MINUTES OF A MEETING
OF THE
CITY COUNCIL
AUGUST 21, 2001

A meeting of the Fayetteville City Council was held on August 21, 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 Jordan, Reynolds, Thiel, Young, Zurcher, Trumbo, and Davis, City Attorney Kit Williams, City Clerk Heather Woodruff, Staff, Press, and Audience.

Mayor Coody stated he wanted to explain some of the options regarding the Wastewater Treatment Project. There were basically three options, the three-quarter percent sales tax, sewer rate increase, and the third option was to go to the open market. With any of the three scenarios they would see, in the year 2004-2205, approximately a twenty-nine percent rate increase with their sewer bills because the one hundred and twenty-five million dollar bond issue will pay for the construction of the new system. One-third of which is the new plant, two-thirds was rebuilding their aging infrastructure. The rates will be increased for maintenance. The bond issue will build the new system, but it will not operate it. If they approved the sales tax, the total interest that would be accrued will be twenty and one half million dollars. With the State Revolving loan at twenty years the interest will be just under forty-seven million dollars. If they had to go conventional, the interest payment would be seventy-two million dollars. There would be a meeting August 23 at the Continuing Education Building at 6:30 p.m. regarding the environmental assessment. There was a lot of information that they needed to get out. This was the biggest issue facing Fayetteville. He wanted all the citizens to be clear in regards to this matter.

CONSENT AGENDA

APPROVAL OF MINUTES: Approval of the minutes from the July 31 and August 7, 2001 meetings.

STEPHENS INC.: A resolution authorizing additional continuing services from Stephens Inc. to provide continuing financial advisory services on the Wastewater System Improvements project financing. The rate per hour is $225.00 and is restricted to certain identified individuals. The authorization requested is not to exceed $15,000 and will be paid from the project budget.

RESOLUTION 114-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BLACK & VEATCH: A resolution authorizing additional continuing services from Black & Veatch to provide continuing system rate analysis services for the City in conjunction with the Wastewater System Improvements Project. The authorization requested is not to exceed $20,000.00 and will be paid from the project budget.

RESOLUTION 115-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

GRANT AGREEMENT: A resolution approving a sub-recipient grant agreement to the Project for Victims of Family Violence.

RESOLUTION 116-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SFCDC: A resolution approving a sub-recipient grant agreement with the South Fayetteville Community Development Corporation.

RESOLUTION 117-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

OLD BUSINESS

SHEWMAKER: A resolution approving a budget adjustment in the amount of $76,436.00 to pay for the City Council's counter offer made at the Special City Council Meeting on July 31, 2001 to settle the Shewmaker case which has been accepted.

Mr. Williams stated that he had received formal notification from the Shewmakers accepting the counter offer which had been presented at the Special City Council Meeting on July 31, 2001. Therefore, they had a contract with the Shewmakers to settle the case. The city council needed to approve the budget adjustment so that this contract could be carried out.

Alderman Young asked what would be the ramifications if they failed to pass this budget adjustment.

Mr. Williams stated they would be breaching a contract. Once there has been an offer and an acceptance then they had a contract. The contract is enforceable by either party. If they tried to back out they would go to court, the city would lose and would have to pay.

Alderman Trumbo stated it had been Mr. Williams advice to not accept the settlement offer.

Mr. Williams stated that he had advised the council that this case should not settle, but that did not make any difference. They had not always followed his advice. They had a contract, which must be paid. The decision on whether or not to settle was a judgement call. He did not argue with the council not making the settlement offer, after all it was only fifteen percent of the original claim. In response to questions from Alderman Trumbo, Mr. Williams estimated it would have cost Fayetteville ten thousand dollars to try the case for expert witnesses. The settlement insured them that they would not have any larger judgement facing them. He did not recommend this settlement, but he did not think that it was a bad offer.

Alderman Zurcher moved to approve the resolution. Alderman Jordan seconded. Upon roll call the motion carried by a vote of 5-2-0. Reynolds and Trumbo voting nay.

RESOLUTION 118-01 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. The ordinance was left on the first reading at the August 7, 2001 City Council meeting.

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

Mr. Williams read the ordinance for the second time.

