions.

Mr. Bunn stated there would be a Water and Sewer Committee meeting on March 27, following Agenda Session, they were going to discuss the plans for the wastewater treatment plant.

Mayor Coody stated they would be presenting different ways of paying for the project.

Mr. Maguire stated it was going to be a public information meeting. The public would be informed of the plans. It was not an official public hearing.

Mr. Bill Moeller, 1511 Markham, stated he was impressed with the manner they were conducting their meeting tonight. He believed the City had a responsibility to the new residents of this apartment complex to deal with whatever drainage problems existed there that would prevent them from using the local arterial. They would not like to have to detour during the rains. They also had

the responsibility to deal with the problem for the sake of the people who had been putting up with this problem.

Ms. Lou Weiss, an area resident, stated she did not understand why they did not fix the problems that they had now, before adding on new things. They needed to take care of their existing problems before adding more stuff and more expenses.

Alderman Thiel stated this zoning was C-2. They could build a commercial strip.. This was a down zone. They could do something more offensive than the apartments. They could not stop them from building anything.

Mayor Coody stated it was going to cost a lot of money to fix the problem. They did not have the money to fix it right now. They relied heavily on sales tax. They did not rely much on property tax. They had a lot of growth and growth cost a lot to keep up with. This was not their only emergency. They had flooding problems in other parts of town.

In response to concerns from Ms. Weiss, Alderman Santos stated if the sewage treatment plant was that critical and if they were at capacity instead of just short of capacity, they would have to impose a moratorium. They could only impose the moratorium for as long as it took them to get the sewage treatment plant built and they would have to have a plan in place at the time they imposed the moratorium.

Mr. Williams stated they would have to have an extreme circumstance, then they would have a moratorium on sewer taps. So even if they had a house in town they could not get a new tap if they were at capacity. He hoped they would not get to that point.

Alderman Zurcher stated that just because there was not a moratorium, on most developments if they were out on the edge of town and whether they were adding C-2 businesses or whether they were adding apartments, chances were good that he was going to vote against it. The kind of growth that brought about was a sprawling growth. Even without a moratorium, this group had the choice to turn it down if it was not in the good of the city. In this case, because it was zoned C-2, this was a down zoning and would generate less traffic than a C-2 use. He would agree that they needed to fix the drainage problem, but the vote on the rezoning. It was a down zoning. They were voting for less development.

Alderman Santos moved to suspend the rules and move to the third and final reading. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the third and final time.

Alderman Jordan asked if they were going to make an effort to fix this flooding problem on Betty Joe Drive.

Mayor Coody replied yes. They would look at putting this into the CIP for next year.

Mr. Bunn stated that assuming an apartment development did go in, they would look at diverting water from Betty Joe and they would try and develop a project which they felt would elevate the flooding problem on the street, see what it would cost and have it as an available project to put into the CIP.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 7-0-1, Trumbo abstaining.

ORDINANCE 4298 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SHILOH WEST APARTMENTS: An ordinance approving a waiver of Ordinance 3793 to accept land and money in lieu as park land requirement of Shiloh West Apartments Subdivision. The ordinance was left on the first reading at the March 6, 2001 City Council meeting.

Mr. Williams read the ordinance for the second time.

Alderman Davis stated the Sidewalks and Trails Committee had tried to work with developer to see if there was anyway they could get trail access to some of these properties as they put together their master trails program. It would help connect trails throughout the city, which was their goal.

Ms. Edmonston, Parks and Recreation Superintendent, stated it was in the City's best interest to accept a combination of land and money as near the location to Davis Park and the future Boys and Girls Club. With this subdivision coming in, it gave them the opportunity to make a trail.

Alderman Thiel stated they did need the money in that quadrant more than the land. There were a lot of amenities in that planned complex and the other parks in the area.

Alderman Davis moved to suspend the rules and move to the third and final reading. Alderman Jordan seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the third and final time.

Ms. Terry Eastin, an area resident, commended Alderman Davis' help on the Trails and Sidewalk Committee to look these things over and to help identify areas where sidewalks and trails could go in, as a forerunner to development. It was a very important issue that as all new development came

in that they keep spotlighting opportunities for sidewalks and trails and alternate transportation connectivity.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 7-0-1, Trumbo abstaining.

