MINUTES OF A MEETING
OF THE
CITY COUNCIL
JULY 17, 2001

A meeting of the Fayetteville City Council will be held on July 17, 2001, at 6:30 p.m. Room 219 of the City Administration Building located at 113 West Mountain, Fayetteville, Arkansas.

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

CONSENT

APPROVAL OF THE MINUTES: Approval of the July 3, 2001 minutes.

PASS THROUGH FEE: A resolution authorizing the continued "pass through" fee of 25 cents per month to water customers to comply with the Federal Safe Drinking Water Act.

RESOLUTION 99-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SAGE HOUSE: A resolution approving the contract in the amount of $162,500 between the City of Fayetteville and Miller, Boskus, Lack Architects for the purpose of designing a 20,000 square foot transitional housing unit for Sage House.

RESOLUTION 100-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

QUALITY OF LIFE ASSOCIATES: A resolution approving a sub-recipient grant agreement with Quality of Life Associates Incorporated in the amount of $100,000 for the purpose of designing and constructing a facility to house the clients served by this organization.

RESOLUTION 101-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RECORD DESTRUCTION: A resolution authorizing the destruction of records.

RESOLUTION 102-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SYSTEM RESOURCES: A resolution approving an annual maintenance agreement in the amount of $10,476.00 with System Resources for hardware maintenance on system printers.

RESOLUTION 103-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

WOMEN'S SHELTER: A resolution approving a lease agreement with the Project for Victim's of Family Violence, to lease city land for the construction of a new Battered Women's Shelter.

RESOLUTION 104-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

LOCAL LAW ENFORCEMENT BLOCK GRANT: A resolution approving the application for the 2001 Local Law Enforcement Block Grant in the amount of $36,058.00. The total project is $40,065.00 and requires a 10% City match of $4,007.00. This grant will be used for the purchase of video equipment to place in patrol cars.

RESOLUTION 105-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

Mr. Gary Lowery, an area resident, stated July 1, 1991, the City passed a pass through fee of fifteen cents per month to the water customers for the Federal Safe Drinking Water Act, Act 1053. In 1993 this provision was increased on June 20, 1993, by ten cents. That increase now, accumulatively, is twenty-five cents. It was not a pass through resolution of twenty-five cents that they should be discussing, it should be a pass through increase of ten cents, not twenty-five cents. It should be an inclusion of the fifteen cents plus the ten cents, which would be twenty-five cents. They were making a pass through of twenty-five cents. The city had neglected State law for ten years by not having it printed on the water bills.

OLD BUSINESS

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 amended and left on the second reading at the July 3, 2001 meeting.

Mr. Williams read the ordinance for the third time.

Alderman Davis asked if they had heard anything back from the Attorney General's office.

Mr. Williams stated he had called the Attorney General's office to see where the request was. The person who did their zoning opinions was on vacation and would not be back until the first of August. They could not assure him that they would have an opinion by the seventh. He did not when they would have an opinion back to him.

Mr. Mort Gitelman, 1229 West Lake Ridge Drive, stated he had served eighteen years on the City Planning Commission during the late 1960 through the mid 1980's. About thirty years ago they did a major revision of the Fayetteville Zoning Ordinance. They had debated the suitability of appeals and conditional use permits from the Planning Commission to the City Council. He had been teaching land use law for thirty-six years, the vast majority of cities did not allow appeals from the Planning Commission on Conditional Use permits, but there was nothing in Arkansas law that prevented them from allowing such appeals if they wanted to amend the ordinance. There were a lot of good reasons not to. The basic reason is that if they understand the theory of the conditional use permit. It makes the Planning Commission an administrative agency of the city. The Planning Commission had approximately ten standards they were supposed to look to in whether or not to grant a conditional use permit. The Planning Commission was to apply those standards. Once they started allowing appeals of conditional use requests to the city council, they might be opening a box that they might not want to. They would encourage a lot of appeals. If they stopped to consider all the conditional uses allowed in the zoning ordinance, for example, home occupations and duplexes. Many of the conditional use requests were controversial. The incentive for the Planning Commission to not to devote full attention to resolving those issues at the administrative level, would mean that they would start coming to the council. The City of Little Rock did allow appeals to the city council. He did not believe the city staff and city attorney are very happy with the process down there. There was no appeal from the Board of Adjustments on variances. State law prohibits it. It was the same sort of thing. The Board of Adjustment hears the individual facts and cases and decided on whether or not to grant a variance. There was no appeal to the legislative body of the city. It went to court. He thought the conditional use permit was very much the same sort of thing. They should look at the Planning Commission as one of their administrative agencies that they had given them the power to apply those standards in the ordinance to individual requests. He stated it would be unwise to change the procedure. He was sure their meetings were long enough as it was. This did not mean the Planning Commission was always going to be right.

Alderman Thiel moved to table the item until they had a decision from the Attorney General. Alderman Zurcher seconded the motion. Upon roll call the motion carried unanimously.

ORDINANCE WAS TABLED.

NEW BUSINESS:

Mayor Coody stated the next three items were related to each other, but they would be addressing each one individually.

SPECIAL SALES TAX ELECTION: An ordinance calling a special election to decide whether or not to approve a three-fourths cent (¾¢) sales and use tax to fund the issuance of not to exceed one hundred twenty-five million dollars of Capital Improvement Bonds to finance all or a portion of the acquisition, construction, reconstruction, extending, improving and equipping of wastewater treatment plants, sewerage and related facilities.

Mr. Williams read the ordinance for the first time.