Alderman Jordan stated he would like to have explained to him how they could have a sewer treatment plant that was over taxed and yet they continue to develop at a very rapid rate. What concerned him was the fact that every development that they put on was like driving a nail in the coffin of the sewer treatment plant and that concerned him. In this city he thought they had come to a point where they develop smart growth here. It has come time for the business people and citizens and the pro-growth and the anti-growth people to sit down at the table and decide which way we were going to go in this city. They could not have it both ways. They could not say they had a problem with the sewer system and continue to develop at a rapid rate. He asked the developer if they were going to develop this property if they annexed or not?

Mr. Bill Helmer stated they would develop the land. This property adjoined other property which had already been annexed and the preliminary plat had been approved. This would be an extension to that parcel. It was adjacent to the Bridgeport Subdivision.

Alderman Jordan stated if the city did not annex this land and put it under city regulation, that they would develop under county regulation, which was basically none. It concerned him on where this would stop. He asked for someone to address his concerns.

Alderman Trumbo stated legally they could only impose a moratorium for a certain period of time.

Mr. Williams stated they were not under any requirement to annex land. If they had a moratorium on rezoning or development it had to be a fix amount of time. There also had to be a reason behind it. They had to be working on a solution or have some reason why they had to have a moratorium. If no new plant was authorized or built then they would be facing a moratorium. The EPA would require them to have one. There was no requirement for them to take land in that was a call that this council made.

Alderman Trumbo stated he had been under the impression that with the existing Noland Plant it was not a certain gage that said they could not take any more. It was a best guess effort based on calculations and flows. There was not a gage which stated they could not take any more. They receive fines for overflows.

Alderman Young stated the city had looked at what could be developed. They knew the capacity of the plant, so what they have been doing is monitoring each of one of these subdivisions. As a subdivision came in they would reduce the number of units. They kept a running total of the how much capacity is left at the plant. There was still some capacity at the plant now. It kept shrinking. They also had a safety factor built into their numbers. It was only an engineering guess.

Mr. Bill Helmer stated the existing Fayetteville infrastructure was on the property. There had been a condemnation across this property to provide sewer. The existing sewer for Bridgeport and Field Stone and some of the other area, the line that supported it ran across this property. Those easements were controlled by the city. There was not a void of infrastructure for this area. In addition, requirements had been made to stub into this property. He was sure that the reason those requirements had been made was because of the presence of existing infrastructure. The city had planned many years ago for this line to go to the lift station.

Alderman Thiel stated that was real important. This whole development has been planned. This was not a new area that they were annexing. This had been planned. It concerned her that they would develop the property whether or not it was annexed. They did not want to see septic tanks out there.

Alderman Jordan asked where it would stop.

Alderman Thiel stated in this area it all tied together. It was something that has been planned. Another point was that the park land dedication that this development would add would fill in some links in this area. She was in favor of this annexation, even though she did agree with a lot of his points.

Alderman Jordan stated he was not anti-growth, but he did believe that growth could be contained.

Alderman Thiel stated she believed this was smart growth.

Alderman Davis stated every person who came through with a subdivision that there was no guarantee that they will be allowed to hook up.

Alderman Zurcher stated there was a difference between smart growth and planned sprawl. Just because it was planned did not mean that it was smart. The infrastructure was there when it comes to the pipe, but the infrastructure they were really talking about was the capacity. He thought they should really consider this annexation and what the impact was really going to be.

Mr. Conklin stated the Assistant Public Works Director did calculate every year the remaining capacity of the plant based on what the Planning Commission had approved. They were keeping track of what was approved at Planning Commission and the excess capacity they were planning for. There was a 500,000 gallon safety amount which was being held back also. Last January, it had been estimated that there were two years left based on the current growth that they were seeing in Fayetteville. They were making sure developers signed a form stating that the city could not guarantee sewer capacity in the future. They were keeping track of those numbers.

Alderman Thiel asked if the estimates were based on estimated growth.

Mr. Conklin stated they were based on everything approved by Planning Commission, plus growth that occurred on in-fill situations. They were backing out everything that the Planning Commission approved. There was capacity left for what they were approving currently, but at some point they would need to discuss what happened when they reached the number. They were trying to keep a close eye on things.

