MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
JULY 3, 2001

A meeting of the Fayetteville City Council was held on Tuesday, July 3, 2001, at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain, Fayetteville, Arkansas.

PRESENT: Mayor Coody, Aldermen Zurcher, Trumbo, Davis, Santos, Jordan, Thiel, and Young, Interim City Attorney Kit Williams, City Clerk Heather Woodruff, Staff, Press and Audience.

NOMINATING COMMITTEE REPORT

Mr. Jim Bemis, an area resident, stated he has served as a reference for an applicant for the Telecommunications Board. He would like to clarify what the procedure was and what governed the Nominating Committee's procedures. He was not expecting an answer tonight, but they should be looked at. What are the formal procedures governing the Nominating Committee. What vote was required? He did not understand the phased process.

Mr. Williams stated the City Council's Rules and Procedures did detail the Nominating Committee. The Committee will recommend one or two persons for a position. The actual selection of the committee member will be made at a regularly scheduled Council meeting. The Nominating Committee would interview the applicants and make a recommendation to the City Council, then the vote to accept or reject would be made at the actual meeting.

Mr. Bemis stated he did not understand what occurs during the process of selecting the initial nominees and how could those be revoked.

Mr. Williams stated the rules stated the Nominating Committee would narrow the list of prospective appointees to no more than two individuals for each position. This decision will be made in an open meeting. The recommendation would be submitted to the full City Council for final decision. The Committees first choice may be indicated. All positions shall be decided by majority vote of the City Council.

Mr. Bemis questioned the roll of the "reference" on the application. He wanted to know how the reference was used and what did it mean? If there were complaints or suggestions that someone might not be the best for the board, what was the proper process? If gossip or innuendos were a part of the process he would like people sign their name to it.

In response to questions from Alderman Young, Mr. Bemis stated according to the paper, there was a straw vote to narrow the process, then the straw vote was negated and another nomination was made. He was unhappy with the process that had been used.

Alderman Santos stated he had tried to tighten up the process since he had been chairing the committee. He had been keeping a tally of motions and seconds. The number of the votes. They did not have staff support during the meetings. The City Clerk's office prepared their packets. They could keep minutes and have someone from the Clerk's office attend the meetings. He questioned how public the meetings really were. They did not let other applicants in during the interviews. Any one else from the public is welcome to come in and listen to the interviews. He had asked at the last meeting for ways to improve the process. What happened with the Telecommunications Board was that all the rest of them had a motion and a vote. With this committee they had to do a straw pole. He had asked everyone to write down their top four nominees. He assumed that was it. They did not actually have a motion and vote to confirm the nominees. That was the reason they had to have the second meeting to get a motion and a second and a vote. Four aldermen had changed their minds on the nominees. He was open for suggestions.

Mr. Williams stated the Nominating Committee, like the other committees, ran themselves. They decide their own procedures. They needed to make a decision on the procedures they wanted to have. Usually a board would decide their own internal procedures. He did not want to draft something up until they had decided among themselves how they wanted to run the meetings.

Alderman Santos stated he did not believe they should even block out other applicants.

Alderman Young stated they technically could not keep them out of the interviews. If an applicant did not have the courtesy to be interviewed, it would be a strong indication to him that they should not serve on the board they were requesting.

Mr. David LaRue, applicant, stated initially his credentials and background were not an issue in the appointment. He expressed his frustration with the gossip and newspaper articles about this potential appointment to the committee.

Ms. Michelle Harring, an area resident, stated she had worked with David for ten months and during that time she had not seen or heard of him miss using equipment. She had not seen David be disrespectful or disparaging to any employee. He was passionate, but had a deep understanding of media issues. She felt he would be a true representative person on the board.

Alderman Thiel stated they had to base their opinion on the information they receive. This was a very bad situation. She felt their process was alright. They had a technical issue they needed to cover. That was the reason for the second meeting. They had motions and seconds on every other nominee, but this one. She did not know how to make it better in the future.

Alderman Davis stated he felt it was unfortunate that they had changed their votes. He had not changed his vote. He thought it was a shame that people had the ability to use the phone after the process was over and try and bring things out on someone. They had the ability to know who applied ahead of time and make the calls earlier.

Alderman Thiel stated she would like to hear from the staff and the board members if they had recommendations for a particular board.

