A MEETING OF THE FAYETTEVILLE CITY COUNCIL

A meeting of the Fayetteville City Council was held on June 16, 1998, at 6:30 p.m. in the City Administration Building, 113 West Mountain Street, Room 219, Fayetteville, Arkansas.

PRESENT: **Mayor Fred Hanna; Aldermen Cyrus Young, Randy Zurcher, Trent Trumbo, Stephen Miller, Kit Williams, Len Schaper, and Heather Daniel; City Attorney Jerry Rose; City Clerk/Treasurer Heather Woodruff; staff; press; and audience.**

ABSENT: **Alderman Pettus**

Mayor Hanna called the meeting to order with seven aldermen present.

CONSENT AGENDA

MINUTES: Approval of minutes from June 2, 1998, meeting.

BID 98-7: A resolution awarding a contract to Johnson Mechanical Contractors Inc. in the amount of $47,500 for the installation of new plumbing, heating, ventilation, and air conditioning for the Animal Shelter Clinic Expansion project.

RESOLUTION 76-98 AS RECORDED IN THE CITY CLERK'S OFFICE

BID 98-50: A resolution approving a contract with RPD Quality Construction, Inc. in the amount of $39,220 plus contingency of $8,000 for all slab work for the new animal clinic.

RESOLUTION 77-98 AS RECORDED IN THE CITY CLERK'S OFFICE

BID 98-39: REMOVED FROM CONSENT. MOVED TO THE FIRST ITEM OF NEW BUSINESS.

BID 98-43: A resolution accepting Midwestern Equipment Company's bid for the purchase of a H.D. Cab and Chassis with mounted sewer cleaner (combination wash and vacuum) in the amount of $231,766.60 and approval of a budget adjustment.

RESOLUTION 78-98 AS RECORDED IN THE CITY CLERK'S OFFICE

BID 98-48: A resolution accepting Shipley Motor Equipment Company's bid in the amount of $130,120 for the purchase of a H.D. Cab and Chassis with mounted combination bulk waste crane with roll off. This unit will be used by the Solid Waste Division.

RESOLUTION 79-98 AS RECORDED IN THE CITY CLERK'S OFFICE

BID 98-45: A resolution accepting Alma Tractor and Equipment, Inc.'s bid in the amount of $90,669.12 for the purchase of two tractor/backhoe/loader. The unit will be used by Water and Sewer Maintenance and Sidewalks and Trails crews.

RESOLUTION 80-98 AS RECORDED IN THE CITY CLERK'S OFFICE

HAMESTRING SEWER: A resolution awarding a contract to Jackson Electric in the amount of $143,583.00 plus contingencies for improvements to the Hamestring Sewer Pump Station, and approval of a budget adjustment in the amount of $120,000, and approval of expenditures up to $50,000 from off site escrow accounts to go toward the project costs.

RESOLUTION 81-98 AS RECORDED IN THE CITY CLERK'S OFFICE

Alderman Williams stated the minutes need to reflect that the Council did vote to grant Washington Regional Medical Services a waiver from placing utility lines underground.

Alderman Williams moved to approve the consent agenda, with the correction. Alderman Miller seconded. Upon roll call, the motion carried on a vote of 7 to 0.

OLD BUSINESS

RZ 98-10.00/1780 HOLLY/DEMAREE MEDIA INC.
Mayor Hanna introduced an ordinance approving a rezoning request submitted by Demaree Media, Inc., for property located at 1780 Holly Street. The property is zoned R-1, Low Density Residential. The request is for R-O, Residential Office. The property contains approximately 2.34 acres. This item was left on first reading at the June 2, 1998, meeting.

Alderman Young stated someone associated with this is a client of the company he works for, so he would abstain on this issue.

Alderman Miller moved to suspend the rules and go to the second reading. Alderman Zurcher seconded. Upon roll call, the motion carried on a vote of 6-0-1, with Alderman Young abstaining.

City Attorney Rose read the ordinance for the second time.

Alderman Schaper asked if the bill of assurance is recordable as a restriction that will run with the land.

Rose replied it is.

Alderman Schaper stated they are giving themselves an out in saying there won't be any further development except for single family residential uses meeting the code requirements in existence at the time of development. He felt they could request a lot split and put on some residential lots.

Alett Little, Planning Director, responded that they have the right to develop it R-1 now. They are reserving the right.

