MINUTES OF A MEETING
OF THE
CITY COUNCIL
AUGUST 7, 2001

A meeting of the Fayetteville City Council was held on August 7, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

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

Mayor Coody congratulated city employees; Scott Caldwell, John Goddard, and Clyde Randall for their Special Achievement in GIS Award.

Mayor Coody stated they were putting the finishing touches on an agreement with the Boys and Girls Club, which will be presented to the City at the next Council meeting.

Mike Hill, Boys and Girls Club, stated they had been working with the City Staff on an agreement and that they should be presenting it at their next meeting.

AUDIT COMMITTEE REPORT

Mr. Marty Bryan, Chairman of the Audit Committee, stated the Audit Committee had been established October 3, 2000, its purpose was to serve as an advisory capacity between the City Council, Independent Auditor, Internal Auditor, and the Management, audit internal controls and compliance. The committee was comprised of four people, one city council member and three private citizens. Their responsibilities were to serve on the review committee to select the external auditor, review the city's annual financial status, including any certification or report rendered by the independent auditor, review the performance of the independent auditors and review financial and accounting personnel adequacy and the effectiveness of the accounting and financial controls of the city and to advise the city council on any issues reported by internal audit staff. The results of the 2000 audit was an unqualified clean opinion. In accounting, that was excellent. There were no disagreements with management on financial reporting matters and no scope limitations related to audit work. There was open and affective communication with management. We received a certificate for excellence in financial reporting and budgeting for the twelfth consecutive year from the GFOA (Government Finance Officers Association).

CONSENT AGENDA

APPROVAL OF THE MINUTES

Approval of the minutes from the July 17, 2001 meeting.

RAVEN TRAIL AND GULLEY PARK TRAIL: A resolution awarding the construction contract for Raven Trail and Gulley Park Trail to Jerry D. Sweetser in the amount of $190,605.50 and approving funding for the project contingency and material testing for the projects.

REMOVED FROM THE CONSENT AGENDA.

OLD MISSOURI: A resolution approving amendment number one, in an amount not to exceed $24,947 to the engineering services contract with Garver Engineers for additional conceptual designs and cost estimates for improvements to Old Missouri Road from the intersection of Rolling Hills north to Mud Creek Bridge.

RESOLUTION 109-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

GREGG STREET: A resolution agreeing to pay for right-of-way and the movement of utilities, if the Highway Department widens Gregg Street from Township to the Bypass.

RESOLUTION 110-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

TRACKING SYSTEMS: A resolution certifying local government endorsement of Tracking Systems to participate in the Advantage Arkansas Program also known as the Arkansas Enterprise Zone Program.

RESOLUTION 111-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CARGO VAN: A resolution approving the purchase of a 2001 Ford E-150 Cargo Van for the sum of $21,164.00 from Ron Blackwell Ford. This unit will be used by the Police Department.

RESOLUTION 112-01 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.

RAVEN TRAIL AND GULLEY PARK TRAIL: A resolution awarding the construction contract for Raven Trail and Gulley Park Trail to Jerry D. Sweetser in the amount of $190,605.50 and approving funding for the project contingency and material testing for the projects.

Mr. Greg Boettcher, Public Works Director, stated the Arkansas Highway and Transportation Department awarded to the city a sum of $750,000 for multi-use trails in Fayetteville. This grant is eighty-percent of the eligible project costs, with the city providing a sum of $187,500 to go with that. The Raven and Gulley Trails which they were considering tonight constitute some $223,196, which was about twenty-three percent of their $937,500 total project funding. Joyce Boulevard, East Mud

Creek and West Mud Creek(CMN Property) are other trails which have been designed. They have been submitted to the Arkansas Highway and Transportation Department. They were expecting approval to bid those in September. They were moving ahead on these projects. The current funding that they have of $937,500 is not expected to be adequate to do all five trails. What they were planning to do was the West Mud Creek Trail which will be segmented into bid units, so they could tailor the last piece of the project to use all of the enhancement funds. There will be additional funding cycles which they hoped to apply for and move forward. At this point, Paul Libertini in the Engineering Division had been a key individual in moving this ahead and designing for the five trails. As it moved forward, the Trails Coordinator would pick up and work with Engineering on those. There was a map showing where the trails are.

