

**MINUTES OF A MEETING
OF THE
CITY COUNCIL
OCTOBER 16, 2001**

A meeting of the Fayetteville City Council was held on October 16, 2001, at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street.

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

CONSENT

APPROVAL OF THE MINUTES

POLICE CARS: A resolution accepting the State of Arkansas contract award ST-01-0194/a, Item #7, 2002 Ford Crown Victoria Police Interceptor Sedan including Option "IO" and modifications to "radio" with authorization to purchase nine units. The vendor for this purchase will be Landers Ford.

RESOLUTION 135-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PAGERS: A resolution to allow expenditures of up to \$25,000 for pagers for year 2001.

RESOLUTION 136-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CELL PHONES: A resolution to allow expenditures of up to \$25,000 for cell phones for year 2001.

RESOLUTION 137-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

DDEP: A resolution approving the contract for services between the City of Fayetteville and the Downtown Dickson Enhancement Project.

RESOLUTION 138-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ARKANSAS AIR MUSEUM: A resolution approving a contract for services with the Arkansas Air Museum.

RESOLUTION 139-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

00050.1

JOYCE AND MUD CREEK TRAIL: A resolution awarding the construction contract to General Contract (contingent upon receiving written approval from AHTD), and approve funding for project contingency and material testing for the projects entitled "Joyce Boulevard Trail and Eastern Mud Creek Trail Construction".

RESOLUTION 140-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CDBG: A resolution approving a budget adjustment in the amount of \$94,000 to reallocate the 2000 CDBG funds. The Department of Housing and Urban Development has approved the reallocation of these funds.

RESOLUTION 141-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

T-21 FUNDING: A resolution authorizing the submission of a grant application for T-21 funding to the Arkansas Highway and Transportation Department.

RESOLUTION 142-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

STEP GRANT: A resolution accepting \$37,000 continuation of the Arkansas State Highway and Transportation Department Selective Traffic Enforcement Program Grant.

RESOLUTION 143-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

FBO AT DRAKE FIELD: Review and approve items related to City of Fayetteville Fixed Based Operations at Drake Field. Bid acceptance and approval of contract with AVFUEL Corporation and approve a budget adjustment.

RESOLUTION 147-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BEKKA DEVELOPMENT: A resolution authorizing the payment of the legal expenses of Bekka Development Corporation related to the Town Center in the amount of \$472.50. 54.5

RESOLUTION 144-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

OLD BUSINESS

THUNDER VALLEY SPEEDWAY: A resolution authorizing the City Attorney to file a suit, if necessary, against the owner of the land and the manager of the Thunder Valley Speedway as a public nuisance. The item was tabled at the October 2, 2001, meeting.

Mr. Williams stated he had spoken with the owner of Thunder Valley Speedway. He had gone to the owner's office in Springdale. The owner was willing to close the raceway at midnight on Saturday night and eleven o'clock through the week, on a weekday night. He would not limit the number of races per night that he would run there. That was the best offer that he would make to them. He pointed out that when Brenda had come to him with complaints from her constituents, they looked at the situation and she had showed him a previous permanent injunction that had been issued to the previous owners of this raceway, back in 1972, by Judge Butt. They had been enjoined as a nuisance. He had followed up and did some research and wrote her back on July 23, that he had found another case that had stipulated that a motorcycle race track was in fact a nuisance and had been enjoined. Since then, his assistant and I have done a lot of research in this area. They had found an unreported case where a speedway by Jonesboro was permanently enjoined, including any successors or assigns. In other words, this land would never be able to be used as a speedway in that particular case. What did concern him and David was that they had not been able to find a case involving a municipality suing someone for a public nuisance, outside city limits. Fayetteville had been party to the Bakery Feeds. That case had been settled. Bakery Feeds had been within the city limits. Back when he was on City Council they had also found River City was a nuisance and they were closed down. They had not found a case involving a municipality suing someone that was outside the city as a public nuisance. That did not mean that they could not do that. He wanted to warn them that the first hurdle that they had to get past, in front of a chancellor, was that the city had proper standing, that they had the right to institute this suit. Any property owner nearby that is adversely affected by the race track owner can sue the race track owner as a public nuisance. That was what happened in 1972 and all the other cases which had been cited to them. His argument to the judge would be that he also had a right to represent the citizens which were being injured and file suit. He was not sure what the judge was going to say. He thought that they should know that at the beginning of the discussion that there was some chance that the judge might say they did not have standing. He thought, based on the facts and merits, that they had a very strong case. Many people were being adversely affected by the operation of this racetrack. They had a previous injunction where the racetrack was supposed to be closed by ten p.m.

Alderman Young stated he had two questions about this and that was one of them. The other question that he had concerned the cases where the racetrack was outside city limits. He asked if it said how long the racetrack had been in operation.

Mr. Williams stated he thought in both cases that they had not been long lasting nuisances when they were sued. He pointed out that this racetrack, even though it had been in operation for a very long time, has had a former injunction on it. It has been found to be a public nuisance when operating after ten p.m. There had been people living there at the time and they had felt that they could rely upon that injunction when they built their homes. That would be a fact issue, because they would be arguing about how long they had been operating so late. He was sure that the owner would say "forever" and the local property

owners would say, "not very long."

Alderman Young stated the standing and whether or not those cases applied because those cases involved a racetrack that started operation with residents already there. They would have to argue that the fact that the racetrack had been there a long time. He knew the track had been there in the 70's.

Alderman Thiel stated the original lawsuit had been filed prior to the racetrack being completed or just after it was completed. Because they had been advised that there needed to be a disturbance. Some of the testimony had been based upon the disturbance. The fact that people built or bought homes knowing the track was there was a major point of argument about this issue. She wanted to emphasis that up until about ten years ago the previous owners complied with the ten o'clock rule. Ten years ago the owner doubled the size of the track, which enabled more cars to race, increasing the sound considerably. They basically started disregarding the ten o'clock deadline. She did not believe a lot of people had bought homes since then. She knew of several lots that could not be sold because of it. She had lived out there for twenty-five years and had gotten along with the first owners. About eleven years ago she had built a new house up the hill. The track then changed. That was the basis of the concern by a lot of the people. They bought prior to the track changing the way it was being run. They bought with the understanding that it would shut down at ten o'clock. The city had a responsibility to the citizens to provide a good quality of life. She did not think that they wanted to put a popular, economically, beneficial business out of business. She thought there were some other things that they could consider tonight.

Alderman Zurcher asked if they were to file suit, what exactly would they be asking the judge to do?