There were no comments from the public.

Alderman Williams moved to suspend the rules and go to the third and final reading. Alderman Miller seconded. Upon roll call, the motion failed on a vote of 4-2-1, with Aldermen Zurcher and

Schaper voting no and Alderman Young abstaining.

This item remained on second reading.

PLANNING COMMISSION APPEAL/WASHINGTON REGIONAL
Mayor Hanna introduced an appeal submitted by Burke and Eldridge on behalf of Washington Regional Medical Services for a large scale development off Millsap Road and Wimberly Street. The request is to appeal the Planning Commission's decision to deny a waiver request for the construction of a standard city street.

Jack Anderson, Administrator of Fayetteville City Hospital, stated this is a Fayetteville City Hospital project. He stated he was present to ask the Council to waive the portion of the road through Washington Regional property as well as the monetary assessment for the road across the property to the east. They are requesting this because every dollar required made it less likely the project would be developed. They have an excellent site at that location. They can only afford this type of facility on this site because Washington Regional has worked with them. If the site development costs are significant, they will have to look at alternative sites and possibly not continue with the project. The bottom line is if you take the street development cost off of this four-acre development you'll be taking it off the backs of senior citizens of Northwest Arkansas. He requested the Council wait until Washington Regional developed the remainder of the property to require the road to be completed. If it is required now, it may prevent the project from taking place.

Alderman Williams stated the Council saved the development half a million dollars by taking into account the need for this facility. However, the normal procedure is for the developer to build the street all the way through. He could imagine the property on the other side developing and having two streets within half a block of each other not being finished. He stated he has no problem requiring them to pay half the cost of extending the street off their property; but he agrees with the Planning Commission that they do need a street through their property.

Mr. Anderson stated his concern is that the additional cost would make it unfeasible to continue with the project.

Alderman Williams estimated the cost savings of not running the street through to the property line would be approximately $75,000.

Kurt Jones, Crafton & Tull Engineers, stated the estimate submitted did not include storm drainage. He estimated it to be $150,000.

Alderman Schaper asked about further development. He noted the development was sited in the middle of a forty-acre tract of land.

Mr. Anderson replied that the facility has been situated where it is because it is the least attractive on the property and could justify this type of facility. They have no plans for other development at this time.

Alderman Schaper questioned the agreement between this development and Washington Regional.

Mr. Anderson stated it was his intention to purchase this portion of the property from Washington Regional.

Alderman Schaper stated the rest of the site could be further developed.

Ms. Little stated part of the reason why the master street had not joined Kenray Street was so that there would be more room on the eastern side for future development.

Alderman Daniel stated she had spoken with Chief Jackson who stated the road was needed for emergency vehicles.

Little stated it is normal procedure for a developer to guarantee the construction of facilities with a bond or cash contributions. The City has not taken bills of assurance for two to three years. They are very difficult to collect.

Alderman Schaper expressed concern about the developer purchasing a land-locked piece of property. He asked if they were going to purchase the property, would Washington Medical Center dedicate an access easement to them.

Little stated they have not discussed a lot split during any of the meetings. It is her understanding that this is a Washington Regional Medical Center project.

Mr. Jones stated they are not discussing a lot split at this time.

Alderman Williams stated this was Washington Regional property and they would have to have a road constructed through the property. He could not see a good reason not to required the road.

Alderman Williams moved to grant the waiver not to require off-site road construction. The through road would be required. Alderman Schaper seconded the motion. The motion carried by a vote of 6-0-1, with Alderman Young abstaining.

CHAPTER 33 AMENDMENT & ADOPTING UDO

Mayor Hanna introduced an ordinance amending Chapter 33 of the Code of Fayetteville to provide for the Board of Adjustment, the Plat Review Committee, the Subdivision Committee, the Tree and Landscape Advisory Committee, and the Board of Sign Appeals.

Alderman Williams moved to suspend the rules and go to the second reading of this item and the next item, an ordinance deleting Title 15, etc., and adopting the Unified Development Ordinance. Upon roll call, the motion carried on a vote of 7 to 0.

City Attorney Rose read the ordinances for the second time.

Alderman Schaper asked if editing corrections would have to come back to the Council.

Rose replied clerical errors can be corrected as found.

Alderman Trumbo moved to go to the third and final readings. Alderman Miller seconded. Upon roll call, the motion carried on a vote of 7 to 0.