ORDINANCE 4299 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

TREE AND TRAILS TASK FORCE: A resolution creating a Tree and Trails Task Force composed of six members, all residents of Fayetteville, appointed by the City Council to two year terms as required by the Tree Settlement Agreement, Serafini, et al v. City of Fayetteville, et al.

Mr. Conklin stated the purpose for having this item on the Agenda was to appoint a Tree and Trails Task Force. This was created as a part of the Tree Settlement Agreement. The task force was to be comprised of six members. The recommended appointments are: Mary Alice Serafini with the League of Women Voters of Washington County, Melissa Terry representing the Ozark Headwaters Group for Sierra Club, Bob Davis as an Alderman-Sidewalk and Trails Committee, Brenda Thiel as an Alderman-Environmental Concerns Committee, Bill Dollar Chairman of the Tree and Landscape Advisory Committee, and Tim Conklin as Planning Representative. This was the first step in creating the committee. There was $225,000 put into a trust fund for 2001 and 2002. That money was to be used for acquisition of conservation easements and property that contained trees and trails and other properties which would enhance their master trails plan and their comprehensive plan. This was the first step in the process to set up the committee. May 8 was their deadline to appoint the task force. They did not have to pass it tonight, if they wanted to consider the individuals on the committee or they could pass it tonight.

Alderman Santos stated they had rewritten the membership of the Sidewalk and Trails Committee. The had a number of people who were representing other groups, like the Parks Board Representative. They had decided that member should be sent to them by that Board and not the Nominating Committee or Mayor. He suggested that they do that.

Mr. Conklin stated the Tree and Landscape Committee had met today and that name had been given to him. Those were the names which had been given to him. It had been very difficult for him to figure out how to approach these people for names. If they had it in writing it would be set. It was a positive thing for the City to do. It was a pro-active approach to saving open space and trees. Most of the time they were reacting to development. This was one way they could go out into the community, identify those resources and protect them.

Mr. Williams stated he could look at the settlement that they entered into and the suggestions from Alderman Santos and then draft a resolution. In fact if they wanted to vote on this tonight. He wanted them to have it in their minds that was the resolution that they were going to accept representatives selected by each of these individual groups in the future, if there was any change.

Alderman Young moved to pass a resolution setting up the committee with the members listed. In the future they would accept the recommended nominees from the various departments as suggested. Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 39-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

TRAILS GRANT: A resolution authorizing the Parks and Recreation Division to apply for up to $80,000 (80/20 matching funds) in grant money for the development of a multi-use trail at Lake Fayetteville.

Mayor Coody stated that as a Council they decided if they were going to apply for a grant, rather than applying for it then deciding they did not want to get into it. This way they could make a conscious decision up front, then as they applied and went through the process they would know what they were getting into.

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

Mr. John Deane, an area resident, stated there was always going to be a need for money. He suggested that they try and find out what the people of Fayetteville were thinking. He suggested putting on the ballot for a vote that they assess one dollar on each water meter and it be earmarked for these quality of life programs. They would have money for the grants for the Police Department.

Ms. Jennifer Michaels, Friends of Lake Fayetteville, stated her group appreciated the efforts of the Parks Department in writing this grant. They supported this grant request, with the understanding that the funds would be used for trail improvements that were based on public input gathered by the Parks Department and their Master Plan consultant.

RESOLUTION 40-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RADIO SYSTEM BID WAIVER: An ordinance waiving competitive bidding for purchase of special radio equipment from Motorola.

Mr. Williams read the ordinance for the first time.

Alderman Santos explained this was a sole source provider and they were saving a lot of money over any other option that any other provider could give to them.