Mr. Williams stated he would get his instructions from them. What he would recommend to them was that they go along the same lines of the original injunctions. That they look at a firm closing time. They should also look at limiting the number of races. He did not believe that would be too much of a hardship on the owner, because he was on a circuit. They normally only race once a week. He thought that the citizens would want some assurance that in fact there would not be more than an average of one a week. He thought they should look at a set time to close down and a limit on the number of races per week. There might be something else in relation to mufflers. He thought they already had a requirement for mufflers. The actual noise level itself was a different issue.

Alderman Thiel stated she wanted to mention another thing that the Council had an option of doing. They could vote to let the citizens decide this, to decide whether or not to annex the property into the city limits. That way all the citizens of Fayetteville would have the opportunity to vote on this issue. If this was annexed into the city limits they would have to comply with their noise ordinance.

Alderman Davis asked if it would be grandfathered in.

Mr. Williams stated he did not believe it would be. When they adopted the noise ordinance, there had been live music on Dickson Street.

Alderman Davis stated he understood that the noise ordinance would apply, but would the track itself be grandfathered in?

Mr. Williams stated the track itself would be grandfathered in, but they would have to comply with their regular ordinances.

Alderman Thiel stated she did not want to get ride of the track. A lot of people enjoyed it.

Alderman Reynolds stated they did not come into this to close down Thunder Valley Speedway. What they were after was for Mr. Berry to tell them that they would end it at a time that the neighbors could live with. They were after a closing time. All they needed was a simple agreement and a closing time that the neighbors could live with.

Mr. Richard Berry, track owner, stated he was the owner of the track. He reiterated that if they had came and talked to him before they got so busy about putting things in the paper they would have had a lot better dialogue and they probably could have worked something out. He asked the city attorney what the definition of a public nuisance was.

Mr. Williams quoted it had been defined as, "conduct by one landowner which unreasonably or unlawfully interferes with the use and enjoyment of the land of another. It includes conduct on property which disturbs the peaceful, quiet and undisturbed use of nearby property."

Mr. Berry stated he could not tell the City Council what to do. He had been thinking that they had two things that they could do. They could sue them and win. They had then opened a can of worms for other lawsuits. Or they could sue them and lose and then where were they at. He thought they needed to understand that they did not have any business and they should bow out. It was a fact that they might open up a can of worms. If everyone went to bed at ten on Saturday night, then they would close down at ten. They were not disturbing the peace if they were not in bed. Where was this going to stop? Were they going to have to mow their lawn at a certain time of the day on a certain day of the week? When were they going to try and stop running other people's lives? All of them were effected by this. They needed a common sense deal here. He had offered a deal and they had not gone for it. He had told them midnight on Friday and Saturday nights, and eleven o'clock on weeknights, and they could not limit themselves to one night a week. They could not make a living that way. This was a business. Midnight was not an unreasonable time. They could live with that. They were not saying that they would go to midnight every time. That was what they could abide by. They normally get done by ten, ten-thirty and eleven. That was not very

long. He did not understand why they were making such a big deal out of such a little thing.

Ms. Reda Hemp, 48 E. 27th Circle, said there were a few additional things that she would like to point out. This was a growing situation. They moved here in 1993. Looking back over some notes that she had conversations with the City Prosecutor, Mr. Jones during the mid-ninety's. Mr. Jones had worked out an agreement with an owner to quit at ten o'clock. They previously had those agreements and then the property would be sold and they would have to start all over again. It has been getting later and later and louder and louder. It was an ever-increasing burden. If they say they were not going to do anything about it today, because they did not do anything about five to ten years ago. Then five and ten years from now when it was going five days a week until four in the morning, what do they say then? At what point does this incrementalism stop? She had a difficult problem believing that Mr. Berry had purchased the property four or five years ago in complete ignorance that it had been controversial since the day the ground broke. There has been a history of controversy and complaints from the neighbors. That no one had called him personally to talk about-she would not have called him, what good would it have done her. Another point she would like to point out to Mr. Williams was that when the people in the area say they wanted it limited to one day a week, it was not because they were saying one day a week was enough to have to listen to it. It was for planning purposes. They had all agreed and understood and don't mind, to some extent, sharing their living space with the racetrack. They understood that none of them could plan a backyard barbeque or cookout or have friends over on Saturday night during the summer time because odds were it was going to be too loud. So, they did not plan things for Saturday night. If he gets rained out on Saturday night, they had to run on Sunday, then there went their Sunday. They needed to know, if he was going to have a rain day, they needed to know that rain day would be a certain day. That was reasonable. They needed to have something that they could work with. They had conceded Saturday night to them. They were only asking them to quit at a reasonable hour on Saturday. If they were willing to give up their Saturday night so they could have fun on their track, then surely they could start early enough on Saturday to have it done at a reasonable hour.

Ms. Beth Miller, an area resident, stated she had purchased her home eight years ago with the understanding that there was a judgment on it that they would be closed at ten o'clock. Since she has lived there the latest she could remember it running was two in the morning. She did not feel that ten o'clock was unreasonable, if they could find a way to make it quieter. They could not go outside. They had to go inside and close the windows and doors and turn the television up, even then the noise would come through. There had been a couple of makeup nights. Two Tuesday nights they had raced. The last one had gone to eleven-thirty. School still started at eight o'clock. They had not been able to go to bed at eight-thirty because the races were going. She did not believe that they were being unreasonable. She was sure that a lot of people enjoyed the noise, but there were a lot of people who did not. This noise did not just effect Fayetteville. It effected Elkins, Greenland and some Springdale residents. It was very loud. If they could quiet it down some. It had been her understanding that it was ten o'clock. There were several people who attended the races that

wore earplugs. She hoped that they could come to some sort of an agreement.

Mr. Dick Privates, an area resident, stated in July he had taken his father and mother to the races. In August he had taken his grandson. In September evil people had tried to take away the freedoms of people. These were not the people he was concerned with. The people in his own back yard were the ones he was concerned with. They were willing to take away his freedom to enjoy car racing. It was the voice of a few which stopped prayer in their schools. It was the voice of a few that took the Ten Commandments out of the courthouse. It was the voice of a few that have tried to take God out of their vocabulary. Today it was the voice of a few that was trying to take away his freedom of watching racing at Thunder Valley. He could say that it was time that the voice of many be heard. All the people who were race fans were speaking with one voice. And that was that Thunder Valley was not a public nuisance. Many people enjoyed the freedom of baseball, soccer, football and all other sports. They had the same rights that those people have to go to car racing. America stands for freedom and no one could take that away.