Alderman Santos stated they had the opportunity to change their vote at the actual meeting.

Alderman Young stated what normally happened was the chair would read off all the nominees and there would be one vote for all the nominees. There was not usually a chance to get a word in edge wise. This was the first time he had ever seen any discussion on the nominations.

Mr. Williams stated the rules and procedures did state that when there were instances where there was more than one nominee for a position, either by nominating committee recommendation or by other nominations, each council member shall vote by naming his or her choice for that position.

Alderman Thiel stated the procedure they were referring too was based on the committee being composed of four aldermen. The committee was now a committee of the whole. In the past, there had not been this many problems with the nominating committee. She thought a nominating committee of four was better for several reasons. It worked better in the past than it did now. Now they had the entire council there voting on the nominations. It seemed mutt for them to be voting on this again at the regular council meeting. They had already voted on the nominations. They were only confirming it at the regular meeting. She stated she felt the idea was that there would be four from the council on the nominating committee, then the eight would have a chance to make changes if they wanted to. She had a problem with the nominating committee being eight, rather than four.

Alderman Young stated that the reality of only four aldermen being on the committee, they did not always agree on the nomination and they had come close to having to refer it to the full council. When there were only four the other council members rarely looked at who was applying.

Mayor Coody stated he did not have a problem if the nominating committee wanted to change any of their policies and procedures.

Alderman Santos moved to appoint:

ENVIRONMENTAL CONCERNS COMMITTEE
Annee Littell, One three-year term ending 06/30/04

TELECOMMUNICATIONS BOARD
Doug Wright, Reappointed, One two-year term ending 06/30/03
Brian Richard, One two-year term ending 06/30/03
David LaRue, One two-year term ending 06/30/03
Don Elkins, One two-year term ending 06/30/03

TREE AND LANDSCAPE ADVISORY COMMITTEE
J. S. Candy Clark, One unexpired Service Organization term ending 12/31/01
Leah Karnes, One unexpired Landscape Development term ending 12/31/01
Shay Elizabeth Hopper, One full two-year Land Development term ending 12/31/03
Carl M. Thomas, Jr., One unexpired Utility term ending 12/31/01

WALTON ARTS CENTER COUNCIL, INC.
Reed Greenwood, Reappointed, One three-year term ending 06/30/04
Bill Mandrell, Reappointed, One three-year term ending 06/30/04

WALTON ARTS CENTER FOUNDATION, INC.
Wes Murtishaw, One three-year term ending 06/30/04

YOUTH ADVOCACY COMMITTEE
Karla Bradley, One two-year Teacher position term ending 05/31/03
Cathie Newell, One two-year Parent position term ending 05/31/03
Mathanki Kalapathy, Reappointed, One one-year Student position term ending 05/31/02

Alderman Thiel seconded the motion.

Alderman Zurcher stated he had been one of the aldermen who had changed their vote. He did not do it because of hearsay. David tended to feel very strongly about his opinions and he can be some what abrasive at times. He had been told after they had taken the first tally to check his references. They received references on every one, but it was difficult to check everyone. If someone called and asked him to check someone references, then he was going to. His reference had stated that he had a hard time working with others. The other reference had a glowing reference for David.

Alderman Zurcher moved to amend the motion to remove Trey Marley with David LaRue.

Mr. Williams stated what they needed to do rather than amend the motion was to nominate Mr. LaRue. The rules of procedure stated that if more than one person was nominated for a position then each council member would vote by naming the person of their choice. They could vote on the balance of the motion, then this particular position.

Alderman Santos stated the motion would be to appoint everyone with the exception of Trey Marley. Alderman Thiel agreed to the change.

Upon roll call the motion carried by a vote of 6-0-1, Alderman Trumbo abstaining.

Upon the roll call for the appointment of David LaRue or Trey Marley, Mr. LaRue was appointed by a vote of 5-1-1. Thiel voting for Trey Marley and Trumbo abstaining.

Alderman Trumbo stated he had not been able to attend all the interviews and felt it was appropriate for him to abstain.

CONSENT
APPROVAL OF THE MINUTES: June 5, 2001 and June 19, 2001 minutes.

DOUBLE SPRINGS RD. BRIDGE: A resolution approving the construction contract with Gray Construction, Inc. for Double Springs Bridge over Owl Creek sewer relocation project, in the amount of $41,577.95, and a 15% project contingency in the amount of $6,236.