Alderman Thiel stated it was wonderful that they had been able to obtain funding. As alderman for Ward One, she knew they were working on a Walker Park Trail.

Mr. Boettcher stated there would be future funding cycles. In the case of these funds that have been awarded they were project specific and must be used for the five trails the Highway Department identified.

Alderman Davis stated they had purchased land for the Prairie Creek Trail which went from Sixth Street to the Walton Art Center area. The intent at the start of this project was to find land that the city owned, which happened to be in Ward Three.

Mayor Coody stated they had received notice today that the Transportation Enhancement Funds were becoming available. They were going to start applying for more grant money.

Alderman Davis thanked Chuck Rutherford for all his work on putting this together.

Alderman Davis moved to approve the item. Alderman Thiel seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 113-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

OLD BUSINESS

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. The ordinance was left on the second reading.

Alderman Trumbo stated that they had a number of public hearings. Bringing this forward would allow the public the right to vote on whether or not to go forward with the proposed new wastewater treatment plant, retrofitting their existing plant, and improving their collection system. This was not just about adding capacity, it was also about clean water. This was a lot of money. They had a number of public hearings and had talked at length about the three percent revolving loan, which was available to the city. It was unprecedented in terms of the low interest cost. They had talked about the fact that if this was defeated that they still have to do fifty million dollars of improvements to their existing plant which would mean doubling sewer rates for existing rate payers. They had looked at all the different financing mechanisms, the interest costs and the amortization, the schematics, the plans. He just thought it was time to move forward and to let the general public vote on this proposal on floating a bond and to do what was right for Fayetteville. There were those who wanted to defeat this to shut down growth in Fayetteville. That was not what this was about. It was adding capacity, but it was also increasing the technology of their existing facility and adding more capacity. It was an ongoing process of fixing up their collection system and it would allow them to not take slug all the way across Fayetteville.

Mayor Coody stated they had been given an administrative order back in 1989 from the EPA that put them on notice that they had to improve their sewer system. They were under this executive order until 1995 when they started going through the process of starting the engineering of a new system and rebuilding their antiquated infrastructure and building a new plant on the west side of town. Once they saw us making serious headway, they lifted the order. They did not have a choice about building a sewer plant. The plant was just one quarter of the project. The entire sewer system was what they were having to rebuild. They did not have an option. The election was basically going to be asking the question of how they would pay for it. They were giving the voters a chance to approve the three-quarter cent sales and use tax. He personally felt that when they looked at the money they would be saving by doing this, they would save twenty-six million dollars in interest. They would also pay for it in half of the time, ten years verses twenty. If the voters turned down a three-quarter cent sales tax, they would be locked into having to find another funding mechanism to rebuild the system with. The only other option that could be used as collateral for this debt would be an increase in sewer rates. Sewer rates and sales tax were the two most predictable incomes the city has. If they did not have the sales tax, they will have to have a substantial increase in sewer rates. That would narrow their pool on the number of people who would be paying for it. They had to let people know it was not a question of if they were going to get a new system, the question was what mechanism of funding will they chose to pay for it.

Alderman Trumbo stated they were over taxing Fayetteville. They were paying eight and one-eight percent city tax. One penny of that was for the HMR, one for Parks, one general fund and one for capitol improvements. He stated the library tax would sunset and this tax would pick up. The people voted and said that they wanted the Town Center, the Library, and the two mills for the Senior Center added to the property taxes. They were over taxed, but there were city services and needs they were having to make democratic decisions on.

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

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

Alderman Young stated hotels and motels were collecting 12.125%. Restaurants were collecting 10.125%, every one else was collecting 8.125%.

In response to questions from Alderman Zurcher, Mr. Steve Davis stated there were approximately 29,000 sewer system customers, which included Fayetteville, Greenland, Farmington and Johnson.

Alderman Reynolds stated there were 2,199 customers outside the City of Fayetteville.

Mr. Davis stated there was a single connection to Elkins. They had one customer, which was the city of Elkins. They did not have any control over how many connections that they had. They did not do anything past that one connection with Elkins. It was based on volume.

Alderman Trumbo stated he had heard some people say why didn't they just shut off the communities that were not in Fayetteville and let them build their own plant. He asked if they had long standing contracts with those municipalities for service.