Mr. Kevin Gwen, racer at Thunder Valley, stated they keep going back to 1972, at that time there might have been only twenty cars at that track. 1972 stock car racing was not what it is today, even ten years ago they were able to close at ten o'clock. Ten years ago they could not find a Nascar race on television every Sunday. Today they can. Racing was such an American sport. It was not right to take that away. Another thing they had addressed was starting earlier. They started at seven because of the heat. He personally wore a three-layer driver's suit, in August that suit is approximately one hundred and thirty degrees. If they were to start any earlier, in the heat of the day, who know how many drivers would black out from heat. They had one driver running a hundred miles an hour into a wall because he passed out from the heat. He thought seven o'clock starting time was not that bad. They were not saying they were going to race to twelve o'clock every night, but he was guaranteeing that they could be done by twelve. They were not going to race until midnight because they say it's okay. They were normally done by ten-thirty or eleven. He had been racing there for six years. He could not ever remember racing to two-thirty in the morning at Thunder Valley. They had done that at other tracks.

Mr. Eddie Gwen, car owner, asked if they as a Council for the city want to take on a fight for a relatively small group of people? There were some problems with the racetrack and sometimes they did run past ten o'clock, probably every night that they race. He for one, as an owner or racer, if it was going to run later than ten thirty he was not going to go, because he had a lot to do once he got home. He thought the time factor would take care of itself, if it were a week in and out problem.

Mr. Joe Hurley, an area resident on Country Club Hill, stated he had carried the petition around. He thought they needed to decide if they could win the lawsuit or not. He had been in two lawsuits. They needed to think about if they could win or not. When he was carrying the petition around, he had been in Mayor Hanna's home. He had signed the petition. Fred

had stated that the City Council could not do anything about this because it was outside city limits, but a judge could. Most judges were going to be unbiased. If he thought it was a nuisance he was going to rule against it. He thought it would be good if they had a lawsuit, but if they did not think it would go any good, then he would recommend not having a trial.

Mr. Robert Cooper, an area resident, state that he lived by the country club. Last week he went to a Ward 1 meeting. He wanted to hear what was being said about the racecar. He wanted to see and put a face on Mr. Berry. The fellow who in the newspaper stated that if they did not like it, the people on Millionaire Mountain could afford to buy him out. If they did not like it, they could put up or shut up. Mr. Berry's argument appears to be of two types. One is there was nothing legal that they could do about this. The other is that this is not a nuisance. He did not know what the answer was to the first one, but he was here to tell them he knew what a nuisance was. He assured them that was the folks around the racetrack were going through considered it to be a nuisance. They could compare it to Razorback Football games or anything else that they wanted to, but the fact was that what they were being subjected to, they consider to be a nuisance.

Ms. Lisa Veseska, Prairie Grove, stated she and her husband enjoyed the races. She had been going the races since 1986. It was funny to her that this problem did not come up until this year. She did not know how long it had been going on. They had said 1972. Judge Butt was dead and gone. This was a new time. They needed to start from now. She agreed with what Richard Berry said. She knew that this was one of the best seasons that they had. Lance Lee was undecided if he was going to keep it and run it again next year because of all the commotion. They did not want any problems from this. They just wanted to enjoy their racetrack and their drivers. They supported their drivers and she enjoyed the show they put on for them. They came from Missouri, Oklahoma, and all over Arkansas. That track has never run until two thirty in the morning. She used to live on Black Oak Road in Springdale and she never heard the racetrack. The majority of the homes around the racetrack were not there. They chose to build there. They knew the track was there. They could not put a time on a racetrack. Who knew if there was going to be an accident or a lose a wheel. There was going to be a caution. They were going to give that guy a chance to fix his car and get it back out there. That was only fair. As far as a nuisance, yes, their Razorback games were a nuisance. She was not a hog fan. They could not get down Hwy 62 when there was a game in town. If there was a noise ordinance in Fayetteville, then they should enforce it. There were a lot of times she pulled up to a stop light with a teenager with a boom box so loud it could break her windows. They had a sign ordinance now that did not allow for them to advertise their own business because it was going to obstruct the view, but they advertised for people to come to Fayetteville, but don't buy or build anything. What they were doing was taking the rights of people to run their business. That was why the majority of the businesses were talking about leaving and not doing business here. The way she felt about it, if she had to drive to Oklahoma or Missouri to the races ever Saturday night, they were the ones who were going to get her business. These race car drivers came in here and fueled their cars here. They used their motels and eat at their restaurants and they talked about

HMR tax and they did not think that they were getting any. Where do you think these guys were spending their money when they were here for the races? She had moved out of the city of Fayetteville because they trying to tell people what they could or could not do with their land. They were not going to tell her if she could or could not cut down a tree to build something.

Ms. Shelia Faulkern, Huntsville resident, stated this racing was a family thing. She did not care if they were a fan or racer. There had been times when they had people who had been burnt. They had a little boy who had been killed down there by accident, from a rock. The even sent money from their last race to the firemen. How many places could they go where the people get together and donate to help some body else? If they did not want them to run down there, that was fine. She drove two hundred miles to Salina and Flippin. She would go wherever she had to go because racing was the biggest growing sport. It was the American thing. It was all family and that was the way it is. Sometimes they could be done by ten thirty. They had times that they had wait on an ambulance that took someone to the hospital for safety reasons for the other drivers not to be able to run. They could not help that. There was Flippin, Coffeyville, etc. All of them had a twelve o'clock curfew, but sometimes they just could not help but be late.

Mr. Tim Newman, an area resident, stated by the same right that these people had to watch racing the residents of Fayetteville had the same right to peace and quiet and a good quality of life. He asked if this was a City Council for the city of Fayetteville? They were to represent the citizens of Fayetteville. As a resident they were asking for this action. He felt it was appropriate for them to listen to their voice as representatives of them and to take action appropriately.

Ms. Kathy Lux, an area resident, stated she lived on Mt. Sequoyah they could hear it pretty good up there. She had to hear that every Saturday night during of the summer even though she would like to have a Saturday night that she could invite friends over and they could sit out side, but it was too loud. Even inside with the window closed and the air conditioner on. She appreciated Swifty and Brenda for bringing this up. They recognized their right for their ways. She wanted them to consider her right to have some peace and quiet on the weekends. She worked all week and she would like to enjoy her weekend once in a while. She hoped that they could find a good compromise.

Ms. Kathy Miller, an area resident, stated her son-in-law raced. She asked if they were wanting to close this down. People kept saying they wanted a restful night, if they raced to ten o'clock they could not have a restful night. If they were going to try and close them down, they needed to be honest about it. They had been going to this track for a long time. It was a family get together. It might be inconvenient for some people, but she hoped they realized this was a family sport and they were all together as a family.

Mayor Coody stated this Council did not intend to shut down the track. The intent was to find a time when the track might close that might pacify the wishes of a lot of the community that they had heard from. He thought the compromise time for a lot of folks was ten o'clock. That was considered bed time by a lot of people. He thought the discussion was to see if there was a way the track could close at ten, but not close down. They were being honest.