City Attorney Rose read the ordinances for the third time.

There were no comments from the audience.

Mayor Hanna called for separate votes.

Upon roll call, the ordinance amending Chapter 33 passed on a vote of 7 to 0.

ORDINANCE 4099 AS RECORDED IN THE CITY CLERK'S OFFICE

Upon roll call, the ordinance deleting Title 15, etc., and adopting the Unified Development Ordinance passed on a vote of 7 to 0.

ORDINANCE 4100 AS RECORDED IN THE CITY CLERK'S OFFICE.

NEW BUSINESS

BID 98-39/WALKER PARK PARKING

Mayor Hanna introduced a resolution awarding a contract to J & L Construction in the amount of $188,500 plus a project contingency of $18,850 for the construction of a 100 space parking lot in Walker Park and approval of a budget adjustment.

Alderman Miller read a prepared statement opposing this.

Alderman Daniel asked about the cost of doing this in house.

Kevin Crosson, Public Works Director, replied that the City tries to do smaller parking lots attached to City facilities. This stands alone and will require landscaping, etc.

Alderman Schaper stated the issue is not cost but that the Council hasn't seen an overall plan for development in Walker Park and what parking is available.

Bill Ackerman, Parks & Recreation Board, stated this parking lot has been in the CIP since 1992. The need arises from the growth of the children's athletic program. He cited statistics regarding usage. He stated there is constant use of the facilities and there is not adequate parking. There are two small parking lots in the area. A third parking lot to the north is not used for a number of reasons. Its location was not determined by the Parks Department. Parents have been pressing to get this facility built for four to six years. We have not had the money. We wouldn't have the money this year, if another project or two came to fruition. Now, we have the chance to get this project off the table.

Mr. Ackerman stated there have been over a hundred parking citations issued this year in the vicinity of the facility because there is not adequate parking. He stated there is a safety problem as well. Children have been hit by automobiles. We have one-lane traffic.

Richard Alderman, architect, stated there is a master plan for the park that suggests there are 339 parking spaces. Adequate parking would be 471 spaces. This project would add 100 spaces. He stated the concept is to locate it centrally, which also helps with handicap access. Only a corner of the heavily wooded area would be used.

Alderman Williams asked if the lot will be landscaped and conform to the current parking lot ordinance.

Mr. Alderman replied this project has been worked on by all the City departments. Beth Sandeen, Landscape Administrator, walked the site. She did a tree inventory and determined that the quality trees are in the front area. The parking lot was set back and a tree preservation area was created. One reason this will be a little more expensive than a regular parking lot is because the contractor will have to fence that area off to be kept entirely natural. He stated Chuck Rutherford, Sidewalk and Trails Administrator, saw the site and went through all of the sidewalk relationships. A major crossing area will be marked off. This project has been a couple of years in development because it did go through all the steps.

Alderman Miller stated seeing the plan took care of his objections.

Alderman Schaper asked about the one access to the parking lot. Instead of spreading the congestion out, this parking lot concentrates it.

Mr. Alderman responded that they had talked early on about spreading it out. With the amount of cars coming from some of the other parking lots, that extra exit would be to no advantage, as it would bring more cars out where there is a bunch of cars. This plan requires everyone to make a right turn. In overall terms, this is a better flow.

Alderman Williams stated the Council should look at the safety issue above everything else. Parking should be allowed on only one side of Block Street.

Alderman Young asked about the general plan.

Mr. Alderman replied the general plan done in 1992 shows closing a street and parking being added.

Alderman Young asked why the heavily wooded area is being sacrificed, rather than an area in the ball fields.

Crosson responded that we need more ball fields.

Alderman Zurcher stated research needs to be done on the songbird act referred to in Alderman Miller's statement.

Mr. Alderman stated the only thing he has found is a law that states you cannot harm, kill, etc. It would be hard to say you are doing harm if you are taking three quarters of an acre out of sixty acres and no known habitat.

Alderman Zurcher stated removing trees is removing habitat.

Crosson responded that as far as staff is concerned, there is no such law.

Alderman Young asked about the consequences of awarding the contract and then having someone come up with a law.

Alderman Miller stated that the birds the Federal law protects are done nesting and probably would not affect the schedule.

Mr. Ackerman explained their extensive efforts to find such a law and that they found nothing that would impact this.