Mr. Earnest stated one of the things that they hoped they could get to as a public dialogue beginning September 11, 2001 was a discussion about smart growth. There was a lot of misconceptions about it. One reality was that it was not no growth. It was reasoned reasonable growth or sustainable development. Was it development that they could sustain over time without spending to much public money. That was part of the issue when they talked about sprawl is that could they continue to sustain leap frog development. The other reality, though, for any city in America is that those cities that did not capture their growth begin to die. Those cities that did not capture their growth by some mechanism began to wither and die. There was not an easy answer. The reason they had planning areas was so that they could control the growth that they reasonable expect to annex. In earlier years many cities in Arkansas were surrounded by substandard streets and sewers. What they had here was a way to capture it. The question was what inducements and encouragements could they put in place as a public body to encourage people to come back in and do things like in-fill and revitalization of the downtown areas. Most cities since WWII have declined in density and have moved out. The challenge was to make people want to come back in live in a closer relation to each other. The city was bringing in Mayor Brent Coles, Bois, Idaho, to talk about smart growth.

Alderman Trumbo moved to suspend the rules and move to the third and final reading. Alderman Thiel seconded. Upon roll call the motion carried 6-1-0, Zurcher voting nay.

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

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 5-2-0. Jordan and Zurcher voting nay.

ORDINANCE 4331 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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. The ordinance was left on the first reading at the August 7, 2001 City Council meeting.

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

Mr. Williams read the ordinance for the second time.

Alderman Davis moved to suspend the rules and move to the third and final reading. Alderman Trumbo seconded. Upon roll call the motion carried by a vote of 6-1-0. Zurcher voting nay.

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

Alderman Zurcher stated he believed this to be urban sprawl and what they had done now was annex it to the city and they were getting ready to put it to, what he considered to be, a non-beneficial use to the city, which was dense development on the edge of town. He would be voting against it.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 5-2-0. Jordan and Zurcher voting nay.

ORDINANCE 4332 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

BOYS & GIRLS CLUB: A resolution approving an agreement with Fayetteville Youth Center Inc. d/b/a Fayetteville Boys & Girls, Inc. of Washington County.

Alderman Trumbo stated he would like to thank Tom Stockland and Kevin Renner because when they applied for this money this was a project where they were looking at only spending ten cents on the dollar of public funds to provide what is the most state of the art Boys and Girls Club facilities in the United States. This project would not have been possible without the donations from the Reynolds Foundation. Only seven of the three thousand projects which were submitted were funded.

Mr. Mike Hill stated it was a three page agreement. The basic understanding was that the city would be providing funding for the development and the improvements on this property, which primarily had to do with two game type fields, lights, bleachers, parking, drainage swell. There would be a walking trail around the perimeter, which would put some of the property in the easement areas around the edge of the property. All this would be available to the public. They would have outside bathrooms during the hours they were open. They planned on being open seven days a week. They will be responsible for maintaining that property and paying the utilities and scheduling the use of the property.

Alderman Trumbo asked other than the million one of city dollars toward the infrastructure, there was not other tax or taxing mechanisms that would be used for this project.

Mr. Hill stated they had received correspondence from the Reynolds Foundation.

Mr. Tom Stockland stated they had received word from the Reynolds Foundation that upon execution of the agreement that the council was considering tonight, preconstruction funding for the Donald W. Reynolds Boys and Girls Club will be reinstated as soon as that executed document can get signed by the principle parties and sent to Las Vegas.

Mr. Williams stated they have had this agreement in principle for a long time. The only thing that they had to do was get it in writing.

Mr. Earnest stated that as a fiscal responsibility the city has and will make some considerable changes in its 2002 and 2003 CIP Program. It was a correct change in their expenditure pattern. They were spending $680,000 that had been programed for other areas. He thought they were going to get an excellent facility for the amount of money they were putting in.

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

RESOLUTION 119-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 01-13.00 An ordinance approving rezoning request RZN 01-13.00 submitted by Kirk Elsass on behalf of HCL Properties for property located south of Zion Road in HARB-CO Subdivision. The property is zoned R-O, Residential Office and contains approximately 1.4 acres. The request is to rezone to C-1, Neighborhood Commercial.

Mr. Williams read the ordinance for the first time.

Mr. Kirk Elsass stated this was going to be a baseball batting facility on the east side of town. He thought that it would be a great compliment to the area.

Alderman Davis stated the Planning Commission had approved this 6-0. He thought it would be a great addition to the community.

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

Mr. Williams read the ordinance for the second time.

Alderman Davis moved to suspend the rules and move to the third and final reading. Alderman Reynolds 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 4333 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

The meeting adjourned at 7:20 p.m.