Ms. Miller stated they supported a lot of stuff, take into consideration that too.

Mr. Ed Harper, an area resident, stated he lived on the speedway property for approximately five years. He had worked at the speedway for ten years. A couple of years ago they had a coalition of neighbors that they had tried to work a deal out with, but they did not come to see them. They had heard threats and promises, but nothing ever happened. The same thing had come from Mr. Hanna. They lived outside the city limits and there was nothing that they could do to them. And then the coalition of neighbors died. He did not know if they knew anything about it or not, but they had the leader of the coalition of neighbors on the City Council now, Ms. Thiel.

Alderman Thiel stated she was not.

Mr. Harper stated he had been the voice of Willoughby Road. They had tried to be good neighbors. He was the track manager from the previous year. He was sorry, but they did not get closed by ten o'clock. They did get closed by ten thirty or ten forty-five on an average basis, unless they had an emergency. Cutting someone out with the Jaws of Life took almost three hours. They had to finish that race. It was almost twelve fifteen that night. It was a long night. He did not believe they had but one that year. The Tim gentleman that just spoke was one of her renters, until he was advised of the situation, he walked his dog at the speedway. They ran six months of the year. He had to have a two-a-day show, three times a year on a Friday and a Saturday. Generally he would have a practice on Thursday night, but it was cut off at nine o'clock. On a Friday night, they generally ran all the heat races and that generally ran them until around ten to ten fifteen. On a Saturday night he had approximately one hundred and fifty five to a hundred and eighty cars in the pits. In those five hours he was not running over two hours of maximum noise time. It was a hard situation. He understood these people had a lot of money invested in their homes and property, but so do we. We did not run any cars that were junk. They had a big car show once a year and invite the whole city to come and see it. This year they had it in Springdale. They had kept it in Fayetteville until this year; they went to Springdale trying to expand their fan base. It worked. They got a lot more fans this year. They upped it over twenty-five percent of Mr. Lee's ability of running the track. The sound noise was a problem. They did run mufflers and they required mufflers. They had required them for the three years. Until the last two years they had not been on every car on every night. Granted they were not a muffler for performance on the street. They were a race car muffler. They took the tweek and bang out of it, but that was about it. They try and they will try a little harder. They will try to adapt the noise level, but they needed some help too. When they started back a couple

of years ago, they were lucky to get thirty cars. Now if he did not run a hundred cars, he could not pay the bills. They way he understood what Mr. Berry said was that they wanted to it where they could run until midnight, if they had too, not that they wanted. There was not anyone in his family that would want to sit on a wooden bleacher for five and half-hours. If they could hold it down to three and half or four, they could keep quiet a few of them. They did not have real good neighbors. Both hands needed to be washed here. He did have names of people who had been contacted by phone to come and check on stuff long before this ever came to where they are now. A lot of names from the EPA, Corps of Engineers, Washington County, and FEMA, even came at someone's request. They were all pacified. He dealt with each one personally and they came to an agreement with several of the neighbors. He wanted them to look at the circumstances with which they were going to have to deal with a lot deeper than what had been done this year. There had been a lot more that had been done to them, that they had fought through.

Ms. Sharon Davison, an area resident, stated she signed the petition not the close down the racetrack, but to bring forward something that would be grandfathered into the racetrack's existence so they did not have to do this repetitively and there was some kind of compromise. She suggested eleven o'clock. The number of days was another thing. There were Thursday races, Friday, Saturday races. The point is, how many days- they need that specifically- it was abuse. The whole point here was they want to do what they want to do. They did not want to have to do anything else. She asked that they specify the time and the number of days.

Ms. Peg Cooper, an area resident, stated they were not asking them to close down the racetrack. They were not against families. They all have families and children and they all liked to spend time with them. They were not asking for that. They were asking them to look at them as homeowners, property owner in the city and try and have a compromise to help them. They wanted them to have their fun time, just like they wanted theirs. They were all Americans. It was unfair that somebody was looking at them saying they were the evil ones. She resented that. She was a law abiding patriot person. They were just asking for a reasonable time a night to shut down so that they could all get to sleep and get to church the next day.

Mr. Bradley Keening, racecar driver, stated it was a dream. He enjoyed it. When he did not get to race it was real hard for him to go in and watch the races. They had done a lot of work to expand the track. He had thought about bringing Nascar short races in on Sunday to run at the airport.

Mr. Joe Magnin, an area resident, stated he had a copy of the petition. He had read the petition. He had wanted to know who had signed the petition. Some of his neighbors had signed the petition, but they did not come tonight. He did not have the opportunity to sign or not to sign the petition. He wanted to appear. He heard the racetrack during the evening time. Sometimes he did not hear it. He opposed the fact that the city government had to use

a devise of suing somebody, because of a public nuisance. He had a public nuisance in his neighborhood. He questioned if he had enough people to sign a petition, would they give him the same consideration as they did this speedway.

Alderman Santos stated they had never gone outside the city limits in a suit. The city has never initiated a suit. It has always been the citizens who did.

Mr. Williams stated he thought the Bakery Feeds case was initially brought by citizens, then the city joined in. He was not positive what happened with River City. He just knew they went quickly out of business. The 1971 case was brought by a number of homeowners and neighbors who were directly effected by the racetrack.

Alderman Santos stated he would like to see a compromise. He thought they were over stepping their bounds. He thought this was a suit that they would not win. He wanted to see the county get involved. He would like to see the neighbors pursued the suit themselves. He might not be opposed to joining the suit later. He did not think it was their business to go into the county and try and regulate nuisances.

Alderman Thiel suggested that they let the voters decide to annex the property.

Alderman Santos stated he did not like the idea of annexing property for the purpose of enforcing their noise ordinance on it. It did not sound right.

Alderman Thiel stated if he would recall they had tried to annex property for the wastewater plant. So it was not like it had not been done before.

Alderman Santos replied that had been for a public purpose not to go out and enforce regulations on a private business.

Alderman Thiel stated they had two parties that could not come to a compromise. This needed to have a judge to decide. It was just a matter if they wanted the city to initiate it or to have all the homeowners who feel aggrieved to file a suit for themselves to go to court.

Mr. Williams stated the homeowners really stood in a better position than the city would. They did not have the standing issue that he had discussed. He had not been able to find a case where a city had actually done that. There was some chance that a judge was say that the city was not the right party to bring this lawsuit. That it must be brought by neighboring homeowners. He would argue against that to the judge. He would state that he was representing the citizens and that he had every right to bring that suit. That was an open question. He did not know which way the judge would rule on it. An injured homeowner would have standing to bring it. He thought there was very substantial evidence that they could get from the surrounding homeowners to show that this was a nuisance for operating so late.