Mr. Davis stated that was correct. The closest contract that they had would expire in 2008.

Alderman Zurcher stated it would be unfair to charge just the rate payers in Fayetteville to pay for this thing. At the same time to completely rely on a sales tax wasn't fair either. He asked if the communities that did not have their own sewer plants could they pitch in a little more. Can the industries pitch in a little more. Could they not raise them. He would like to look more at a package than just one thing that they were going to vote on.

Mayor Coody stated about five years from now, they would have to have a relative small rate increase on their sewer fees. They were going to do everything that they could to come in under budget on this project. They will have to increase sewer rates five years from now once the plant goes on line. They will have to have the money to operate. They will see an increase in there sewer rates in the year 2005 or 2006. That would be the first rate increase in about nine years. To do a package deal to use different mechanisms to fund this might complicate their bond issue.

Mr. Hunt stated that they needed to keep in mind that the revolving loan fund only allowed the one sales tax that they were talking about that they could pay off early. If they decided to combine with anything other than the one sales tax they would not be able to pay off as early with the other revenues. That was one of the reasons that they felt that from the perspective of participating in the Revolving Loan Fund and maximizing their ability to reduce their interest expends that it made sense for them to use the sales tax alone in this case. Only this specific sales tax, there were other sales tax that the revolving loan fund would not allow them to do. The statute specifically state that it was the only thing they could use this sales tax for was to pay off the debt. The State was not going to say they could not use the sales tax to do that, so they allowed them to do early redemption or paying it off early. That was one of the key advantages of reducing their interest because they had the money coming in. From the current numbers, it looks like they would be able to pay it off in 2015. With a Revenue Bond issue they would be talking about going out to 2025. That was where the twenty-six million dollars in additional interest expenses would come in. It would be a slightly higher rate, plus they could not pay off early. If they did not use the Revolving Loan method and went out into the open market then they would be talking about nearly fifty million dollars in additional interest.

In response to questions, he stated with the Revolving Loan there would be a ten year call protection. After ten years they could use any resource to help pay down the loan, but they would still have the ten year period that they could not make any redemptions.

Mayor Coody stated he had seen in the paper where they were going to have an election on November 20 for Asa Hutchinson's position. Would it be a mistake to move the election from November 6 to November 20.

Mr. Wilburn stated the statute stated "general or special election". It really did not matter.

Mayor Coody asked if it would affect their timing?

Mr. Wilburn stated they could push it back that far.

Alderman Young stated they did not know the exact date of the election.

Mr. William stated this was a one hundred and twenty-five million dollar bond issue. If they changed the date of the election they might present an opening for someone to challenge this. They had worked very hard to make sure that this particular ordinance was very legal and constitutional and covered all the bases. He would hate for something which represented such a tiny amount of the bond issue to endanger a potential bond issue. He stated they needed to chose a date tonight. If they wanted to chose November 20, then they could amend Section Three. They could move to reconsider this amendment at their next council meeting. They could not come back anytime they wanted to amend this ordinance without leaving opening for someone to challenge this.

Mayor Coody stated the money to him was a small factor in this. One of the things he had heard quite often was that the public felt that they had special elections in order to time it when people were out of town and only the interested people would show up. It would not hurt to make the extra effort to try and get the public to understand they wanted as many people as possible to come to this.

Alderman Young stated November 20 was not as good a date as November 6. Have an election just before Thanksgiving when a lot of people were out of town.

Alderman Zurcher moved to table the ordinance.

In response to questions, Mr. Williams stated the next item if it passed would postpone any ordinance for ninety days. That would get them outside time frame. Anytime they were dealing with a large bond issue like this they needed to be as clean as possible and to follow the law exactly and not through any new legal changes. They did not want to push the envelope and be creative when it came to something like this. His advice to them was to go as straight as possible. They did not want to give any room for challenges. The more they played around with this the more openings could happen. They had studied the issue very carefully and had come up with this ordinance after a lot of work. This ordinance right now as it was written, they knew what would it do. If they started changing things on the fly he could not tell them what it would do. When they were dealing with one hundred and twenty-five millions dollars they did not want to learn after the fact that they had made a mistake and that someone could claim that they were confused on what they were voting on. Or that they confused the voters by changing the dates or putting a date in that was not certain and that was set by someone else. They did not want to do anything like that. They wanted it to be clear to the voters exactly what the issue was.