RESOLUTION 93-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

T-HANGAR DRAINAGE: A resolution approving a grant application and a budget adjustment in the amount of $76,340 for the drainage project for T-Hangar Units "E", "F", and "G".

RESOLUTION 94-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

LIBRARY GREEN BUILDING CERTIFICATION: A resolution approving a budget adjustment and contract amendment for additional professional services leading to LEED (Leadership in Energy and Environmental Design) Green Building certification.

RESOLUTION 95-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

OLD BUSINESS
DHL WORLDWIDE: A resolution approving an agreement with DHL Worldwide Express for the lease of the old Airport Fire Station Building located at 4140 S. School Avenue. The item was tabled at the June 19, 2001 meeting.

Mr. Gary Dumas, Utility Services Director, stated he had been asked to contact DHL concerning a provision in their insurance package. They had modified their insurance as requested.

Mr. Jordan stated it was his understanding the roof was approximately fifteen to twenty years old. There were several ways that they could repair the roof to last a few more years. He asked if they would still have to maintain the roof whether they leased it or not.

Mr. Dumas stated they would have to maintain the building whether they leased it or not. Under this lease the major repairs would be the city's responsibility.

Mr. Jordan stated they would be leasing this for $175.00 per month for the next two years. He expressed concern that they were currently strapped for money. They had a chance here to bring in some revenue. The amount of the repairs would be at least $2,500. Which meant that they would not make back in the first year what they had put into the building. There were a lot of demands for money. He questioned why the city would rent this building out for pennies. He was very concerned about this. He did not have a problem with the company, but he did have a problem with the amount of money they were charging them.

Mr. Dumas stated the terms of the lease had been negotiated over the past eight to ten months. The city had requested DHL to make the move to get them out of the active part of the airport and into a facility that had access outside the controlled space. DHL had indicated that if the lease rate went up then they would prefer to stay where they were. They did not have any prospects for the space now. There had been some difficulty in finding tenants.

Mr. Rick McKinney, Airport Board member, stated the history behind this company was that they had come in with a very upstart type of cargo business. They hit record cargo of shipments within the first year they operated out of Drake Field. He encouraged them to accept the lease for several reasons which were beneficial to both DHL and the Airport. They would gain one aircraft hangar back that they were operating out of. They would realize a reduced rate of traffic. They were now having to take their cargo from the east side to the west side. They would reduce the amount of traffic that they have from their vans. Having a tenant paying rent was better than not having a renter. Someone else might pay the same rate, but they would not give them any beneficial side benefit. The metro line which came in twice a day was four traffic counts a day for their tower. That was a side benefit of having this business on the field. They were having to consider cost sharing on the tower because their traffic had dropped. They had picked back up in traffic count and DHL had been a constant factor in that traffic count. Another part of the formula in cost sharing of the funding of the tower was the type of businesses on the field, if they were aviation related or not. They could use another five or ten types of the same businesses there. Their fuel and maintenance needs also contributed to the airport. They needed tenants. They competed against five other airports for these tenants. They had to stay on the edge of the competitive prices. Having DHL there as an operation and a lease hold was important to the airport.

In response to questions, Mr. Dumas stated their current lease was up and they were leasing month to month waiting the outcome of this item.

Mr. McKinney added this would be a better location for them and it would reduce the truck traffic on the east side of the airport, which would lower the maintenance on the gate.

Alderman Young asked if DHL went somewhere else, then the city might end up paying more for the tower.

Mr. McKinney stated that was a factor in the equation. It was not just the direct income by payment of lease holding, they also had to look at the side benefit that this business provided to their traffic count the tower. It would affect them next year.

Alderman Thiel stated she thought this was a win win situation and in the long run would pay for itself.

Alderman Trumbo moved to approve the resolution. Alderman Thiel seconded the motion. Upon role call the motion carried by a vote of 6-1-0, Jordan voting nay.

RESOLUTION 96-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

APPEAL: An ordinance amending Chapter 155, Appeals, to allow an appeal by three aldermen of a decision by the Planning Commission to approve or deny a conditional use. The ordinance was left on the first reading at the June 19, 2001 meeting.

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

Mr. Williams read the ordinance for the second time. He reminded the council that they might want to have a motion to delete section two.