Alderman Zurcher asked what fund the money for this project would come out of.

Mr. Ackerman replied part would come from the CIP budget and part from greenspace money.

Alderman Zurcher found it ironic to be taking money from the greenspace fund to do away with greenspace.

Alderman Williams stated there has been neighborhood opposition to building ball fields in the wooded area. There was going to be nature trails and a senior citizen center. He asked about plans for this.

Mr. Ackerman stated it is part of the CIP budget process for this year. They hope to start on the trail project in 1999.

Crosson noted there is $79,000 budgeted in 1998 and $50,000 in 1999 and $2,000 in 2000 for Walker Park trail and parking lot. The work will begin this year and spread out over the next two years.

Jeff Erff, parent of a son who plays T-ball at Walker Park, encouraged the Council to come up with a solution because there is definitely a problem.

Beth Campbell, another parent, stated the Council should represent the parents. She stated she loves her children more than she loves trees. There is a safety factor. She noted she carries lawn chairs and other paraphernalia when walking from the parking spots and she is not willing to walk half a mile. She stated the wooded area is a home for vagrants. If the City is not willing to develop this park, they need to find another site for a sports complex.

Vince Kelly, Fayetteville Youth Baseball Board, stated safety is a concern. In the last four years, three kids have been struck by cars. We need this parking lot and proper cross walk. This will not solve all the problems, but it is a step in the right direction. Preserving nature is also a concern, but parents do not allow children to enter into this wooded area as it is.. The parking lot to the north does not get used because of the distance and the hill that blocks the view. Car windows have been broken, tires slashed, and graffiti sprayed on cars. Block Street was not designated as parking; it is makeshift parking. He hopes parking is limited to one side of the street, which would improve traffic flow and safety.

Alderman Trumbo moved to approve the resolution. Alderman Miller seconded. Upon roll call, the resolution passed on a vote of 7 to 0.

RESOLUTION 82-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

LAND PURCHASE/HICKSON/FAT GULLEY RD.

Mayor Hanna introduced a resolution authorizing the acquisition of a 12-acre tract of land from Carolyn Hickson in the amount of $243,000. The property is located along Fat Gulley Road, south of Joyce Blvd. and north of Highway 45. The land will be used for the installation of new water storage towers in conjunction with Fayetteville Water Systems Improvements. Approval should include closing costs associated with the purchase of land.

Alderman Schaper felt the City is being forced to purchase land they do not need. There is marketable land along the road. He questioned why we have to buy the road frontage in order to have access to the water tower site.

Alderman Young replied if the land is marketable, the City could sell it.

Kevin Crosson, Public Works Director, stated if there is not a need for the land, it would be sold. The current owner does not want a portion left to sell.

Alderman Williams stated the water tower would devalue the remaining property.

Alderman Schaper asked if this was the highest land around. He asked if the tower would be elevated.

Don Bunn, City Engineer, stated the land is the highest in the vicinity, but it is not high enough for the required pressure.

Crosson stated the new tower would help with some of the pressure problems.

Bunn stated it would help the east side of town.

Alderman Schaper moved the resolution. Alderman Daniel seconded. Upon roll call, the resolution passed on a vote of 7 to 0.

RESOLUTION 83-98 AS RECORDED IN THE CITY CLERK'S OFFICE

LANDING FEES/DRAKE FIELD

Mayor Hanna introduced an ordinance revising and updating the landing fees at Drake Field to meet leasing requirements, industry trends, and use in negotiating future leases and airport agreements.

City Attorney Rose read the ordinance for the first time.

Alderman Schaper asked when the lease with American Eagle expires.

Don Green, Airport Director of Operations, replied it expires December 31, but there is a clause allowing American Eagle to terminate it at any time. We can terminate at any time, too.

Alderman Schaper stated American Eagle needs to be notified that the City is terminating their lease effective the first of November. They've made it clear they have a contract starting the first of November with the regional airport.

Green stated this resolution will give airport staff the ability to negotiate new landing fees.

Alderman Williams stated this would allow the airport to negotiate the best fee with new carriers. He agreed American Airlines' actions are disappointing, but we need to be careful of what we do. There are FAA rules about being accessible to national carriers. We need to go slowly and to make sure we are in total compliance. We need to involve the Airport Advisory Board. He suggested relaying Alderman Schaper's suggestion about terminating the lease in November to Dale Frederick, Airport Manager, and to the Airport Advisory Board.