Alderman Thiel asked Mr. Wilburn if he was in total agreement with Mr. Williams.

Mr. Wilburn stated he agreed with Mr. Williams. They needed to go straight down the line with what had been proven and up held.

Alderman Zurcher again moved to table the item to the next meeting. The motion failed from lack of a second.

Alderman Jordan stated the three-quarter sales tax was the best way that they could go with that. He felt sales taxes were regressive, but in this case he thought the alternative to doubling the sewer rate, that the three-quarter sales tax was the better way to go. He had always been in favor of putting taxes before a vote of the people. This was no exception. If the people voted this down, do not expect him to support doubling people's sewer rates.

Mr. Geary Lowery, an area resident, stated he would like to inform them of a rumor that the proposed west side treatment plant already needed expansion to include other communities that lie west of Fayetteville and other communities wanting on line to the Fayetteville Sewer Plant. At another meeting it had been proposed that a park could go around the new sewer plant. At that time the Mayor stated they might need that land for expansion. The number of people using our sewer out side of city limits was one large main tap to Elkins which served them at the current rate of four hundred and seventy-nine sewer connections. Who they were and what they were, the city did not know. They had sixty three commercial taps in Farmington. They had twenty two commercial and industrial taps in Greenland. In the growth area they had one large major industrial tap. They had twelve hundred and seventy five residential taps in Farmington, three hundred and eleven in Greenland, four hundred and seventy nine in Elkins and one hundred and fifty eight in Johnson and twenty two in the growth area. They currently had twenty four other from Farmington and twenty one other Greenland, and one other for the city of Elkins. He had been trying to get some figures from OMI. Everyone seemed concerned about the infill and age of our sewer lines. They had a lot of problems. They needed to improve their system. He was upset at the cost and that it was only going to be for Fayetteville. It was for Fayetteville and the other communities surrounding us. He was tired of this city taking a hit. There were people within city limits that did not have sewer service who would like to have it. Before they expanded anymore or any more sewer taps were given to anyone else, they needed to tap into their own constituents. It was the duty of the city to service all of the citizens. In the last five years this city has had revenue profits in excess of five million dollars a year in revenue capital improvement money for the sewer system. Why did they need to increase their rates in the next five years, if they had five to nine million dollars available for sewer improvements.

Mr. Jeff Erf, an area resident, stated he would like to pin point the numbers that they were talking about for the sewer treatment plant. He asked that they correct him if he was wrong. So far they had spent about seven million dollars already towards this project for land, engineering and other related costs. The engineer was estimating that the current cost for the plant and improvements to the Noland Plant and other associated costs was one hundred and twenty million dollars.

Mr. Greg Boettcher stated that was correct.
Mr. Erf asked if that included construction cost, engineering, legal and administrative costs?

Mr. Boettcher stated it also included some contingencies on construction.

Mr. Erf stated that the amount of bonds that would need to be sold was about a hundred and fifteen million and five of that came from a bond issue that had been approved last year and carried over to this year for a total of one hundred and twenty million dollars of money that was available for capital costs. The interest on the hundred and fifteen million dollars was roughly twenty and a half million dollars.

Mayor Coody stated that was correct.

Mr. Erf stated if he tallied up the seven million they had already spent, the one hundred and twenty million construction cost and related expenses and the interest on all of that, he came up with one hundred and forty seven million and one half dollars. He asked if that seemed right for total project cost or the amount of tax payer dollars which would be spent on the project as estimated today.

In response to comments from Mr. Hunt, Mr. Erf stated the total project cost would be nearly one hundred and fifty million dollars. The ballot was asking the voters to approve a bond issue up to one hundred and twenty five million dollars. Another thing that concerned him was if the voters voted against this bond issue, what did that mean?

Mayor Coody replied they could raise sewer rates. If they did not correct their system and get it in line with what the EPA required then not only could they shut them down, but they could fine them twenty five thousand dollars per occurrence.

Mr. Erf stated he did not believe the EPA was requiring that the city of Fayetteville provide capacity for eighty five thousand people. He questioned if the voters turned this down in November did the rates have to go up. He thought they needed to put that on the ballot.