Mr. Rick Hoyt, Police Department, stated that because of the infrastructure that was re-useable, they were saving at least $350,000. The consultant from RCC Consultants had stated the saving would be near a half a million dollars. This equipment was very proprietary. There were only two major players on the market that did this type of large systems. Motorola was one of them. They had been with Motorola since 1984. They had hired a consulting company. They had come out with the final recommendation that they stay with Motorola mainly because there was no way they could get a better deal. The problem with opening it up to competitive bidding that to level the playing field for another vendor, then they could not include any of the equipment they already had. Their cost would sky rocket. There was an existing bid waiver for Motorola, but it was from 1991.

Mr. Tim Drisel, RCC Consultants, stated they had been hired by the City. In 1984 the City had purchased a trunk radio system, Motorola. One of the very few drawbacks to trunk radio system technology was that it was vendor proprietary. One vendors mobile and radio would not operate on another vendors tower site. They had checked the pricing offered by Motorola and found it to be comprehendible. The reason to not bid it out was economical because of the nearly half a million dollars worth of existing equipment that could be used. If they were to go with another vendor that would be discarded.

Mayor Coody asked what kind of costs they were looking at for Phase II.

Mr. Drisel stated the radio system which was going to be given to the Fire Department was of the latest technology. It was part of the half million dollars of equipment that could be reused. There was approximately one hundred and forty radios that could be upgraded to operate in the new technology offered in the proposal. Most of the equipment that they were going to be reusing was less than three years old. Mt. Robinson site was going to provide the City with a hot standby redundant backup system that they could go to. There was an automatic switch over. If anything was to happen to the prime site at Mt. Sequoyah it would automatically switch over to the Mt. Robinson site. There would not be as much stress on the older system. It should still last them quiet a few years to come. The coverage would be improved.

Mr. Hoyt stated Phase II covered clean up projects. The Fire Department was wanting a system that would log them in when they got into their truck and left their station. They would push a button, which would send a signal to the dispatch system and logged them in. They had to look at this a little more. A new fire chief might have different ideas. It was also very costly. The interface to make it talk to the system was $57,000 by itself. There would be devices that they would have to attach to their radios in the truck which were $700 each. The unknown factor was that they would have to get with the software vendor, which handled their dispatching, New World System, and they would have to write a custom program. They would be coming back at a later time, if the new fire

chief wished it to go forward. The Fire Department had a redundant system, which was required. They had this system and a high band system. It was his understanding the high band system was antiquated and they would like to update it. That was not as expensive as a trunk radio system. Phase II would also look at two areas of possible concern with coverage. By moving the tower to Mt. Sequoyah, the existing Pollution Control Plant might be in hole where it did not have the coverage that they wanted it to have. The airport was also a concern. What they were going to do, rather than engineering up front, was in Phase II clean it up, if there was even a need too. They did spec this at a much higher rate than the old system. They have speced this system at 95% coverage with portables.

In response to questions from Alderman Jordan, Mr. Hoyt stated they were going to be placing some antennas on top of the Mt. Sequoyah water tower.

Alderman Santos moved to suspend the rules and move to the second reading. Alderman Jordan seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the second time.

Alderman Davis moved to suspend the rules and move to the third and final reading. Alderman Jordan seconded the motion. Upon roll call the motion carried unanimously.

Mr. William read the ordinance for the third and final time.

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

Alderman Davis moved to approve the emergency clause. Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.

ORDINANCE 4300 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RADIO SYSTEM: A resolution awarding a contract to Motorola Inc. in the amount of $1,769,013.54 to upgrade and enhance the 800 Mhz Radio System, construct a radio building at tower site in the amount of $48,000, project contingency of $40,000 and approval of a budget adjustment to complete Phase I.

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

RESOLUTION 41-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

VA 01-2.00: An ordinance approving vacation request VA 01-2.00 as submitted by Al Harris of Crafton, Tull and Associates on behalf of Scurlock Industries for property located at 3725 S. McCollum. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately 14.38 acres. The request is to vacate a water line easement.

Mr. Williams read the ordinance for the first time.

Mr. Chris Parton, Crafton, Tull and Associates, stated Scurlock Industries were planning on expanding their facility and add about one hundred feet onto the south of their existing building. A portion of the existing water line easement was within the limits of their proposed building. The fire hydrant was not. They were going to relocate the fire hydrant to the west property line and vacate the easement. This would allow the owner to expand the building if they wanted. All the utilities, the City and the Fire Chief agreed to the vacation.