Mr. James Ulmer, McGoodwin, Williams and Yates, presented an overview of the project. The first item on the history was the hiring of the engineer to develop a wastewater system facility plan, that was back in September of 1995. That process concluded in February of 1997. The recommendation of a split flow and a second wastewater treatment plan were in that facility plan. The second plant was to be built in the Illinois River Basin. The preferred location had been the confluence of Goose Creek and Illinois River. In April of 1997, the public hearing was held on the facility plan regarding the recommendation. In May 1997 the Water and Sewer Committee modified the selection of the preferred location to the east of the confluence of Owl and Goose Creeks. Approximately, the location which had been located for the Illinois River Basin plant site. In October of 1998, the Water and Sewer Committee met and the staff recommended the purchase of the Broyles Farm as the primary location for the plant site. They also recommended the additional purchase of property. In May 1999, they completed that process. The total acreage was approximately 300 acres. The plant site was to be located within those parcels. In October of 1999, the Selection Committee for the city selected four engineering firms. During February and March of 2000 engineering contracts were approved for those four firms; RJN Group, McGoodwin, Williams and Yates, Garver Engineers, and Black and Vetch. The process began with neighborhood meetings with residents surrounding both plant sites. A public meeting had also been held in June of 2000 which presented further detail regarding the proposed project. In March of this year the Water and Sewer Committee met. Recommendations had been made to the committee regarding the cost of the projects. On July 9, 2001, the Water and Sewer Committee met to discuss the financing for the project. That has been forwarded to the council for consideration tonight. Last Wednesday a preliminary engineering report had been reviewed by the Water and Wastewater Advisory Committee at Little Rock to recommend a funding program. They had a conditional approval to go forward with the revolving loan fund which was process by which they would borrow the money for this particular project. There were a lot of other things yet to do. Which would include a facility plan and public hearing and selected alternatives, which would come in the future. He presented a map of the city, mostly the west and north part of the town was in the Illinois River Watershed. The east and south part of town was in the White River Watershed. The current loading at the Noland Plant, the average annual flow for 2000 was 11.8 million gallons per day. During the peak times, where there was a great deal of rainfall induced fall the peak flow would rise to 27 million gallons per day. Those flow rates could be higher in the future, if they went through with this project. There were several overflows which ocured in the city on the order of sixty to ninety times per year because of this extraneous water which gets into the system. All that will be treated to eliminate all the environmental impacts of overflows. The present rate of capacity was 12.6 million gallons per day. The present average was 11.8 million gallons. The plant was 94% loaded. It was essential and urgent that they move forward with the project. The average annual design for each facility, the Noland Facility will be rated at 11.2 million gallons. The west side treatment plant would be rated at 10 million gallons. For a total of 21.2 million gallons. The effluent for the new plant was somewhat more stringent. Those proposed limits have been reviewed by the State of Arkansas and forwarded to the EPA for their review. When the EPA concurred or recommended changes it would come back to the State of Arkansas. Then the State would begin the process of establishing the effluent limits and will issue a permit. The process would take three to six months after the approval of the process.

There were several environmental issues which were going to have to be dealt with. There would be Section 404 Corp of Engineers permit regarding the construction of wet lands and stream crossings and the construction of the outfall structure, where the effluent from the west side plant would discharge into Goose Creek. EPNS permits would be required during construction to protect the environment from run off and siltation. Flood plain permits will be required. A lot of the pipe lines will be built in the flood plain. There were two species which were tentative on the endangered species in the project area. One of them was the Arkansas Darter and the Neosho Muscle. The best management practices plan will be part of the contract documents for the construction of all the facilities and each of these issues will be meet. There will be a contingency plan in case caves are encountered during construction. There would also be terms and conditions regarding seasonal construction in the vicinity of sensitive environmental areas, like streams. The implementation schedule, July 11 was the Wastewater Advisory Committee. There will be a financing seminar on July 26. They will be explaining the details on the project and all the alternatives regarding the financing of the project. The public hearing will be advertised on August 5, that would be a forty five day notice. The public hearing scheduled to be on September 20. That public hearing will be regarding the selective plan. There would be a facility plan and environmental information document to be placed in a depository thirty days before that to give the public an opportunity to review the ongoing studies. They hoped to have an approval of the facility plan by October of 2000 before the November 6th Sales Tax election. It would be subject to all the regulatory and environmental review of the documents. They earliest date to begin detailed design and plant specification was August of this year. All the studies had been done to be able to begin detailed design from the standpoint of engineering. If the city choose those detailed designs could begin. If they wanted to wait until after the sales tax election, then their beginning date would be January 2002. Receiving bids for construction would be between May 2002 and January 2003. Start of construction would be sixty days later. The State of Arkansas had to review those documents before they could go forward with construction, because of the revolving loan fund process. The construction of the project would take two to two and a half years. Some phases could be done sooner. It was a lengthy process. Project costs were summarized on page twelve. The west side line work was set at 28.43 million dollars. The west side wastewater treatment plant was set at 39.61 million. The outfall line for the west side plant was set at 2.9 million. The east side treatment plant upgrade was 17.1 million. The east side line work 14.71 million for a total construction cost of 102.76 million dollars. There would be additional fees regarding engineering, legal fees, administrative cost, and land acquisition. The subtotal comes to 119.76 million dollars. There was five million dollars on hand right now from a previous bond issue. The net capital cost to be financed was expected to the 115 million dollars.

Mayor Coody stated this project would help them to continue to enjoy the growth they had experienced. It had been his perspective that if they did not add another person to the Fayetteville population they still needed to do a lot of this work.

Mr. Ulmer replied there were overflows in the current system during the wet weather. That occurred approximately sixty to ninety times per year. Those issues had to be dealt with. They were talking about fifty or sixty million dollars to deal with that issue allow, if they never added another drop of extra capacity for growth in the system.

Mayor Coody asked when they did have overflows, what happened to the effluent.

Mr. Ulmer stated those overflows generally went into the waterways in the city and then went into the Illinois or White River which then went into Beaver Lake which was the city's drinking water source or the Illinois River, which was Siloam Springs drinking water source.

Mayor Coody stated there were a lot of important factors to consider in this project. Another was that they had nine lift stations. He thought they would be eliminating nine lift stations if the public approved this project. If they did not add another person to the town, they still had some major work to do on this system.