Mayor Coody stated he was exactly right, but whether the legal department agreed with him or not was another question.

Mr. Erf stated he had problem with the choice of "being build " or "build it". They were only talking about how to pay for it. That concerned him. If they were going to see this as a mandate, then that meant they were voting for a rate increase.

Mayor Coody stated they did not want to be in the position of having the public think that if they voted down the three-quarter cent and then they skyrocketed the sewer rates. The public will then say that the city was shoving the rate increase down their throat so that they could get what they want. They kept talking about the need for this project and the fact that it was really the question of how they were going to pay for it. They were trying to make it as clear as they could. They had to let the public know what they were dealing with. Even if not another person moved into town, they had to rebuild their system. Right now they were pumping all their waste from the west side of town through nine lift stations, over the ridge, and down to the Paul Noland Plant and then they were sending it right over the mountain again to the Illinois River. They were trying to do as much as they could with the public. There was one lift station where the sewage crosses the ridge three times to get treated once. They would be able to eliminate nine lift stations and all the required industrial and electrical pumping that went with that. It should decrease their operating cost.

Mr. Erf stated it was his understanding that after the new plant was on line and the old plant was improved and all the pipes were put in that they were talking about, an increase in twenty-eight percent for operation and management of the new system. Any saving from the removal of the lift stations was eliminated.

Mr. Boettcher stated that grade was calculated on 2005. It was predicted for four years ahead rather than today's dollars.

Mr. Erf stated if the voters were to approve this bond issue, it permitted them to go up to one hundred and twenty five million dollars in bonds. Could any of that be used for maintenance or operation expenses?

Mayor Coody replied they could not, it was for the building and construction. He hoped the public realized that those were the choices. This project started ten years ago. It was time they did something. Doing nothing was simply not an option.

Mr. Erf asked if there would be an ordinance in place regarding impact fees before the election.

Mayor Coody replied things did not move that fast around here.

Mr. Earnest stated impact fees would still be in discussion at the time of the election.

Alderman Thiel stated it was her understanding that they could use the impact fees for sewer capacity needs and not to pay the bonds off. It was not going to make her shy away from impact fees, just because they could not be used directly towards this.

Alderman Zurcher stated he was going to have trouble supporting this issue if he did not know before hand that the developers were going to pay their fair share by using impact fees.

Alderman Thiel stated the people who had lived here for a long time had paid their dues. Some of the affect of the growth needed to be paid for by the people that were creating the need.

Alderman Zurcher moved to amend Section Three from "November 6, 2001", to "this election would fall on the same day that would be set by Governor Huckabee for the election for the third congressional district seat".

Alderman Davis stated their bond council agreed with Mr. Williams. Since both of them felt the same way, they were probably correct.

The motion died from lack of a second.

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

ORDINANCE 4327 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. The ordinance was left on the first reading.

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

Mr. Williams read the ordinance for the second time.

Mr. Hunt stated they had brought bond issues to them in the past and that it was important that they take all three readings in one evening because investors had indicated they would buy the bonds, but they did not want to be delayed over a ninety-day period. The market could change dramatically during that period of time. There would become a resistance on the part of the investors to purchase bonds. He thought they needed to be concerned that Arkansas was one of very few States that had the thirty-day referendum requirement currently for bond issues. This was a concern if this was an interest rate environment where interest rates were creeping up. If they went to the ninety-days, he thought they would be compounding that problem significantly. In terms of financing a bond issue, they should seriously consider the implications it would have. Someone was going to buy the bonds, the city was going to be the one taking the interest rate risk. They were going to want a higher interest rate, because they were talking about such an extended period of time. They were not only talking about ninety-days, they would be talking about hundred and ten days before the ordinance was completed.

Alderman Zurcher asked if an emergency clause would work?

Mr. Williams stated they would have to be very careful with an emergency clause. Generally they had to be for peace and safety as opposed to money. When they were dealing with large bond issues, that made it a target. If they did not have a good reason to have an emergency clause, then that was another way that they could be challenged. That was why they did not have an emergency clause here.

Mr. Wilburn stated even with the emergency clause they would still wait thirty-days. If the ordinance passed they would wait ninety-days. The supreme court has cracked down on the use of the emergency clause. People were putting them on every thing. For them to be comfortable to close a multi-million dollar bond issue they would wait the thirty or ninety-days. If the ordinance was not validly adopted, it was his opinion on the line.