Alderman Trumbo moved to delete section two, emergency clause. Alderman Jordan seconded the motion.

Ms. Paula Marinoni, an area resident, stated this had come out of a request from Central United Methodist Church for a parking lot. Preservationists and neighbors had opposed this. The church had a plan which had been approved in 1995 which had not been taken into consideration. The request had been voted in at Planning Commission. Alderman Davis and Trumbo had brought this forward for consideration. There was a State law which determined that Conditional Uses went from the Planning Commission to Circuit Court. This had always been the law, as far as she knew. Everyone else that had come before had been told their only opinion was to take it to Circuit Court. She had been told this five years ago. She could not believe that they could not take it to City Council. A citizen should have the right to appeal to their own governing body before taking it to Circuit Court. Five years ago when she questioned this, she had been told by State Representative Sue Madison that this was an old law and should be changed, but it was the law. That was the way it had always been presented to other entities who wanted to challenge. She did not think that they had the authority to pass the ordinance. The city attorney had sited other ordinances in Arkansas where other cities had appealed their conditional uses to the city council. Just because someone else was doing something did not make it legal. The fact that no one had ever challenged them did not make it right. She questioned what the State Law was. After the last meeting, she contacted their

State Represenitive, Jan Judy, and asked her for an Attorney General opinion. She presented the request to the Attorney General. The request had been assigned to an attorney who would work on this. It had a rush on it. She asked them to leave the item on this reading and/or table it until the opinion came in. She did not believe the opinion would be in before the two weeks. This was not an emergency and they had the time to wait. She had also asked in the opinion if they could use the city trolley to help with the churches on Sundays and the merchants on Dickson Street and downtown.

Mr. Richard Maynard, an area resident, stated he was concerned about this because it changed something that was not a policy decision. He did not think it was the no brainer that it appeared to be. It was a burden that they would be taking on. This was not a policy decision. It was someone asking the city for a break. He did not see any problem with the process ending at Planning Commission. He could see some problems with this being an appeal. This was basically, just taking a second look at it. If it was an appeal, they would not be just looking at the whole thing again, but they would be looking at on whether the findings of fact were followed. He thought that would put the burden on whoever was appealing that they had to come to them with specific fault in the findings and fact. It would get rid of frivolous appeals. He did not believe he would have a problem finding three aldermen to appeal the decision for him, however, if they had point out where they went wrong and where they disagreed with their finding of fact. He encouraged them to have stricter guidelines. As a citizen, he was afraid they were getting into micro managing. They things he would rather them micro manage was their money. He saw many things put on the consent agenda for large sums of money that he was not sure why they were on there. His concern was that once they had a contentious conditional use appeal more things would be put on the consent agenda. He felt they were taking on a lot of work.

Alderman Trumbo stated that when he called the other cities which did appeal their conditional uses to the city council, he had asked the kinds and volumes. They had replied that they were rare.

Mr. Huge Ernest, Urban Development Director, stated the city of Little Rock had very few appeals and they were usually regarding the use of manufactured homes.

Mr. Maynard stated he felt the Planning Commission looked at the Conditional Uses more carefully than they did the rezoning, which automatically came to them.

Alderman Santos stated he had assumed that with the appeal they would have to cite specific ordinances or things from the general plan that showed where the Planning Commission decision was not in line.

Mr. Williams stated he had placed this within the same paragraph that allowed the decision of the Planning Commission to be appealed to the City Council. All of the other provisions allowed an alderman to appeal the decision of the Planning Commission. There was nothing in here that required any particular thing to be cited beyond what was already in the appeals section. In reference to comments made earlier from Ms. Marinoni he quoted from the State Law regarding the functions of the Board of Adjustments and not the Planning Commission regarding the appeal of variances. Variances from the Board of Adjustments had to be appealed to the Circuit Court. Under another statute they were given the authority to change their ordinances.

THE ORDINANCE WAS LEFT ON THE SECOND READING.

NEW BUSINESS

ZONING DISTRICTS: An ordinance amending Chapter 160, Zoning Districts, and Chapter 161, Zoning Regulations, of the Unified Development Ordinance to include additional multi-family zoning districts, RMF-6, RMF-12, and RMF-18.

Mr. Williams read the ordinance for the first time.

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

Mr. Williams stated the Council did pass this ordinance several months ago, but the ordinance did not have the proper definitions. They had to go back and put the proper definitions in.