In response to questions from Mayor Coody regarding the Neosho Muscle, Mr. Ulmer stated the effluent from the west side plant would be virtually spring water. A lot of the flow in the Illinois River was runoff water from agricultural environment and overflows from the sewer system. If they could gather up those overflows and increase the flow of clear water then they would improve the habitat of any species in the river including the endangered species.

Alderman Davis asked if they ran the chance of the being fined for those overflows from the EPA.

Mr. Ulmer stated they were running that risk now. The only reason they were not being fined was because they were moving forward now. A fine was $25,000 per occurrence.

Mayor Coody stated their domestic average annual million gallons per day, they produced right at 5.6 million gallons of their domestic usage. When they had infiltration and rainfall induced infiltration, just those two came up to 4.6 million gallons. They had almost as much storm water entering their system during a storm as they produced in their domestic flow.

Alderman Young asked Mr. Ulmer to explain what the finance meeting was going to be.

Mr. Ulmer stated the meetings purpose was to allow the public to come and hear as much detail about how rates were determined and where revenues come from that created waste water revenues. How the sales tax plays into the affect of not raising rates. They planned to have everyone there who was involved from a financial stand point to give the public a briefing. Most people did not know their property taxes did not go for wastewater rates. They went for other things. They would be presenting an explaintation of the details.

Mayor Coody stated when they had the hearing on September 20 for the Selective Plan he wanted everyone to come to the meetings and to come to the city and ask questions. This needed to be a good education campaign, so when people went to the polls they would be very informed about what the options were.

Alderman Young stated he had requested that they record the finance meeting and any meetings regarding the wastewater treatment plant.

Mayor Coody introduced Dennis Hunt to explain some of the financial aspects.

Mr. Hunt, Stephens Inc., stated they had spent the last several months working with the city attempting to identify the most cost affect approach which they could use to finance the wastewater treatment plant improvements and the wastewater system improvements that Mr. Ulmer had just reviewed. During the review they had analyzed during what traditional public bond issues and combinations of traditional public bond issues with other funds which were available, specifically the State Revolving Loan fund. After the analysis, and looking at the requirement that the State would have impose upon the city, they came to the conclusion that the most cost affect approach was to capitalize on the state's willingness to provide the city the latest information that they had $115,000,000 from the revolving loan program. The reason that it was very attractive was that the interest rate for a shorter term financing is 3% which was far below the market rate, if they were doing a traditional public issue. Even if they went the longer structure it was 3.25%. They then looked at the best way to secure that debt. They had put together a table which summarized their analysis with respect to paying back the revolving loan program. As they could see option number one was simply using water and sewer system revenues, In other words increasing the rates for water and sewer. Increasing rates to provide for adequate revenue to pay off the $115,000,000 loan. The second would be to impose a three-quarter cent sales tax that would be used to payoff the revolving loan. Doing the water system revenues the total principle and interest costs associated with $115,000,000 borrowing was approximately $161.9 million dollars. That issue would pay off in 2025. Under the second option of imposing a sales tax of three-quarters of a cent and using it to finance the revolving loan the principle and interest costs associated with that transaction was $135.5 million. It would pay off in the year 2015. From this analysis was that there was about a $26.4 million dollar advantage by using the sales tax as compared to the revenue bond issue. The key reason that the difference in the terms of maturity really were two fold. If they were using the revenues of the system to pay off the revolving loan fund the State required them to build their project, have that project operational and after that point, twenty years of amortization of the principle. Basically if they were using anything other than a sales tax, mandatory redemption, every cent that the city collected under this sales tax will be used to pay off this revolving loan. It did not go anywhere else. The only way the State would allow them to do the mandatory redemption, to pay off principle in advance of maturity is if this particular State Statute was used. It was a unique opportunity for the city to get extremely low interest rate financing and to have the ability to pay it off as rapidly as possible. Thereby saving about $26.4 million. As a result, it was their recommendation to the city. They give the citizens of Fayetteville the opportunity to consider the approval of the three quarter cent sales tax and to finance this through the State Revolving Loan program.

Alderman Davis stated it was his understanding that they were now doing the one percent sales tax for the library which would end in March 2002. That was one cent, by having only three-quarters of a cent then the citizen would still be saving one quarter of a cent.

Mr. Hunt stated the sales tax would reduce on April 1, 2002 from one percent to three-quarts of a cent.

Alderman Thiel questioned how much would they have to increase their current fees?

Mr. Hunt stated based upon analysis prepared by Black and Vetch, the numbers were slightly smaller when the study was presented. It might be more. they would have to more than double the current rates. That estimate had been based on a $110 million financing. That was only taking care of that indebtedness. It did not take into account the additional maintenance and operation costs. Which would be required regardless of which option they decided to use.

Alderman Zurcher asked if there had been any studies done on what other cities charged industries for their water and wastewater treatment. He questioned if other cities gave breaks, like they gave breaks.

Mr. Hunt stated he was not equipped to answer that question.

Alderman Zurcher stated it would be easier for him to support if they could end or reduce that subsidize. They were just encouraging people to waste water and to waste capacity. The industries that did this were as responsible as the additonal people in town for them needed a new plant. They needed to do their fair share. He asked when their contracts with other towns who were using their system were up for renewal.

Mr. Steve Davis, Budget Manager, stated they had one contract with one town, Elkins. They were the only city that they actually contracted with. They provided sewer service to Greenland, Farmington, and portions of Johnson. The agreement that they had with Greenland and Farmington allowed them to treat their citizens as retail customers. They really did not have a contract in the normal since. If the citizens of Greenland or Farmington did not pay their sewer bill they had to go against the retail customer and the city. Outside the city they paid a higher rate on sewer and water.

Alderman Zurcher stated the sales tax meant that only people who bought things in Fayetteville would be paying for this plant. He did not know if people living in these other towns were doing that. He did not know if they were going to find a fair way to pay for this thing.

Mr. Davis stated when they totaled up the city's sales tax collected in Fayetteville and Springdale they had about ninety to ninety-five percent of the total one percent sales tax collected in Washington County.