Alderman Trumbo asked Ms. Reda, an attorney, if she had heard the argument from the city attorney that the homeowner would have a better standing to go forth. He asked her legal opinion.

Ms. Reda explained they would like to have the city do it because the action which had been brought up during the 70's had been brought by private owners who spent the money and time into filing that action only to see it be forgot when the property was sold a few years later. When they sought enforcement then, they were told that they could not enforce it against the new owner. They felt that they had wasted their time, money, energy and emotion that had gone into the initial lawsuit. It seemed to them that if the city brought this action and if the city was successful and Mr. Berry sold the property, then the city was in an excellent position to reinstate this action on the subsequent owner with out the individual citizen having to go through it again. She would think that anyone who bought from Mr. Berry, even if the order did not specify the future property owner, that the city was in an excellent position to say to the new owner that this was what they got the last time, would the new owner consent or did they have to go through this again. She could not imagine a new owner wanting to go through this again. They had the possibility for the enforcement ability that would not exist as easily with private property owners bringing the suit. If they go a hundred and fifty people together to file this action, then who was going to see about enforcing it. Who would control when the situation arose to seek a complaint citation. It was simpler for Mr. Berry and the property owners, if they had someone in the front, like the city attorney, that they had to deal with than if they had to deal with a zillion different property owners. They could not win if they did not fight. She did not see what the down side was if Mr. Williams presented it to the circuit court and the circuit court stated they did not feel the city had standing. They were then no worst off than they were today. They were then back to where the citizens had to decide if as individuals did they want to get together and come up with the money. Mr. Williams was already paid by the city to do work for the citizens. The police department was paid for by us as citizens. They had the sound readings. If the brought a private lawsuit. She assumed they would have to hire sound experts to take sound levels, which would mean waiting until next spring, when the track started up again. She did not know if the city could loan them their people for that. They were much better off if they proceeded now. And let Mr. Williams do what they had talked about doing and if the judge says no, then they were no worst off than they were today. She thought this was an appropriate thing for the city to do. The city had a responsibility to act on behalf of the people who lived in the city. They had already compromised. They were willing to give them Saturday night until ten o'clock. She thought they needed some help from the city. She thought it was much more effective coming from the city.

Alderman Trumbo stated he thought this needed to go to court and to have the judge decide on the time issue. He was in favor of having the judge be the referee. There was not going to be any more compromising. It needed to be decided by a judge as it was in 1972. The intention was not to shut down the race. They had two parties which both had good arguments. This was why they had a judicial system

Alderman Trumbo moved to move the city attorney pursue this. Alderman Zurcher seconded the motion.

Alderman Davis stated he hated the way this had played out. He would appreciate that if in the future they could visit with individuals prior to coming out with a resolution to take someone to court. He asked if there was some compromise that they could come to. He asked Mr. Berry if he was willing to compromise.

Mr. Berry stated most people were talking about disturbing their life style up until ten o'clock. He did not know of many people having cookouts after ten o'clock. He could not see the difference between ten and midnight. They were saying that they were going to midnight every night. He questioned how many of those people actually hit the sac at ten o'clock every Saturday night. Were they really keeping them awake? He would be using his private time, money to defend against this. He did not see anything that would be right about using everyone's moneys to pursue only one hundred and fourteen people. They could get twelve hundred signatures. He had a lot of people call him from Ward one that supported them. It was no different than a factory running. There was everything in the world that could be a nuisance. They were talking about two hours and they were not even telling them they were going to run to the deadline. They had a compromise.

Mayor Coody asked if there was any willingness to compromise.

Mr. Berry stated he thought he was going to compromise to go to twelve o'clock or he would fight the law suit.. He asked how this would compare to the Razorback games as far as being a nuisance.

Mr. Williams stated they had not received any complaints about the Razorback games. The University was a State Institute and was higher than the city. They did not have to comply with their ordinances.

Alderman Thiel added they were only here four to five times a year. That was a lot different than every Saturday night for six months.

Alderman Davis stated he had received twelve calls on this item. Nine people said they would settle for eleven o'clock. That was why he was asking.

Alderman Jordan stated he had received about the same amount of calls and about eighty percent stated they were willing to make it eleven o'clock.

Alderman Reynolds stated he also had the same response. If they knew they were going to shut the cars off and turn the lights out and be gone at that time they would negotiate that time.

Alderman Davis stated if they were starting at six-thirty and they cut their intermission down, they probably would not have a problem.

Mr. Berry stated let's auction this to eleven-thirty.

Alderman Young stated when they were first saying twelve o'clock, that was not a compromise. That was when they were saying they shut down. That was not a compromise. What they were saying was that eleven o'clock was a compromise between what a lot of the citizens were saying and what he was willing to do. It was not to have the lights out; it was to have the motors off.

Alderman Trumbo stated he liked racing, but this needed to have a judge be the referee. Both sides have good valid points and the emotions were strong on both sides.

Alderman Zurcher stated they had a right to love racing, but he was a very strong advocate of property rights. He thought everyone had property rights. He did not feel Mr. Berry wasn't going to budge on this. He did not see anything else to do, but vote on this.

Mayor Coody stated there was a motion to file a suit declaring the Thunder Valley Racetrack a nuisance.

Mr. Williams stated it would be a public or private nuisance. He would be filing in both ways to make sure to cover the bases.

Alderman Davis asked if they could state that related to time? They were not wanting to shut down the track and he wanted people to realize that. This was strictly a time issue.

Mr. Williams stated the resolution stated that it was at too late of an hour.

Upon roll call the motion passed by a vote of 7-1-0, Santos voting nay.

RESOLUTION 145-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

AD 01-43: Approval of an ordinance to update and revise the Flood Damage Prevention Code (Chapter 168 of the UDO) by adopting the Flood Hazard Study, Phase IV and amending Phase I, provided by the U.S. Army Corps of Engineers for use in managing floodplains within the City of Fayetteville.

Mr. Williams read the ordinance for the first time.

Mr. Conklin stated they had two parts of a study that they were asking them to adopt this evening. Phase IV, the tributaries to the White River. They would be using this data for

their flood plain management ordinance. They also had an amended Phase I study. That was a tributary of Hamstring Creek off Wedington and I-540. During the Shiloh West development, they found some errors within the model. Those have been corrected by the Corps of Engineers. Both studies will be submitted to FEMA and will become part of a flood insurance rate map. It will be the official map published by the Federal Government for use in Floodplain management.

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

Mr. Williams read the ordinance for the second time.

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

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

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

ORDINANCE 4342 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 01-16: An ordinance approving rezoning request RZN 01-16.00 as submitted by Ronnie Ball on behalf of William Lazenby for property located at the southwest corner of Millennium Drive and Crossover. The property is zoned C-1, Neighborhood Commercial and contains approximately 0.70 acres. The request is to rezone to C-2, Thoroughfare Commercial.