Alderman Jordan asked if they were going to pay for moving the fire hydrant and water line.

Mr.Parton replied yes.

Aldermen Reynolds and Thiel stated they had not received any objections to this vacation.

Alderman Zurcher stated a vacation request from the City was a favor. He stated they needed to take a serious look at who asked for these favors and what kind of corporate citizens they were in Fayetteville. Crafton, Tull and Associates, in his opinion, assaulted their democratic process when they fired one of their aldermen for speaking out on something he cared about. He did not think the City should grant the process to people who disregarded their process.

Alderman Davis stated the request was from Scurlock Industries and that would be penalizing Crafton, Tull's client.

Alderman Zurcher stated he did not believe it was right for a corporation to fire an employee for something they were doing in an elected post, representing their constituents. It would not be fair for Scurlock Industries, but maybe they would chose to do business with someone who had good relations with the City and who had not done what this company had done to their democratic process. Crafton, Tull and a chance to make amends. This was not a use by right. It was a favor. He did not think that they were deserving of a favor.

Alderman Reynolds stated the issue was being litigated. Crafton, Tull was not the owner of this factory. They needed to leave the alderman and the company outside of their Council chamber. The City and this company were not in this fight.

Alderman Trumbo moved to suspend the rules and move to the second reading. Alderman Davis seconded the motion. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance for the second time.

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

Mr. Williams read the ordinance for the third and final time.

Mr. John DeVal, 1131 East Wood, expressed his appreciation to Alderman Zurcher for his comments. He still felt that what Crafton, Tull had done was an offense against democracy.

Ms. Lou Weiss, an area resident, stated she agreed with Alderman Zurcher.

Alderman Santos stated they could not punish them or their client. It seemed like a favor, but it was something they had no need for. It was an abandoned easement. They should let the people build their expansion.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 6-2-0. Jordan and Zurcher voting nay.

ORDINANCE 4301 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

LSD 01-1.00: A resolution approving a waiver of right-of-way dedication for Old Gregg Avenue as requested for LSD 01-1.00 submitted by Dave Jorgensen of Jorgensen and Associates on behalf of Sweetser LTD Partnership for property located between Elm and Township and west of Gregg Street.

Mr. Conklin stated the development on the site was proposed to be for mini-storage. Staff was in support of the lesser dedication. This was being brought forward because of the Master Street Plan. It required dedication of right-of-way. The only way they could waive the requirements of the plan was to bring it forward to the City Council for a waiver. This was not a consideration of the Large Scale Development.

Mr. Chris Bracket, Jorgensen and Associates, stated the owner of the development was improving Old Gregg Street to current street standards, fourteen foot from center line with curb and gutter. He would be installing that. They were able to do that within the fifteen feet from the center line that was existing. Since they were not putting the sidewalk in front of the building, which would not be used by the public, they were installing it on the east side of Gregg Street. They did not feel there was a need for the right-of-way dedication

Alderman Zurcher asked if this was the property where the two rare landmark trees had been cut down.

Mr. Bracket replied, yes, and a penalty had been paid.

Alderman Zurcher stated he was not looking at this as a punishment. He thought that by their existing laws and ordinances the developer had been punished for that violation. He believed that these waivers were favors. He did not believe that the kind of thing that they had done was what a friend to the City did.

Mr. Bracket stated they were doing this at the request of the City. They were not required to put the sidewalk on that side of the street, which would service the public. If the Council did not want to do this vacation, they would install the sidewalk to the Master Plan's specifications. They felt that they were making concessions.

Mr. Chuck Rutherford, Sidewalk and Trails, stated the sidewalk issue had been addressed up front during their plat review process. He agreed that the sidewalk would function better for all citizens on New Gregg rather than on Old Gregg.

Alderman Santos asked since the trees had been removed would there be an increase in the required tree canopy.

Alderman Davis stated there were seventeen new pin oaks that were being put up. They were also screening on the south side of the property.