Alderman Young questioned on the revolving loan fund, if they started construction, he assumed the money would be metered out a little at a time until they came up to the amount they needed.

Mr. Hunt stated that was the way the revolving loan was set up. They would draw it as they needed. They were not paying interest until they made the draw down. If the city elected to proceed forward the staff would work with the State in terms of a draw down schedule.

Alderman Young asked if there was a provision in there that the plant had to be completed within a specific amount of time.

Mr. Hunt stated it was not a specific amount of time. They had to negotiate the time. When that point in time was reached they could not draw down any more.

Mayor Coody introduced Gordon Wilburn, Kutak, Rock.

Mr. Wilburn stated they were serving as bond council in connection with this issue. The ordinance before them tonight was the necessary legislation by this body to call the election for a sales tax if that option was selected. They had to pass the ordinance at least thirty days before the election was called. These revenues could only be used for debt service. Under this program the State Revolving Loan Fund accepted prepayment, whereas, if they were doing a revenue issue that was not the case.

Mr. Williams stated that he wanted to point out that Kutak, Rock and Mr. Wilburn had been very helpful in drafting the ordinance. They had been in regular consultation to make sure that this ordinance would pass constitutional mustard. The city had been sued numerous times over bond issues. That was one reason that they wanted to have them on board. They had the kind of expertise as a national law firm that deal in this sort of work to make sure that this particular ordinance and the bond issue was going to be done properly and to be in compliance with the Arkansas Law. They had worked together very hard to make sure that this was a good ordinance.

Mr. Wilburn stated they had tried to make this as flexible as possible. Under the revolving loan program. The reason they were talking about issuing bonds, what actually happened was that the city does issue a bond which the Arkansas Development Finance Authority bought. It then advances money on it as needed for construction. That was also the issuance of a bond. This would permit them to do that or a public issue if for some reason that became favorable. Or a combination of the two.

Alderman Davis stated he felt it was very straight forward.

Mr. Wilburn stated they could thank the state statute for that, with respect for the special tax they just for "for" or "against" the issuance of the bonds. They explained what they tax was about. They were not actually voting for the tax. If the bonds fail the tax was not implemented. If it passed it was implemented.

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Alderman Young stated he would like to hear from a representive of Kutak and Rock, they had reviewed the ordinances and they did make the constitution.

Mr. Wilburn stated he had and as Kit had said they had numerous discussions. He believed this did pass constitutioanl mustard.

Mayor Coody stated the city was going to be relying heavily on their expertise.

Alderman Young stated since this was $125,000,000, the staff review form attached to their packet, all the signatures were not there.

Mr. Williams state he did not like the title on the first review form. There should be a second staff review form with additional signatures.

Mayor Coody stated they would be doing everything they could to bring it in under budget and a head of time.

Mr. Jeff Erf, an area resident, asked how much had already been spent, including property.

Mr. Don Bunn stated there had been approximately seven million dollars spent.

Mr. Erf questioned if there was any limitation on the amount of money the city could spend on this project. The Town Center had a finite amount on their ballot. This was more open ended. It was going to fund all or a portion of." It if was "a portion of", that meant it would cost more than 130 million dollars, because there was five million from a previous bond issue.

Mr. Williams stated they had place the "a portion of" there intentionally because if the project actually cost 135 million and one dollar, they did not want someone coming back and saying the voters had been misled. They were getting from the people in financing and engineering the most accurate amount of money that they believed it would cost. It was a major project with several different components. However, they wanted to be clear that if it did cost more then there would not be some problem with how the ballot was written.

Mr. Erf stated he wanted to be clear that what the citizens would be approving is not the total cost of the project, just the amount of the bond issue.

Mr. Williams stated they were not approving a cap on what could be spent, however, they were they approving not more that 125 million dollars worth of bonds may be issued in relation to the sales tax. He was correct. This was not a cap. They did not want people to be misled on this project.

Mr. Erf reminded them that originally the costs had been estimated about ninety million dollars. It had increase substantially since then. On April 1, 2002, what would be the sales tax rate that was expected at that time. Currently he believed it was 8.125%.

Mayor Coody replied, basically and they had the 2% HMR Tax on top of that for restaurant. If all went to plan that rate would drop to7.78%.

Mr. Erf stated that was making some assumptions that the county did not pass a 1% sales tax for a new jail or that the Parks and Recreation did not push for .25% tax for parks.

Mayor Coody stated they could not answer for the County, but he did think the Parks would be coming back for a quarter percent.

Alderman Young stated he knew a lady that was collecting 12.15%. It was at a hotel, motel and restaurant. They needed to nail down the exact amount of sales tax being charged in Fayetteville.

Alderman Reynolds stated it was 10.125%.

Mr. Erf asked on a 125 million dollars what would be the interest and principle total. How much tax dollars would be collected.

Alderman Santos estimated the costs to be $148 million.

Mr. Erf stated in reality they were asking the citizens for up to 147 million dollars for this project. Not including the previous bond issue that was five million dollars. He asked if the city was going to provide the citizens with a better estimate of costs before the election. Was there any chance of having an impact fee passed before the election.

Mr. Steve Davis replied the impact fee consultant was scheduled to have a work product to city council to review by the end of September. In their contract there were public hearings and meetings scheduled. There was about a sixty day window for comments before they get to a final impact fee number. They were looking at the end of November.

Alderman Thiel asked what would happen to this tax if they did implement some impact fees on sewer. Was there some way the tax could be adjusted?

Mr. Davis stated the staff preferred the impact fees be held off to the side. They would need future capacity increases after this plant is brought on line. Those capacity increases would be to benefit the growth that would occur.

Alderman Santos stated he was assuming the impact fees would be used to pay for this capacity increase. That way they could pay off the bonds and retire the tax sooner.

Mr. Davis stated that was an option for City Council, if they wanted to do that. Staff would recommend that they hold those impact fees off to the side to cover future capacity increases as they will occur.

Alderman Santos stated so they were going to have the present citizens pay for doubling the capacity and then after the population was over 115,000 would be when they would start charging impact fees.