Mr. Williams read the ordinance for the first time.

Mr. Williams stated there was a bill of assurance that had been submitted by Mr. Lazenby for this property that the Planning Commission considered. They had recommended this rezoning based upon the offered bill of assurance. In order for the bill of assurance to be affective the City Council also needed to base any decision to rezone upon the bill of assurance.

Alderman Davis asked how they could be sure that twenty to twenty-five years down the line that they could enforce the bill of assurance. Their positions would be changed by then and the person on watch at that time, would they have some mechanism to track it.

Mr. Williams stated the Bill of Assurance shall be file with the circuit clerk's office after the rezoning is effective and shall be noted on any final plat or large scale development, which approve some or all of the petitioners property. He suggested that they ask the city planner

what their office had in place to follow these bills of assurances to make sure that they remained affective.

Mr. Conklin stated when they accepted a bill of assurance they noted it on their official maps. Anytime there was a Certificate of Zoning Compliance that was applied for use on that property, they referred back to that. As they got more computerized their zoning information would be able to be tied to those individual parcels. That type of information will be able to be brought up. There was a bill of assurance with this rezoning. They were asking that they be allowed to have all the uses in a C-1 zoning remain, plus add the use of the liquor store. Those were the only uses which would be allowed by right in C-1 was a liquor store.

Alderman Santos noted it was recommended unanimously by the Planning Commission and it was consistent with the City's master plan.

Alderman Davis stated he had received some calls regarding this issue. They would like for them to leave it on the first or second reading.

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 Davis stated that he had people ask what the structure was going to look like. He assumed that he had plans drawn up.

Mr. Ronnie Ball stated their plans conformed to the covenants of the Millennium. They all had to conform to the same theme.

Alderman Davis stated they had been concerned about what the building would look like and the future maintenance.

Mr. Ball stated they would bring drawings to the next meeting. They were wanting this to be an upscale liquor-spirit shop.

Mr. Conklin stated the Planning Commission had not reviewed the development for compliance with their commercial design standards and design theme within the Millennium Subdivision. He can provide them what had been provided to the Planning Commission with regard to the rezoning. Staff would not review that until the development came through the large scale development phase. There was a design theme set for that subdivision. He would require that the building be similar to what had already been constructed. The elevations and site plan had not been reviewed for compliance with ordinance. There would be changes to the site plan. There would be some design changes with regard to their landscaping and greenspace requirement and parking lot requirements. The building

000520

materials would have to be similar and compatible with what was there now. This project will not be coming through the large scale development. It was less than an acre. Staff will be reviewing it. They did have a condition on the entire subdivision that every lot come through large scale. The developer had showed, by going through the process three times, that the quality of the development and the design of the buildings had met their requirement to a point the staff could sit down administratively and approve the development. They had done this to streamline development and not to make it burdensome for the developer.

Alderman Reynolds asked if the public had a chance to come and view it.

Mr. Conklin stated there had been three or four developments in this subdivision.

LEFT ON THE SECOND READING.

RZN 01-17: An ordinance approving rezoning request RZN 01-17.00 as submitted by Cynthia Beard and Williams M. Center for property located on the southeast corner of 15th Street and Beechwood Avenue. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately 12.13 acres. The request is rezone to R-2, Medium Density Residential.

Mr. Williams read the ordinance for the first time.

Alderman Davis stated he had no problems with the rezoning request. His concern was that they might be putting water in people's homes that may not be currently having a problem.

Mr. Conklin stated this issue had been brought up at agenda session and Council tour. He provided each of them with a colored map the latest data on the hundred year flood plain and flood way. These properties do contain creeks and streams. They did have a flood plain, damage prevention code, and stormwater management ordinance. Any work in there was also regulated by the Federal government with the 404 permits. They were going to have to meet their ordinances. He had contacted the U.S. Corp of Engineers, unfortunately the person doing the study for them was on vacation. Any time a development went through the development they had to consider stormwater. They had look at the amount of stormwater they created. They had to design their stormwater facilities with the development to carry the water through their development based on ultimate build out upstream. They were not only looking at what stormwater they had, but they were also looking at potential build out within the watershed upstream from them. They would also have to manage that water. It was an involved process. They required preliminary drainage and final drainage plans, grading plans and detention ponds. In his opinion when they considered the tree preservation, retention ponds, and the rest of their development requirements they would most likely be staying out of the floodway and floodplain areas. If they developed in the floodplain they would have to elevate their buildings and their standards. Flood protection

was also required. The city of Fayetteville has gone over and beyond what the federal government requires. They had the ordinances in place and they would have to meet those ordinances.

Alderman Jordan stated his main concern was if they developed the land and put parking lots in there what would happen if something went wrong and those homes got flooded?

Mr. Conklin stated they had to meet their standards. Civil engineers had to stamp the developers plans. The city had engineers who would review those plans. Their ordinances were to protect the citizens of Fayetteville.

Mr. Williams stated as long as the city engineer had applied the city ordinances and used due diligence, then he did not believe there would be legal liability for the city if the development did not perform as anticipated. It did not mean that the city did not feel that they needed to try and elevate some of the problem. Legally as long as they followed the ordinances and the federal statutes and operate in good faith he did not believe the city would be legally liable. The owners civil engineers would bear a substantial burden. The city also had sovereign immunity, even if they made a mistake.

Alderman Jordan stated whether or not they were legally responsible or not, they still represented the people of the city. If something went wrong and they flooded some of those people, not only would it be his constituents, but it would be his neighbors. He asked the number of apartments going in there.

Mr. Conklin stated they had not done a detailed plan. They were requesting R-2 zoning which allowed up to twenty-four units per acre. Keep in mind they had tree preservation, detention ponds, landscaping in the parking lots. All these ordinances had to be met within the actual development. They did tend to limit the type of density they could get unless they started going up. This was a down zoning from Heavy Commercial/Light Industrial. Staff felt it was more appropriate to down zone this property.

Alderman Jordan stated he had seen water out in those fields. He has lived down there for twenty-six years. He did not want to get into a situation where the apartments get flooded or the neighbors get flooded.

Mr. Conklin stated he could not guarantee that nothing was going to go wrong out there, but they did have some very good ordinances that offered protection. Some of their ordinances were more stringent than the federal government required them to do. He had faith in the city's engineers and the developer's engineers that they could design something that will provide safe housing for future citizens of Fayetteville.

Alderman Zurcher asked for the history of the zoning of the property. Why would this be zoned I-1 to begin with.

Mr. Conklin explained a lot of that area in south Fayetteville was rezoned in 1970 through a comprehensive city wide zoning change. Most of that area was rezoned in 1970. As a city they needed to go forward and make some changes.