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

ORDINANCE 4325 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SKATE PARK: A resolution authorizing the Parks and Recreation Division to apply for up to $200,000 (50/50 matching funds) in grant money for the development of a skate park.

Mr. Eric Schuldt, Parks and Recreation, stated the Skate Park idea had been brought up years ago. The Parks and Recreation had been working on it for two and a half years. It was originally in the CIP for 2000. They had $75,000 allocated to start that project. Staff knew at that time they would need more funds at a future date. Until they got to the community involvement process and a consultant hired they did not know the direction to go. There were many different ways to build a park. They could build a wood, steel or concrete park. They had formed a subcommitee. The subcommittee recommended a concrete park. It was traditionally what was being built. It was the best thing for the skater and maintenance. It was the more expensive route, but it was a first class facility. They went through a process that was community driven. There had been three public meetings. Approximately forty skaters had attended each of the meetings. The Parks and Recreation Advisory Committee had approved the design on January 8, 2001 and allocated $150,000 more to the project. As of right now, they had $187,000 for construction. They had some contingency built in to pay their architects. The grant they were asking to apply for was an Outdoor Recreation grant. They were asking to pay for $200,000. It was a 50/50 match. They basically had their match. If they were awarded the grant, then they could go with what the skaters had designed. They had tried to involve the skater as much as possible.

In response to questions from Alderman Davis, Mr. Schuldt stated the grant deadline was August 31, 2001. They would find out at the end of December if they were awarded the grant. The Parks and Recreation Advisory Committee had approved the design. The Planning Commission had approved the large scale development on June 14, 2001.

In response to questions from Alderman Jordan, Mr. Schuldt stated their consultants had designed approximately thirty parks that were currently built. They had estimated twenty to twenty-five dollars a square foot on a concrete park. If the city's was 15,000 square feet. The bottom line was $308,000. This grant would allow them to get a walkway all the way around the park and a plaza at the front, then they would be talking about $370,000. They originally had $75,000 allocated.

Alderman Thiel stated there was a lot of young adults and college students that participated in the sport. There was a demand for a better park that would last. They were spending more money up front, but it was going to last for a long time. The wood frame park would not last for very long. She stated she felt the project was wonderful and was in full support.

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

RESOLUTION 97-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

TCA CABLE: A resolution authorizing TCA Cable partners to continue to operate the cable communications system.

Mr. Williams stated they had extended the franchise agreement with TCA Cable several times. They needed to extend it again. It was basically extending everything as is. They did not have any problems continuing as they continued their negotiations for the final franchise agreement.

Alderman Young asked what the hold up on the franchise had been.

Mr. Williams replied the biggest problem they were having was the I-net issue. He had asked Bob

Zimmerman and Craig Brown from the University to assist in the negotiation. He had been able to get from Cox a map of their cells and node connections. He had noticed an ad from Cox which raised the basic rate by seventy-six percent. The city had not received official notification. The biggest hold up was the I-net. He thought that they were moving closer at this point in time. Yesterday, the professors had brought in their comments. He hoped this would be the last time they would have to extend this agreement. He added this was a very long term agreement, it was important to get the best agreement that they could. They wanted to ensure that the citizens would have good cable services.

Alderman Zurcher stated he would not support a franchise agreement that raised the rate on the bottom tear by seventy-six percent.

Mr. Williams replied the franchise agreement did not set rates. Rates were set by the company, however, the city could challenge them.

Alderman Zurcher stated the second thing was, any franchise agreement that proposed to put their Community Access or Educational or Government channel that they were so high on the dial that they were not included in the lowest tear or where they could not be easily found by people watching cable television.

Mr. Williams replied they could not remove them from the lowest level of service. Their rights were limited under federal law to designate the stations. Mr. Grogan could explain in more detail.

Mayor Coody stated they had not received their notification on the rate increase. Could there be a chance it was lost in the mail.

Mr. Williams stated the ball was in their court if they wanted to raise the rates they would have to notify the city.

Mayor Coody suggested checking with other cities to see if they had received their notification.

Mr. Williams stated they were currently building their system. The other cities had been finished. He did not think they could raise the rates until they could offer the new services.

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

RESOLUTION 98-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MEETING ADJOURNED AT 8:30 P.M.