Mr. Davis replied no. That was a decision the council would have to make after the impact fees were enacted.

Alderman Santos asked why he would recommend they not do that.

Alderman Young stated the reason was they could pay off those revolving loans faster, but they were at three percent, then they would have to go to the regular bond market at five to six percent and borrow more money.

Alderman Santos stated they would not need to do that until they doubled their sewer demand.

Mr. Davis stated the reports had indicated that if their building trends continued into the future as they had in the past they would collect approximately one million dollars per year on impact fees on the sewer side. If they collected a million dollars per year, that was equivalent to one month's sales tax collection. They were not going to shorten the amortization on the bond issue very much at all, but they could end up having to spend five or six million dollars on capacity related sewer issues in the interium between the time the plant comes on line and the bonds were paid off. If they dedicated the impact fees to paying off the debt then they could not use them for sewer capacity needs that will occur over time.

Alderman Santos stated the sewer capacity they were adding was doubling their existing capacity.

Mr. Davis stated if they wanted to increase the pipe line capacity they had the opportunity to do that by collecting the impact fees and putting the capacity in so they could possibility avoid overflows in the future from lift stations.

Alderman Santos stated the major capitol cost was the plant itself, that was what they should be paying for with impact fees as much as possible.

Mayor Coody stated they could put the impact fees toward the sewer plant or they could put it toward other project, but they did not have three percent money for.

Mr. Williams stated he would recommend that they wait until their consultants came back and gave their presentation. They might also have recommendations on how the impact fees can best be use to give them the most flexibility and to make sure that they did not have to go back to the citizens with another bond issue any time soon.

In response to questions from Mr. Erf, Mr. Wilburn stated the underwriter language was only applicable if they did not do a revolving loan fund. There would be no underwriter if they did the revolving loan, but there was a financial advisor. Bond Counsel fees were approved by the revolving loan fund as a cost they could draw down. He did not think that generally that there were financial advisors, but they have not done a project nearly this size before.

Mr. Erf asked how much money they would be paying the underwriter and the bond advisor.

Mr. Hunt stated with respect to the underwriter, the way they had planned to do this right now, there would be no underwriter and there would be no fee associated with it if it could be done under the revolving loan program and they would serve as financial advisor. The city had already entered into a contract with them. They were paid on an hourly basis for the services that they provided. If the underwriter were used it would depend on the size of the issue. It would be a percentage basis, but a 115 million dollars would be a much smaller percentage than if it were a ten million dollar financing. All those issue would have to come back to the city and the city council would have to make the determination that was an appropriate fee and approve it. It would probably be less than one percent.

Mr. Erf asked who was going to organize the public meetings. Previously, the engineering firm was coordinating those through a consultant that they had hired or would someone from the city be doing this.

Mr. Ulmer stated right now Haniflin Associates were assisting them regarding public information. They had been working together. It was a joint effort between the staff and the consultants.

Mayor Coody stated they wanted to make this as big and public that they could make it. Everyone needed to know what they were voting on.

Mr. Erf stated it bothered him that the person responsible for coordinating the information for the public did not work for the public, but works for the engineer. He wanted to see the city coordinate this and not someone who worked for a third party and had an interest in the outcome of the election.

Mr. Greg Betcher, Public Works Director, stated they had began to flow all the information through the city offices, through their own public affairs office. They intended to handle this on a local basis. They would use her for advise and guidance, but it would go through them and they would add their own interpretation. He everyone was concerned about the costs and cost overruns. Right now, the engineering firms were working on a preliminary engineers report. Every detail of the project was not completed. When they had completed the detailed designs and the contract documents were completed, they would also receive a final engineer cost estimate. They would be reviewing this closely before the project went out to bid. They would have check points before this went out to bid to make sure that they were on target, under cost, if they see there are cost concerns they would go back to the drawing board to the see what they could do to avoid any financial difficulty.

Alderman Young stated the additional funds, on the Town Center, could they spend funds in addition to what the bond ordinance said. He wanted to make sure that if it ran over the 125 million they could spend from the general fund, sewer fund or impact fees. Additional fees to cover the costs.

Mr. Wilburn stated the answer was yes. The way this ordinance was drafted there was not limit on other funds for this project.

Mr. George Weiss, an area resident, asked why they were restricting this three-quarter percent tax to the first twenty-five hundred dollars.

Mayor Coody stated that was standard operating procedure for sales taxes.

Mr. Wilburn stated the state statute specifically said that. That was the standard definition in the statute.

Ms. Lou Weiss asked if groceries were going to be included in this.

Mr. Williams stated the state law was clear that when they passed a tax like this the state had set out will be taxed. What was taxed by the state was taxed by this.

In response to questions from Ms. Weiss, Mayor Coody stated there were some people who thought that if they stopped growth right now then they would not need a new sewer plant. In reality because of the overflows and the leakage in the existing sewer system they got a lot of infiltration from the sewer system. The sewer plant would also flood. They have the problem of sending improperly treated water into their streams and creeks. If storm water could get in during a rain, to him it meant that sewer could get out when it was dry. They had the chance of polluting their ground water at the same time. There were a lot of different reasons, even if not another person moved into town. They had current existing problems that they had to deal with. They were not cheap problems to fix.

Ms. Weiss stated Mr. Davis had made a statement that the taxes would not be increased they would go down a quarter of a cent. A year ago they were paying one cent less. Now they were paying one cent less more for the library. He could not say that their taxes were going to be increased. They were going to be three-quarters of a cent more than they were a year or two ago. That tax was supposed to end.

Alderman Young asked if the citizens passed this tax and they started collecting sales tax on food. If after that there was a constitutional amendment or state legislature prohibiting sales tax on food, what would happen.

Mr. Wilburn replied it was possible that portion of the tax would go away. Although he thought that the last act that came around had a grandfather provision where that tax pledged to bonds for the life of the bonds.

Alderman Young stated so it would be as it was written, but the odds were that it would continue on until their bonds were paid off.