Mayor Coody stated he was concerned about extending this to ninety-days because they already had initiated referendum on the books. Anyone at anytime can put something on a ballot to be voted on without having to do it in thirty-one days. They could spend up to a year and a half to get something on a ballot.

Alderman Young stated he did not think that was correct. He thought they had sixty or ninety-days.

Mr. Williams stated if someone wanted something on the ballot they could go through the initiated ballot process. He was not sure when they could start collecting the petitions, but they would have time to get very organized and have their people ready to go out. If they had an issue they were concerned about, they could get their group together and get organized. They would have plenty of lead time to get on the general election ballot.

Mayor Coody stated that within the last ten years there has only been two ordinance that have been questioned with a petition. They had passed over forty ordinance this year alone.

Alderman Thiel asked if they would consider forty-five days.

In responses to suggestions from Aldermen, Mr. Williams stated Amendment 7, and stated they needed to pick a date and that was when they took affect or the deadline for the referendum. The City Council was not given the right to fine tune it as they went along, ordinance by ordinance. The City Council had to chose a time or if they did not chose a time, then it was ninety-days. He could find nothing in Amendment 7 which would allow a city council to make exceptions for ordinances which were going to be challenged. Amendment 7 was part of their constitution. They had to fall within that framework. They could not go outside either the statutory or the constitutional law.

Mayor Coody stated by using parliamentary procedure they had the option to use a motion to reconsider.

Mr. Williams stated there were parliamentary ways that they could postpone the affect date of an ordinance. Normally that was not a good thing to do in a tax sort of issue. A lot of these have not been tested in court. But it was a potential possible way it could be done.

Alderman Zurcher stated that defeated the purpose of allowing citizens to get something on a ballot. What they were doing was not always the best decision. This would give people the chance to petition the government to put it to a vote. That was different than us allowing it. This would allow them the time to do, because we would not do it. It was not because they agreed with us. It was giving away a little bit of their power to the people and who wanted to give up power. This made him want to almost want to vote wrong so that he would be in the majority on these things so that he could bring it up later. But he was not going to.

Alderman Jordan did not believe thirty-one days was long enough.

Alderman Davis stated usually it was over something controversial and they were already getting set up. He did not think that thirty-one days was a problem. Usually very few things were done in three readings. They would have some warning ahead of time that this could be a problem.

Alderman Trumbo moved to suspend the rules and go to the third and final reading. Alderman Thiel seconded the motion. Upon roll call the motion carried unanimously.

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

Ms. Paula Marioni, an area resident, stated she had worked on an effort to save Carnell Hall. They had gotten four thousand signatures in thirty days during their petition drive. They were already organized. It was already an impassioned issue. She did not bring this issue forward, but she could relate to it. Thirty days was not really enough time for the citizens to be able to rally interest and to make their concerns be known. When they get the energy rolling and people were excited about it, then they would jump in. If it was not there it was going to drag on forever.

Alderman Thiel asked the attorneys what they thought of the forty-five day proposal. It was critical for bonding purposes?

Mr. Wilburn stated they would be different from everyone else in the State. As far as he knew, everyone else in the State was thirty-one days.

Alderman Young stated there was a law passed stating that any one who did not have an ordinance on the books, the affective date was ninety-days.

Mr. Wilburn stated he had not come across any city which did not have that ordinance on the books.

Alderman Santos stated there were other re-courses. They were trying to change an ordinance which was going to have an adverse affect on ninety-nine percent of their ordinances.

Alderman Zurcher asked who was being hurt by the delay besides the bond issuer.

Alderman Reynolds called for the vote.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance failed by a votes of 3-5-0, Santos, Reynolds, Thiel, Trumbo, and Davis voting nay.

ORDINANCE FAILED.

NEW BUSINESS

CLIFFS APARTMENTS: An ordinance waiving Ordinance 3793 to accept money- in-lieu of the park land requirement for the Cliffs Apartments Phase II Development.

Mr. Williams read the ordinance for the first time.

Alderman Davis stated he was in favor of this. The developer was giving one hundred and thirty-five thousand dollars in lieu of land. They were also going to be putting in an olympic sized pool, jogging and walking trails.