Mr. Bracket stated the LSD had been approved. They had been through Subdivision and the Planning Commission. They had discussed that in length. This request was concerning the right-of-way vacation. They felt that they were trying to do what they could to work with the City. It was his understanding that they were increasing the canopy to over eleven percent. Before it would have been at ten percent.

Mr. Conklin stated they were increasing ten percent over what they had already required. They required two inch caliper trees to be planted.

Alderman Zurcher stated the canopy that was there would not be replaced for years. The Large Scale Development might have been approved. Cutting down those trees was not approved by anybody. It was bad citizenship. He did not believe that a business that was a bad citizen deserved a favor.

Mr. Bracket stated they were not required to place the sidewalk on New Gregg.

Alderman Thiel stated it was her understanding that they were getting a sidewalk out of this, where they wanted it. They did not have to do that.

In response to questions from Alderman Jordan, Mr. Conklin explained they were not giving up any right-of-way. The City had a Master Street Plan that stated how much right-of-way was required on a local street, which was fifty feet of right-of-way. There was thirty feet of right-of-way in this situation. Typically, they acquired the additional right-of-way. In this situation since the street is functioning as a service road they did not ask for the additional right-of-way to be dedicated. They are also required to build a six foot sidewalk. The best location for the sidewalk was not on Old Gregg, but on New Gregg on the east side of the street. They were willing to work with the City on the location of the sidewalk. They were not giving up anything, they were just not taking anything as part of this development. The rationale behind this was that this was the Old Gregg street and the New Gregg Street had the right-of-way. They did not foresee in the future expanding Old Gregg Street.

Mr. George Weiss, an area resident, asked if the waived the right-of-way would it hinder the development of trails.

Mr. Conklin stated they did not have any ordinance or program in place to acquire the land along the railroad for a trail. He did not believe they could take land from a private developer for a trail as a condition of approval.

Mr. Bill Moeller, an area resident, asked the Council not to put the sidewalk next to the curb.

Mr. Rutherford stated the current sidewalk greenspace width was five, six and ten feet. There were no sidewalks adjacent to the curb. The sidewalk they were going to build on New Gregg would be right up along side SWEPCO fence. There would be greenspace between the sidewalk and the street.

Mr. Gary Lowery, an area resident, stated in the future if they were going to have a tree ordinance to give it some teeth. The five hundred dollar fine was just a slap on the hands. He suggested they draft a new ordinance, which was stronger than the State's.

Alderman Jordan moved to approve the resolution. Alderman Santos seconded the motion. Upon roll call the motion carried by a vote of 6-1-1. Zurcher voting nay and Davis abstaining.

RESOLUTION 42-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

DOUBLE SPRINGS ROAD: A resolution authorizing the City Attorney to seek possession of lands owned by Richard L. and June Hill, 686 N. Double Springs Road, for roadway and water line easements due to the inability of obtaining all legal signatures on the specific documents.

Mr. Williams stated this was a necessary easement for a bridge over Owl Creek. The husband had agreed to the easement, he had signed the contract for sale. He had also signed for his wife, who is an invalid in a California nursing home. Unfortunately, there was not a power of attorney. In order to move forward, they needed to file the condemnation action. It was a friendly condemnation action. A judge would have to approve the sale for her.

Alderman Davis moved to approve the resolution. Alderman Jordan seconded. Upon roll call the motion carried unanimously.

RESOLUTION 43-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PARKS HMR TAX: An ordinance codifying Ordinance 3900 of the City of Fayetteville, Arkansas and amending said ordinance to provide penalties and enforcement, allowing examination of records and investigations, and providing for rule making power.

Mr. Williams read the ordinance for the first time.

Alderman Zurcher stated he was for this. There were several businesses that had been collecting the tax from the taxpayer and had not paid it to the City. This would give them the tools they would need.

Alderman Jordan stated the customer paid this tax up front. A lot of the business had collected the tax and were now not in business anymore. Basically they had stolen from the taxpayer.

Alderman Santos moved to suspend the rule and move to the second reading. Alderman Davis seconded the motion. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance for the second time.

Mr. Sam Campbell, an area resident, stated if they did not like business this was the way to go.