Mr. Wilburn stated that was the last act that came up that they looked at.

Alderman Davis stated that if not the loan would take that much longer.

Mr. Al Vic, an area resident, stated he would be a poor environmentalist if he did not support a new plant because he did not want sewer pouring into the ground or aquifer or into the rivers either. But still there were some things that made him uncomfortable. In the 1990's they had a series of forums in the city. They knew the existing plant would be reaching capacity around this time. Every neighborhood in this city, the people came out and stated they needed to get a handle on the growth. It has not happened in this town. Everything had kept growing. What was happening was that the citizens of this city were subsidizing growth. As they grew the city was not the only one that came to them for money. The county will keep coming to them for larger jail facilities. The school boards and school district because the need to build new schools.. Their taxes were going to continue to go up. He wanted to see some type of a smart growth policy for this town. They did not want to keep funding these things. He was opposed for the reason that continued to drive them in this direction. As a citizen he did not like the idea that they either vote for a three quarter sales tax or be punished by doubling their sewer rates. People should not have to subsidize this corporate welfare. When he was at the Water and Sewer Committee meeting when someone asked if they could pay off the debt in less than ten years and the answer had been no. His understanding was that it would not be allowed.

In response to questions, Mr. Hunt explained that typically if they did a traditional public bond offering there would be a ten year call protection. What was said at the Water and Sewer Committee meeting was that if they wanted to use revenues from their system or impact fees to try and pay off the bonds. The State Revolving Loan program has a ten year call protection. They could save back the money. They could pay off with the sales tax because the state statute stated that was the only way the collected it and that was the way they had to do it. But if they were using revenues from the system or impact fees they would have to wait the ten year period. If it was sales tax alone the revolving loan program allowed them to pay it off. If sales tax were to grow they could pay it off as fast as the money was coming in. There was a ten year call protection for any other than sales tax.

Alderman Santos stated he was hoping that they would allowed to pay this loan off early if they came in under budget and used impact fee money to help pay for it. But they could not use anything but sales tax?

Mr. Hunt stated he thought that they could. With the sales tax 2.5% growth, they pay off in 2015. That was more than ten years. If the City Council decided they wanted to set back some money and pay it off quicker than 2015, sometime between 2011 and 2015 they could make that decision to accelerate that time. Unless they were going to create a lot of additional revenue they were not going to accelerate it by very much. The fact that the sales tax was currently generating 9.25 million. That would give them some period of time.

Mr. Wilburn stated if they came in under budget that meant that they had never drawn it down. Their principle amont would be lower to start with. They would typically have the ten year call protection for anything other than sales tax revenues. They might be limited to ten years out to use those. What they were trying to do was match their revenues coming in to their debt service on the debt that they had issued.

Mayor Coody stated that with three percent interest rate and a three percent inflation rate, this was free money.

Mr. Wilburn stated they could invest their other money in an excess of three percent. They did not run into the federal tax law pledge rules because that money was not pledged to the bonds so they could make what ever they could make on it.

Mayor Coody stated if he had borrowed money at three percent, he would not want to pay it off any earlier than he had too.

Mr. Gary Lowery, an resident, he believed in managed controlled growth. He believed in proper infrastructure and the cost associated with those, including the wastewater treatment plant expansion. He was against the rates and methods for payment. The Noland plant's maximum capacity is set at 17 million gallons per day, not eleven million. It currently runs twelve to thirteen million gallons a day. During thunderstorms they had the tenancy to go over the maximum they were able to treat. The reason was that they had in-fill problems into the system because of their antiquated system. If they expanded the Noland plant by four million gallons they would have what they needed. They needed to expand, but who was going to pay for it. They were going to have every one who came here pay for it in addition to the citizens. He was already paying for it and they were going to increase his taxes even more. The mayor and two aldermen did not have city sewer. Why did they not have sewer lines running to every citizen in Fayetteville. We charged Elkins a $1.80 per thousand gallons. The citizens of Fayetteville pay $2.39 per thousand gallons. Industrial, commercial and business users pay $1.87 per thousand gallons. That included the university and the big industries. This city generates twenty to twenty-one million dollars per year income of their wastewater plant costs and water treatment costs. It was going to take 9.2 million dollars per year to pay for the wastewater treatment plant additions. He asked what happened to the flat sewer rate they use to pay. He added the city of Fayetteville is a partial owner in the Beaver Water District. The district was made up of four entities. The cities of Rogers, Lowell, Springdale, and Fayetteville. All the members on this board are not appointed by or directed through any city entity. They had total immunity from any government. They were self-sustained. We were buying our water from ourselves and they were charging the citizens more than they needed to.

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.

LEFT ON THE SECOND READING.

WASTEWATER TREATMENT PLANT: A resolution of intent regarding certain costs and expenses incurred in connection with the Wastewater Treatment Plant Expansion Project.

Mr. Wilburn stated the resolution of intent was required by the Revolving Loan Fund Program. It stemmed from the Federal Tax Regulation that if they were going to reimbursed expenditures made by the city with tax exempt proceeds, they had to pass an intent to do so. From the date they passed that they could look back sixty days. If money was going to be spent then time was a factor. It did not hurt anything if they passed it tonight. It would have no impact if they did not end up issuing the bonds.

Mr. Boettcher stated there might be some engineering costs, which might be recovered, they would be minor in the scope of the entire project.

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

RESOLUTION 106-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SIGNATORY AUTHORITY: A resolution delegating signatory authority in connection with State Revolving Loan Assistance.

Mr. Williams state this resolution designated Mayor Coody and Mr. Ted Webber as Administrative Services Director as the signatory agents of the city or their successors to sign any documents necessary for this project.

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

RESOLUTION 107-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PARKING POLICY: Informational item regarding uniform parking policies for the City of Fayetteville Phase I of the downtown municipal parking areas.