Mr. Williams stated they were developing as a PUD and this was private park land that they were having for their residents. They were donating money rather than giving additional land for a public park.

In response to questions, Mr. Tim Conklin stated this was an extension of the Cliffs. The property is surrounded to the east and north by the original Cliffs Boulevard and Highway 265. The planning and development was in the process right now. They were meeting the open space requirements with regard to the request for increase in density bonus. They had a two hundred and fifty foot setback around the perimeter. It was a Planned Unit Development. It was an expansion of the original Cliffs. They will have park like amenities within the development in addition to the one hundred thirty thousand five hundred dollars.

Alderman Thiel stated that they did have parks near by and that they did not really need the park land. Park land acquisition to the north was preferred in the future. She supported this.

Ms. Connie Edmonston stated that they encouraged developments to add park amenities for their people because it took stress of the park system. They can still serve the area with other park amenities such as soccer fields or skate board parks. It was a good compromise that when they had a development with the community spirit of providing for the people recreational activities that it was a good deal for both people.

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

Mr. Williams read the ordinance for the second time.

Alderman Santos stated he would like to explain that this fee was an impact fee, it was based on the demand for parks created by the new residents. This was going to be a public park, but it was going to provide recreational facilities for these residents. It was a great deal for the city because in addition to providing for the demand created by the development they were also contributing to the greenspace fund, just as if they had not included a park in their development which already met their new residents demands for recreational facilities.

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

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

Mr. Geary Lowery, an area resident, stated make sure that they collect the money. Subdivisions and places that were suppose to dedicate money or land to the city have not done so. The area where he lived was supposed to dedicate fourteen thousand eight hundred and forty-eight dollars toward the Parks and Recreation department. They had yet to fulfill their obligation. He suggested that they get their documents recorded and checks certified.

Ms. Edmonston stated upon final plat approval there were spaces where everyone had to sign off on. One of them was the parks. If they were requiring park land or money in lieu. If it was land they did not sign off until a deed is received. If it was money they did not sign off until they had paid the money to the city. They did have check and balances in place now. She did not think that could happen.

Alderman Thiel stated she had checked on it, during that time the individual when they built a house within a subdivision they were supposed to take care of this. That became very difficult to track. There were probably a lot of older subdivisions still where that happened. For them to try and track that now would be cost prohibitive. Their ordinances now protected them from that situation.

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

ORDINANCE 4328 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 01-10.00: An ordinance approving rezoning request RZN 01-10.00 submitted by George Faucette on behalf of James and Judy McDonald, for property located at 461 East Township. The property is zoned R-1, Low Density Residential and contains approximately .42 acres. The request is to rezone to C-2, Thoroughfare Commercial.

Mr. Williams read the ordinance for the first time.

Alderman Santos asked to leave this item and the next on the first reading tonight. He did not have a problem with any of them. But they needed to give people in the community more time.

Mr. Faucett stated this item had passed the Planning Commission by a vote of 9-0. In addition to that over half of the lot was zoned C-2. He thought there was a problem with the zoning map.

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

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

Mr. Conklin stated the staff had recommended approval, the Planning Commission did approve it. In this situation, it was a lot which was half zoned C-2 and half R-1. The use had been established in the early seventy's. It was a clean-up rezoning. There was currently a retail business there.

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

ORDINANCE 4329 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ANX 01-2.00: An ordinance approving annexation request ANX 01-2.00 for property located east of Sunshine Road and South of Mount Comfort. The property is in the planning area and contains approximately 14.47 acres. The request is to annex the subject property into the City of Fayetteville.

Mr. Williams read the ordinance for the first time.

Alderman Zurcher asked if they had any idea of when they wanted those planning areas to develop.

Mr.Conklin stated this annexation is directly north of a forty acre annexation that they looked at a couple of months ago. At that time, the Mayor brought up that they would begin looking at annexation policy for the City of Fayetteville. His staff has begun that effort, along with updating their general plan with the 2000 census numbers. What he intended to do was to bring forward an amended General Plan with the first three chapters and adding a chapter with regard to annexation policy. That would be brought through the Planning Commission and the City Council. Most cities that had an annexation policy have placed those policies within their Comprehensive plan. That was what they were looking to do.