Mayor Coody stated the restaurants were collecting a tax, but they were not giving it to the city, but putting it in their pockets.

Mr. Gary Lowery, an area resident, stated by the time you paid the tax and tipped the waiter, they were over twenty-five percent. Most blue collar workers could not afford to go out and eat a lot because the additional amount which went onto their bill. He did not have respect for people who kept wanting to tax him and did not provide anything in return for him. He did not see anything in return for the HMR Tax. If they wanted to advertise and promote Fayetteville, first clean it up. Bring it into the twenty-first century, and start charging businesses a business license tax and a percentage of gross business sales.

Ms. Johnson stated what they were considering tonight was the enforcement of the tax. They did provide an incentive to businesses who paid their taxes before the twentieth of the month. At present, they were lacking the teeth in the ordinance. This was collected by the Finance Department.

Alderman Santos moved to suspend the rules and move to the third and final reading. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the third and final time.

Alderman Zurcher stated he felt a business license was a good thing for them to look into.

Alderman Reynolds stated if they were in a business which served alcohol then they had to buy a privilege license. If they did not follow those rules then they would not be in business very long. The City or the State would put them out of business. Some of them paid as much as $2,500 a year.

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

ORDINANCE 4302 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

HMR TAX: An ordinance amending Section 35.20 of the Code of Fayetteville, Transient Occupancy Tax, levy of tax to provide penalties and enforcement, allowing examination of records and investigations and providing for rule making power.

Mr. Williams read the ordinance for the first time.

Ms. Francis Langham, an area resident, asked if it was true if they were going to be able to go into a business to look over their books in order to assure themselves that they were paying what they should be paying.

Mr. Williams replied this was designed similar to what the State did. They had a right to go and audit the books of the business to make sure they were paying the proper state sales tax. This would give the City the right to look at the books of restaurants in order to determine if they were paying the proper amount of HMR Tax.

Ms. Langham stated this hit her as the wrong thing. Particular if you tied it to the idea they could shut someone down. She did not think that they could do that. They had a business license at one time. That had been abandoned. She felt that it was too broad of a situation. This was extensive.

Mr. Williams stated this did not give them the authority to close a business, only to investigate and collect a tax which had already been paid by the citizens.

Alderman Reynolds stated if they found someone in violation and they did not want to pay. What did they do?

Mr. Williams stated this did give them the power to file penalties against them and have that collected. They could sue the business and obtain a judgment against them. It did give them more investigative power.

Mayor Coody stated this was not taxing a business, this was collecting the tax that the business had collected from the consumer.

Alderman Jordan stated it was not right for the citizens go in and pay the tax and then have some businessman pocket the money. It was wrong.

In response to comments, Mr. Williams stated the tax payers had voted in this tax. They paid the tax. The City should make sure that when they pay the tax it was turned over to the City. This gave them those kinds of enforcement powers. Often times, when there was a business that had failed there would be no one left that they could get a judgment for. They needed to change the ordinance to put enforcement power in so they could keep these problems from getting to far advanced.

Ms. Langham suggested adding a penalty.

Ms. Johnson stated this was a house keeping issue. It paralleled the state law. Every Advertising and Promotion Commission in the State followed these same rules. They were allowed by State Law. State law allowed the A&P to collect the tax for their agent. The City is their agent.

Mr. Williams stated the key reason for that was because they also collected for the Parks. It would be confusing having the City and the A&P commission collecting taxes. They needed to be uniform.

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

Mr. Williams read the ordinance for the third and final time.

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

ORDINANCE 4303 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

JUVENILE CONCERNS COMMITTEE: An ordinance amending Ordinance 3875 to change the name of the Juvenile Concerns Committee to Youth Advocacy Committee.

Mr. Williams read the ordinance for the first time.

Alderman Davis moved to suspend the rules and move to the second reading. Alderman Jordan seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the second time.

Alderman Jordan moved to suspend the rules and move to the third and final reading. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the third and final time.

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

ORDINANCE 4304 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

HOUSE BILLS 2343 AND 2305: A resolution opposing proposed House Bills 2343 and 2305 and notifying the Arkansas Legislature, Municipal League, and Governor's Office of such opposition.