Ms. Sharon Crosson stated with the opening of the Town Center they had two hundred and twenty spaces in the new parking deck. Before they did any thing major on the downtown parking issue, she would like to see how the spaces at the town center help the congestion in the area. There were several items in this proposal that did not really require council approval. They could be inhouse as policy only. They could pass these by resolution, even though it is not necessary. Others needed to be done by a new ordinance or an ordinance amendment. She did not want to bring those to them as an approval item until they could see the entire package. She wanted them to see everything that they were anticipating doing and not piece milling together.

Alderman Davis asked how long they should wait until they took any action.

Ms. Crosson replied she would like to propose the items that she had presented. If they were in favor of those then she would like to come back to the next council meeting with the ordinances for them to approve, particularly if they were interested in increasing parking fines. She highly recommended that. To enter the parking deck at the town center, it would cost them three dollars per entry. They could park right on the square and get a ticket for two dollars. There was no incentive to get off the square. They were trying to open up those spaces for customer parking. She would not recommend going so high that they scared off the customers downtown. She thought five dollars was high enough that if they received two tickets per day was a lot more expensive than parking at the deck for three dollars or participating in one of the other programs. If there was no cost incentive then it was easier for them to park on the square.

Alderman Davis asked if they ever enforced the habitual offender.

Ms. Crosson stated that they had used the boot one time, it was very bad PR and was never used again. Super tickets were already in place. On your sixth one, per calendar month, the sixth ticket and every one after that was twenty-five dollars. She recommended continuing that. The first five were two dollars each.

Alderman Zurcher asked if this dealt with the lease of parking spaces.

Ms. Crosson stated they had an in-house policy that limited the spaces to the firs row of lot one, behind Campbell Bell. Those were the only spaces that they made available for lease. They limited those to customers who were on the west side of the square. The reason that was initially adopted by staff was because the Campbell Building had been empty for quiet some time. In order to promote people to move in there and to develop a business parking was an issue. They wanted parking.

Alderman Davis stated Ms. Crosson had done an excellent job in putting all this information together.

Alderman Young asked if she had met with the people around the square.

Ms. Crosson stated she had met with many of them individually. They could have a collective meeting if they wished. She presented this policy to six different downtown businesses, others she had talked to on the phone. She had received good responses from those people.

Alderman Young stated there were four different entities down there. Merchent, landowners, works and shoppers. He thought that before they considered an ordinance a public meeting should be held to get every ones input.

Ms. Crosson stated there were four items which would have to done by ordinance or amendment to ordinance: parking fines, ticket fees and hang tag rates, and no storage/ abandonment, and meter cash key. She asked on the items which did not required council approval if they were interested in adopting them by resolution. She asked them if she could go forward with the city employee parking policy.

Alderman Davis moved to have concenous that Ms. Crosson go forward with in-house parking policy. And present an information item later with further details. Alderman Reynolds seconded the motion. Upon roll call the motion carried unanimously.

NO ACTION TAKEN.

BUSINESS/TECHNOLOGY PARK: A resolution authorizing the City of Fayetteville to apply to the State of Arkansas Department of Finance and Administration for a grant from the Economic Development of Arkansas Fund for construction of water and sewer lines and streets necessary to develop the Arkansas Business/Technology Park.

Mr. Bobby Ferrell, Chamber of Commerce, state he did wish to pull the item, but he would answer any questions that they might have.

Mayor Coody stated they had provided a lot of maps in the agenda packet. They did not have any hard and fast rules on how to develop the area. One thing they were working was to mitigate any potential damage that they might have out there with the Arkansas Darter. They wanted some conservation easements along the streams and to protect some wetlands. They were still waiting to hear back from the state on how much of the wet land they were wanting to buy and will pay for.

Mr. Ferrell stated they still had an applicant that would like to be considered to move in once this thing was done. Unless something changed he planned to have a resolution to bring that to the next meeting. They areas that were being looked at was running parallel with I-540, closer to the top of the hill.

Ms. Thiel stated she would like to see them develop the park. She understood that in order to run some of the utility lines might be where they ran into the problem of running through some of the wet lands. She would like to see a major conversation take place in a public format. She thought they needed to find out what was going on there. She kept hearing different things.

Mayor Coody stated they did not have a hard and fast plan right now. There may be people interested in purchasing the developable land from them, excluding the wetlands. If that were to happen there would be covenants and they would develop it to their own desires. There may be some people looking at that would like to have a campus atmosphere.

Ms. Thiel stated she would like to have a discussion where they could find out more about what he was talking about. People would like to know what was in the works.

Mr. Ferrell stated that two hundred and eighty acres was not all wetlands and affected by the Darter. Alderman Thiel recommended that they try and set something up.

REMOVED FROM AGENDA.

APPEAL: An appeal of a Planning Commission decision regarding a lot split request submitted by Patrick Hannan, LS 01-20.00.

Mr. Patrick Hannan stated their appeal was that they were wanting to build a single residential home. All they were wanting to do was to get the family closer to the in-laws. They had given right-of-way and easements on their portion of the lot. He did not want to see this not happen because his in-law would not agree to give free land to the city.

Mr. Williams stated the reason this came forward was because their city planner was bound by ordinance. The ordinance stated that they city planner shall not waive the preliminary or final plat requirements for this chapter or proposed subdivision or lot split, until the subdivider dedicates suffient right-of-way to bring those streets into conformance with the master street plan. The Master Street Plan showed a road going through the eastern part of his property. Mr. Conklin could not waive that requirement.

Alderman Davis asked if they could have some type of restriction on what they could do structurally on that area of land.

Mr. Williams stated it was possible. The ordinance stated that they could approve a lesser dedication. He had given them a memo citing a supreme court case, the most important one being that they had a burden to show the rough proportionality between the dedication of land the impact they were proposing. They were going to build one house.

Mr. Hannan stated the city was wanting a strip of land forty-five foot strip five hundred feet long for free. That was a problem. He was not going to give his land away.