Mr. Philip Humbard, Engineering Services, this parcel did contain the park land that they were going to dedicate to the city as part of the development.

Alderman Thiel stated this was part of a large park.

Mr. Conklin stated this was along Hamstring Creek. The idea was to have the land dedicated as part of a potential greenway system along the creek. They had received other land dedications in other developments closer into town. The idea was this would make an ideal location for some type of trail or greenway system. It contained floodway and floodplain. It was a beautiful piece of property that would be good for a trail.

ORDINANCE WAS LEFT ON THE FIRST READING.

RZN 01-11.00: An ordinance approving rezoning request RZN 01-11.00 submitted by Phillip Humbard of Engineering Services on behalf of Cross Creek Subdivision for property located east of Sunshine Road and South of Mount Comfort Road. The property is zoned A-1, Agricultural, and contains approximately 14.47 acres. The request is to rezone to R-1, Low Density Residential.

Mr. Williams read the ordinance for the first time.

ORDINANCE WAS LEFT ON THE FIRST READING.

RZN 01-12.00: An ordinance approving rezoning request RZN 01-12.00 submitted by Rob Sharp, on behalf of Brian Reindl, for property located at 509 West Spring Street. The property is zoned I-1, Heavy Commercial/Light Industrial, and contains approximately 1.91 acres. The request is to rezone to C-3, Central Commercial.

Mr. Williams read the ordinance for the first time.

Alderman Zurcher stated this has been used as commercial. He was concerned about the people who were doing some light industrial there, would they be forced out?

Mr. Conklin stated any use that was allowed in I-1, that is now unconforming would be grandfathered in. They did have standards within their zoning ordinances and how long they could be abandoned until they had to comply with the C-3 zone. Typically it was six months. Any parts of the building that was currently being used and continue to be used in that manner can continue as long as they did not stop having business. They were grandfathered in. The city was not going to send them a letter ordering them to discontinue.

Alderman Davis asked if they were allowed to expand the inside that building.

Mr. Conklin stated they were not allowed to expand. There were limitations on how much remodeling or renovations that they could do. It would allow the business to stay in operation. It was not going to put any burdens on them. C-3 had been passed a few years ago to help revitalize Dickson Street. This allowed existing buildings to used or converted from warehousing to retail without requiring additional parking. Prior to that they required parking. It was very difficult to provide that parking. They had seen a lot of their old industrial buildings on Dickson Street and that area be converted from warehousing /industrial uses to retail, entertainment uses. This rezoning would allow them to convert additional space within that building to retail, restaurants, and entertainment uses without having to provide additional parking. It encouraged the use of these old buildings.

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

Mr. Williams read the ordinance for the second time.

Mr. Bob Sharp, applicant representative, stated they had been approved at the July 9, 2001 Planning Commission meeting. He would appreciate it if they could approve this tonight.

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 read the ordinance for the third and final time.

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

ORDINANCE 4330 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SPECIAL ELECTION: A resolution expressing the intent of the City Council to call a special election to dedicate one-quarter cent (.25%) sales and use tax for bonds to fund development of projects toward achieving the goals of the Master Park Plan and the Master Sidewalk and Trail Plan.

Alderman Thiel stated she had brought this forward because she knew that people had wanted parks and trails and sidewalks. She had brought this forward now because of the proposed park they had planned around the proposed wastewater treatment plant. She thought it would be a selling point to tie the three-quarter cent sales tax to the park and trail sales tax. She thought people would support the one-quarter of a cent sales tax. The arguments that she had heard indicated that it would complicate the ballot and cause confusion to the voters. Her intention was not to jeopardize the three quarter sales tax proposal. It was critical that it got passed. She wanted to see if people were interested in this idea. No one has come forward one way or the other. She would leave it up to someone else to make a motion. If no one made a motion it would die from lack of a motion.

Mayor Coody stated they were starting the budget process for 2002. They have found some ways to consolidate funds to be more affective providing services.

Alderman Thiel stated the park proposal around the plant was roughly forty percent of the master park plan. It was roughly a fourteen million dollar park project. She was going to support it for many reasons. It was going to be difficult to fund that project within the next twenty years with their current funding. She thought it was better to not mix it with this issue.

FAILED FROM LACK OF A MOTION.

Meeting adjourned at 8:45 p.m.