Alderman Thiel stated the flooding issue was a real problem. She supported rezoning this because it was a down zoning. She was concerned about the concrete, parking lots and structures. Industrial zoning would probably have the same affect if not more so.

Alderman Santos stated he was not really concerned about flooding, but it was not very likely. He thought they had very good development regulations. He did not believe flood was as much of a concern as with the parts of town that got developed before they had good development regulations. All three of these were passed by the Planning Commission. It was consistent with the General Plan. It was also really good news for this part of town. This part of town really needed some development. He thought this would be high quality development. They were also proposing a hotel, retail and apartments. They were even talking about adding married housing down here. That would give them enough student population to extend Razorback transit. He would like to see development all through here.

Alderman Young asked if the parcel to the east if this owner, owned it.

Mr. Conklin stated it was the same owner. There was an easement to Razorback Road for access.

Alderman Trumbo stated he would have to abstain from this and the next two items.

LEFT ON THE FIRST READING.

RZN 01-18: An ordinance approving rezoning request RZN 01-18.00 as submitted by Bill McClard of Lindsey and Associates on behalf of Cynthia Beard and William M. Center for property located on the southwest corner of 15th Street and Beechwood Avenue. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately 19.39 acres. The request is to rezone to R-2, Medium Density Residential.

Mr. Williams read the ordinance for the first time.

LEFT ON THE FIRST READING.

RZN 01-19.00: An ordinance approving rezoning request RZN 01-19.00 as submitted by Bill McClard of Lindsey and Associates on behalf of Cynthia Beard and William M. Center for property located south of 15th Street between Beechwood Avenue and Razorback Road. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately 9.86 acres. The request is to rezone to C-2, Thoroughfare Commercial.

Mr. Williams read the ordinance for the first time.

LEFT ON THE FIRST READING.

REAL AND PERSONAL PROPERTY TAX RATE: An ordinance adopting the real and personal property tax rates for 2001 for Policemen's Pension and Relief Fund and the Firemen's Pension and Relief Fund. The rate to be adopted is 0.4 mils for real property and 0.4 mils for personal property. There is no millage proposed for general government operations.

Mr. Williams read the ordinance for the first time.

Alderman Santos moved to suspend the rules and move to the second reading. Alderman Jordan seconded the motion.

Mr. Davis stated this year they were collecting two mils which were being collected for the Senior Center. There was a two mil reduction. There was a possibility that a rollback will be triggered. They should know within the next week or so if a milage rollback was going to be triggered.

Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the second time.

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

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

Mr. Davis stated that because of the possibility of a rollback the county judge has requested from the assessment coordination division a waiver for the city of Fayetteville to be able to have our millage levied to the county at a later date so that could make sure that they did not have a rollback when they pass the millage ordinance. He recommended to wait until November 6.

Alderman Young moved to table the ordinance until November 6, 2001. Alderman Jordan seconded. Upon roll call the motion carried unanimously.

TABLED ON THE THIRD READING UNTIL THE NOVEMBER 6, 2001, MEETING.

CAPITAL IMPROVEMENTS PROGRAM: Council review and approval of 2002-2006 CIP.

Mr. Steve Davis stated the 2002-2006 CIP was a plan that examined the city's infrastructure needs over the next five years. It prioritizes those needs, schedules the projects, and allocates funding to address those needs. The 2002-2006 CIP list approximately 216 million dollars in projects and identifies an additional 106 million dollars in potential projects. A potential project is a project that staff has identified as a need buy one in which they had not identified funding for. After the CIP is approved the project schedule for 2002 will be added to 2002 proposed budget that they will see in November. There were approximately sixty million dollars worth of projects scheduled for 2002. Projects in the CIP Program can include obligations for labor and material for contractors involved in completing projects. It can involve acquisition of land and structures. It can be used to provide professional services such as architectural, engineering or other consulting services. It can also be used for the acquisition of vehicles, equipment, and for renovation to or expansion of city facilities, grounds, or equipment. The CIP for 2002-2006 began in the spring of this year when city staff began evaluating their program areas and developing a list of projects. The project listing were assembled and have been reviewed by city management and advisory boards for Parks and Recreation and Airport, as well as City Council committees such as Street, Water and Sewer and Equipment. Funding for the ongoing projects listed in this CIP was primarily for the one percent city sales and use tax that was originally approved in 1993. There was approximately thirty-eight million dollars in those projects. Additional capital funding was from the one percent HMR tax for parks improvements and operating revenues for Water and Sewer Fund, Solid Waste Fund, Airport Fund, and Shop Fund as well as funding from the Off-Street Parking Fund and a proposed bond issue to construct additional parking structures. Other significant projects funded by temporary sales and use tax are the new central library, that is programmed to cost approximately twenty-one million. This was scheduled to expire March 31, 2002. A three-quarter percent sales and use tax was proposed to fund a bond issue for the waste water system improvements project which was estimated to cost one hundred and twenty million dollars. The three quarter percent sales and use tax, if authorized, would begin after the library tax has expired on April 1, 2002.

NO ACTION TAKEN.

FLOWAGE FEES: An ordinance amending Section 91.16 of the Code of Fayetteville.

Mr. Williams read the ordinance for the first time.

Mr. Gary Dumas, Utility Services Director, stated this was to eliminate the need for the city to pay itself the flowage fee and to have the fuel the provider to rebate a penny back to them to verify that they sold the city X number of gallons a month. It was a cross check that they had in place for when they had a fixed based operator other than the city.

Alderman Trumbo stated their traffic had increased since they had lowered their prices. He asked if their goal was to increase traffic flow to keep their FFA Funding.

Mr. Dumas stated they had two goals. One was to make the FBO a break even operation. It was not in place to create a revenue source. The primary approach at this time was to try and get the landings and take-offs up to a level that would minimize their cost share agreement with the FFA.

Alderman Trumbo moved to suspend the rules and move to the second reading. Alderman Santos 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 Santos seconded. 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.

ORDINANCE 4343 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

OFFER AND ACCEPTANCE-HWY 45: A resolution approving the offer and acceptance contract between the City of Fayetteville and Real Assets, Inc. for the sale of 12.91 acres of land off Hwy 45 east of Crossover for a price of \$305,001.01 less associated closing costs where applicable; and approval of a budget adjustment.

Mayor Coody stated they had been approached by Lindsey and Associates to sell this land. They had placed the property on the open market and taken sealed bids. This was the highest bid which had come in. They had a need to widen Gregg Avenue and they did not have the money in the budget to widen Gregg. The State was requiring the city to purchase the right-of-way and to move the utilities to put in temporary turn lanes and signals. In a few years the state will be able to come back and widen Gregg to four lane to make it match the rest of Gregg.