Alderman Zurcher stated this same kind of legislation was going through the Federal Legislation too. These bills, both State and National, would make it very hard for the city of Fayetteville to maintain their high quality of life and would give them a lot of litigation.

Alderman Davis stated he did not believe HB2343 did that. He felt that it gave them the ability to go back to the prior zoning without any compensation given by the City. He did not see where compensation had to be given.

Alderman Thiel disagreed. She stated this was the same bill Charlie Stewart introduced. The League of Women Voters were opposed to this measure. They felt private property rights should be balanced by the protection of long range planning. This did not do that. These bills were a real concern to municipalities.

Alderman Davis stated the City had to be careful as far as what they passed. They had to be careful with what they did with their legislation. If they did not watch it, people within the House and Senate will do something and since they were still in a rural state they could overrule what the City did.

In response to questions, Mr. Williams stated the things that concerned him the most about the two bills was that now they had fairly settled law in the realm of takings. The Fifth Amendment of the U.S. Constitution prevented the government from taking property without due process of law. If a

government took property then they had to pay fair compensation for that property. Any time they started a new law that lowered the threshold of what a takings would be and it was unclear on what could constitute a takings. The biggest threat would be that they did not know and would not know until there had been several cases to the Arkansas Supreme Court interpreting what the law means. This was a broad change in the law. These bills did concern him because he felt they would foster a lot of litigation. In the past a lot of that litigation had been focused on Fayetteville.

Mr. Tom McKinney, Sierra Club, stated Fayetteville has always been a target because of their progressiveness in environmental concerns. Basically, the bill was designed to overwhelm cities and counties with lawsuits. It was designed to be an obstruction to cities which want to do any land planning or zoning. It was so troublesome that the cities would give up and let the developers do what they wanted to do. HB2305 was defeated this morning in the House Economic Committee by a voice vote. The bill could be brought up again. Mr. Pritchard's bill was still out there, but inactive. He urged the Council to pass the resolution. They were dangerous. Their only goal was to frustrate some very important and popular regulations that the cities and states have.

Mr. Richard Maynard, Sang Avenue, questioned what would be considered a takings.

Mr. Williams stated since it had not been interpreted by a court, it was hard to tell.

Mr. Maynard stated the bills kept referring to fair market value. If the City had zoned a property, could the owner take the City to court, if it was not zoned to give them the most value for their land? He was concerned what this bill was really about. Basically, it was saying that their property rights were measured by the worth of their property. The Council could be black mailed into giving any zoning upon request.

Ms. Francis Langham, an area resident, expressed concern about the City passing resolutions voicing their opinion for the entire city.

Mr. Williams stated the resolution basically stated the State Law should remain as it is and should not changed. The proposed act was a major change in the State Law and the due process.

Ms. Langham replied the proposed change was to put the City on notice that if they were to do anything other than the normal process. She was not for them making a resolution stating they did not want private property protected.

Alderman Davis stated he believed in property rights, but to him this proposed change was so vague that they were not sure what the consequences were for these. He was for property rights.

Alderman Thiel stated they were concerned about the City's protection as a whole against what this law could do if they started to get a lot of frivolous law suites. They did not know the affect this law could have.

Mr. John Deane, an area resident, stated this proposed change in the law would come back again if they did not change their ways. They should be mindful that there were property rights. He did believe in planning and zoning, but when they go over into the type of structure and giving land for trees, then they were asking for more changes to the law.

Mr. Al Vick, an area resident, stated property rights had to be within reasons. Their proposed bills were misguided. They stressed property rights, but they did not stress any since of responsibility in terms of how people were to use their property. There had to be ways to balance the rights of the property owners with the rights of others.

Mr. John DuVal, Tree and Landscape Advisory Committee, stated they had met today and voted on supporting this proposed resolution.

Alderman Santos moved to approve the resolution. Alderman Jordan seconded the motion. Upon roll call the motion carried by a vote of 6-0-0. Trumbo absent for the vote.

RESOLUTION 44-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Meeting adjourned at 10:00 p.m.