Mr. Conklin stated the city had in the past on a couple of occasions used a deed restriction to make sure that nothing would be built. The one on the northwest side of town they had the developer dedicate fifty foot of right-of-way and the remaining right-of-way required for the Master Street Plan was put into a deed restriction. There was one other on the east side of town where they just used a deed restriction. Typically by ordinance they were required by ordinance to dedicate that right-of-way. Typically when they had a development that right-of-way was dedicated to the city. Situations like these did not occur very often.

In response to questions from Alderman Theil, Mr. Conklin stated they would still own the property. The deed restrictions in the past have removed their development rights and their potential to build anything within that area. If they did not require these right-of-way or keep them free of development they were going to be in big trouble twenty or thirty years from now when they needed those principle streets.

Alderman Davis asked the applicant if he would have any problem with a deed restriction.

Mr. Hannan stated he would not if it only stated he would not build anything on it for the rest of his life. That was no problem as long as he still owned the land. He had no intention of building over there.

Alderman Davis moved to have a deed restriction on the land. Alderman Jordan seconded the motion.

Mr. Williams stated Mr. Hannan had been talking about the rest of his life. That was a life estate, which meant that at his death the deed restriction would be gone. Was it a forever deed restriction that he was agreeing to.

Alderman Young and Davis stated it needed to run with the land.

Mr. Dale Barnett, applicant's attorney, stated this was in the growth area and not in the city limits at this time. One of the problems with the deed restriction was that it was not really needed. They had control over what was built on the property anyway with the requirement of building permits. This was a two acre lot and they were asking the person who owned the land dedicate an acre. One of the problems was that he had a self contained water system within his property.

Mr. Conklin stated the county did not issue building permits. There was no way to know where something was built within their planning area. That was one of the biggest issues. They tried to make sure those right-of-way were preserved.

Alderman Davis stated his motion was that the deed restriction would follow the land and not the owner.

Alderman Santos stated they needed to stick to their plans. If they did not take it now as the ordinance requires, they would have to go back and condemn it later and pay for it. It was going to be a street that provided access to this property.

Alderman Thiel stated it was just a planning document and it was subject to change. It was her understanding that if Starr Road was continued to the point that their property was, there would have to be two houses purchased in the path of that. The likelihood of them going right along that path would likely change. Their Master Street Plan was subject to changes especially when they thought it was going to be cost prohibited one way. She could not go along with making this family give up their rights to this property.

Alderman Santos stated that they had plans and they needed to stick to them. This road would be needed very soon. If they were not going to stick with their plans then he would recommend getting rid of their Master Street Plan because they were getting rid of it one parcel at a time.

Mr. Hannan stated his sole source of water was a lake over there in the corner where this forty-five foot went through. It was not a lake with a dam, it was a strip dip. Any contamination in the construction of the road or the use of the road would run into his water supply. He had built his own clorination and filtration plant and he used it.
Alderman Reynolds stated he imagined the plan would be changed on this project. Not only would it affect his water supply, but there were two homes in direct line that would have to be taken out, if they stuck with this line.

Mr. Hannan stated there was just pasture land to the east.

Alderman Young clarified that the motion was to waive the right-of-way requirements subject to a deed restrict that would follow the land.

Mr. Williams stated the true question when they were looking at the constitutionality, it was a rough proportionality. Did the granting of a lot split to allow a single house to be build justify taking an acre and a half of land from this individual.

Upon roll call the motion carried unanimously.

RESOLUTION 108-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

REFERENDUM PETITIONS: An ordinance amending Section 36.15 of the Code of Fayetteville to change the number of days allowed for referendum petitions to be filed from thirty-one days to ninety days.

Mr. Williams read the ordinance for the first time.

Alderman Young stated there had been some people passing around a petition regarding the HMR

Tax they thought it was to short of a time period. He thought thirty-one days was too short. The constitution allowed ninety days.

Alderman Zurcher stated to him this was a no brainer. It was the democratic thing to do. If they did not want to give people time for a referendum then may be they should question the kind of things they were passing.

Mayor Coody stated this would affect all the ordinances that they would pass.

Mr. Williams stated all ordinances would not be able to go into affect for ninety days. Currently their ordinances went into affect after thirty days. With this amendment no ordinance would go into affect for ninety days unless it had an emergency clause. He did not believe they should uniformally pass emergency clauses unless it was a true emergency. For example annexations and rezonings would take ninety days. They did not want to have an ordinance go into affect until the time for a referendum had passed. It was just a matter of state law.

Mr. Zurcher stated there was a state law changing the amount of time to ninety days.

Mr. Williams stated at the Municple League conference they had discussed this issue. What that statute did was take the affective date of the ordinance to this amendment. If they had not had an ordinance already stating they had thirty-one days, then it would have gone to ninety days. Now the state law is whatever your ordinance said for Amendment 7 that was the same day that the ordinance would take affect.

Alderman Young stated he had been wondering about emergency clause. Could they be passed to where it takes affect in twenty or thirty days.

Mr. Williams did not think so. The way he read the emergency clause was that it had to be an emergency and they had to take affect immediately and they had to have reasons.

Alderman Davis stated if they were afraid as a governing body of their decisions this may be the proper way to go. By going ninety days he felt they were saying they were not sure they were listening to their constituents. The people of Fayetteville were very vocal if they were doing something they did not like they would let them know in a hurry. If you went back to the Human Dignity, it took those people less than thirty-one days to get the petitions for a vote. On the HMR item they did not have a line of people out the door. In the past when the citizens have been upset and concerned there have been a lot more people come to discuss the item.

A citizen stated it was difficult to collect the number of signatures required. She noted several differences between the HMR and the Human Dignity. There were a lot of churches in the Human Diginity. It was very difficult to organize the people to get the petition circulated.

Mayor Coody stated if it were just the question of having people who wanted to redress their government and extending the period of time that would not be a problem. But the decison to extend the time also will affect every other ordinance that they would pass.

Mr. Williams stated with an initiated referendum they had to collect the same number of signature, they had a different time frame. It had to be voted on at a regular election and not a special election. They had more time to present and get organized.

LEFT ON THE FIRST READING.

Meeting adjourned at 10:10 p.m.