Alderman Reynolds stated this was in Ward 1 when this started out, he was in favor of moving this to Gregg Avenue, but this was one of the hottest issues since he has been alderman. The people in this neighborhood was opposed to them selling this property. Therefore, he was going to support them and they were going to have to look somewhere else for the money for Gregg Street.

Alderman Thiel stated had a lot of phone calls about this proposal. She was concerned about them selling land, when they had a task force set up to buy land, and here they were selling green space. This land did not belong to the parks department. It belonged to the water and sewer department. It would be a few years before the parks department could purchase this land and do anything to it. They did not have the money budgeted for recreational

improvements. It could stay as it is. She thought a lot of the citizens were happy with that.

Alderman Davis asked if they should sell the land, could they take money from one quadrant and spend it in another.

Mr. Williams stated it was the fund that mattered. Quadrants were only relevant to parks land. This was not park land. It was water and sewer. It could be spent anywhere in town in the water sewer budget. It could not be transferred into the parks budget.

Alderman Santos stated the parks department could buy it from the water and sewer department, or it could just be left alone as greenspace. He did not believe that there was any support for this.

Mr. Ernest stated while the Parks Master Plan was still working through the system, it has not been adopted by the Planning Commission, and has yet to be approved by the City Council. One of the tools that any park planner uses map illustrating where neighborhood parks existed. From a parks perspective, they had sufficient land in this quadrant to cover anticipated park demands as recommended by their consultant. That did not cover the appropriate or necessity of dealing with from other perspectives such as preserving open space. They did not have a shortage of available park land in this area for neighborhood parks.

Alderman Thiel stated in the Park Study they counted Crossover Park, which was a 10 acre park that had not been developed. They had a lease agreement with the school. Anything they did to that park would have to met with the agreement with the school.

Alderman Davis stated when the Street Committee reviewed the CIP, there was one project that they all questioned that was the Shiloh Bridge. They might be able to take those fund over to Gregg Street. They could discuss that at their Street Committee Meeting.

Mr. Davis stated the first segment of right-of-way money that they had for Gregg Avenue is one hundred and forty-nine thousand for next year. They had 1.9 million dollars spread over the next four years.

Alderman Young asked if they were doing this project over the next four years, why did they have to sell the land right now to do the right-of-way.

Mr. Davis stated it was his understanding that the railroad was interested in selling the city their right-of-way on their side of the street at an attractive price for the city. They were trying to take advantage of a good opportunity, otherwise they would have to go onto the parking lot side on the east side of the road, which got extremely expensive.

Ms. Sharon Davison, an area resident, stated they were talking about selling land to pay for road project. Her main contention on how to deal with this was impact fees. She asked why they were selling greenspace to pay for projects that should be paid for by other things.

Alderman Trumbo stated this has never been brought to the City Council's attention before tonight. The City Council has never discussed selling greenspace for any reason.

Ms. Connie Harris, an area resident, stated it was getting congested in there. They did not need to add more people in this area.

Alderman Trumbo stated he had two letters from Dr. Rom and Beverly Melton.

Ms. Rheda Groham, an area resident, stated there were numerous wildlife there and she was glad they were not going to develop there.

Ms. Marie Schrider, an area resident, stated they had purchased the property because there was not anyone behind them.

Mr. Mark Brewer, an area resident, stated he lived and had built several homes in Barrington Park. He was not angry with their decision tonight. He asked them to start putting the horse before the cart, rather than at the back end. This had been put out for an open bid. Then it was decided the open bid was wrong, so they did it by a sealed bid. He had contingency on his first bid. If it was going to be sold, he wanted to be involved because not only did he own his property, but he owned five acres in Gaddy Acres. That was his neighborhood. He had been every conscious on how he developed the property so there would be a great deal of greenspace back there. There had only been twenty seven lots plotted with a huge amount of greenspace. He had already gone to the effort to talking to lenders to raise eight hundred thousand dollars. He had already gone to the effort of meeting two bid and talking to four engineering companies regarding development. The fact that they were not going to develop it was wonderful, but if they were going to develop it, he wanted to have a say so in it and to have it done the way he wanted it done. But to put it out for bid and to have them put the time, money and effort into, and to not have the Council members know about it was not right. They needed to go back to the room and settle their differences. Get things right with one another so they did not have this time taken up in their valuable night. They would not be here if it had been right in the first place. There had been a lot of time, money and energy spent, because it had been put out that the city wanted to sell this property, and it was not handled properly. He asked them to review the way they were doing things. He was out approximately twenty-five hundred dollars and a hundred and twenty hours of his time.

Ms. Fran Alexander, an area resident, presented a summary of the process and a comparison of the surrounding property, as well as surrounding parks.

Mr. Jason Stapleton, an area resident, read a letter supporting the creation of a multi-use trail and place for wildlife.

Ms. Armstrong, an area resident, questioned how she would know this would not happen again.

Mayor Coody stated she did not have to worry about that for the next three years and two months.

Mr. Harry Barrett, an area resident, stated he had assumed when he purchased his property that the surrounding land would not be developed. He hoped they kept the land.

Ms. Holly Black, an area resident, stated they had moved to this neighborhood because of the green area. She would like for it to stay the way it was.

Mr. Larry Long, an area resident, stated public land should only be sold for the good of all the citizens.

Alderman Trumbo moved to approve the resolution. Alderman Davis seconded the motion. Upon roll call the motion failed unanimously.

THE RESOLUTION FAILED.

OFFER AND ACCEPTANCE-RAILROAD R-O-W: A resolution approving the offer and acceptance contract between the City of Fayetteville and the Arkansas and Missouri Railroad Company for the purchase of 6.58 acres of railroad right-of-way along the east side of railroad right-of-way and the west side of Gregg Avenue from Poplar Street to the four lane south of the new bridge on Mud Creek for a price of \$263,200. Approval includes purchase price and associated closing costs.

Mr. Beavers asked that the Council table the issue until the next meeting. They have added this to the agenda for the Street Committee. The rail road company had been very good to work with. They did have the intersection at Sunbridge and Gregg designed and ready to bid. They had the equipment to install the signal if they had the right-of-way. They needed to find a way to buy this right-of-way. They did not need to wait for the 2002 CIP.

In responds to concerns about the offer expiring, Mr. Connell stated there was no date for the approval of the Council.

Alderman Young moved to table the item until the next meeting. Alderman Santos seconded the motion. Upon roll call the motion passed unanimously.

TABLED UNTIL THE NOVEMBER 6, 2001, MEETING.

FLEET OPERATIONS: A resolution approving a budget adjustment increasing the maintenance budget for Fleet Operations.

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

RESOLUTION 146-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Meeting adjourned at 10:20 p.m.