Alderman Schaper stated he would like a study to be done real quick regarding FAA rules. At least one airline that is staying has requested to move into American's space. We need to get on with taking care of our loyal carriers.

Alderman Williams moved to go to the second reading. Alderman Daniel seconded. Upon roll call, the motion carried on a vote of 7 to 0.

City Attorney Rose read the ordinance for the second time.

Alderman Williams asked if there is any need for a rush on this.

Green replied there is not.

This item was left on second reading.

DRAKE FIELD FIRE STATION AND TERMINAL CANOPY
Mayor Hanna introduced a resolution approving a contract amendment in the amount of $62,100 with Garver and Garver Engineers. The amendment covers additional engineering work for two projects, the new airfield rescue fire fighting building and the terminal canopy.

Alderman Williams stated this is a good improvement, especially for the passengers.

Alderman Miller moved the resolution. Alderman Daniel seconded. Upon roll call, the resolution passed on a vote 7 to 0.

RESOLUTION 84-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

SUMMIT WATER TANK SITE
Mayor Hanna introduced a resolution approving a bid award for the restoration of the old Summit water storage tank site.

Alderman Williams stated this has been an eyesore and a danger for a long time. This is money well spent. That part of town does not have a park.

Alderman Schaper stated the City has a responsibility to be its own best citizen.

Alderman Schaper moved the resolution. Alderman Zurcher seconded. Upon roll call, the resolution passed on a vote of 7 to 0.

RESOLUTION 85-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

VAC 98-7/EMERALD SUBDIVISION/HAYS
Mayor Hanna introduced an ordinance vacating a utility easement for property located on Lots 8 and 9 in Emerald Subdivision, Phase I. The request was submitted by Floyd Reed on behalf of J. B. and Oma Hays.

City Attorney Rose read the ordinance for the first time.

Floyd Reed, representing the petitioner, stated they are trying to move the utility easement 15 feet to the north. He asked if the three readings could be done at this meeting.

Alderman Schaper moved to suspend the rules and go to the second reading. Alderman Williams seconded. Upon roll call, the motion carried on a vote of 7 to 0.

City Attorney Rose read the ordinance for the second time.

There were no comments from the public.

Alderman Williams moved to go to third and final reading. Alderman Miller seconded. Upon roll call, the motion carried on a vote of 6 to 0, with Alderman Zurcher absent for the vote.

City Attorney Rose read the ordinance for the third time.

There being no further comments, Mayor Hanna called for the vote.

Upon roll call, the ordinance passed on a vote of 6 to 0, with Alderman Zurcher absent for the vote.

ORDINANCE 4101 AS RECORDED IN THE CITY CLERK'S OFFICE.

LEASE AGREEMENT/BEKKA DEVELOPMENT/TOWN CENTER
Mayor Hanna introduced a resolution approving a lease agreement between the City of Fayetteville and BEKKA Development for the property to be used as the entrance to the town center.

City Attorney Rose stated the Council had before them the lease agreement that Ed Bradberry and he negotiated, with the help of John Bradberry and Diane Boyd. The lease agreement attempts to give the City as much of an ownership interest as possible and provide a lease for Mr. Bradberry. It is a 25-year lease initially, with five year extensions at the option of the City. He read from the agreement, "It is the specific intent of the parties that this lease be one of perpetual renewal at the option of the lessee as long as the lessee is not in default." Reading from paragraph 11, he stated, "Default is failure to pay any installment of rent or to comply with any other terms of the lease and not curing those failures within 60 days."

Rose stated the amount of money is an up-front sum of $120,000 upon possession and $1 per year during the term or any extended terms of the lease. Mr. Bradberry will receive 32 covered parking spaces or room for those spaces under the town plaza area. He also has reasonable design approval as to the town plaza as it connects especially to his buildings to the north and south. He is interested in maintaining the flow and access to his buildings.

Alderman Trumbo stated this is a good and equitable compromise. He would like to pursue having the Advertising & Promotion Commission pay the up-front money.

Alderman Daniel asked how many parking spaces would be left for the City.

Richard Alderman, architect, stated the literature that went out for the election stated we would have about 230 parking spaces. They have wanted to change that and take about 30 parking spaces out, to lower the cost. He has been instructed to bid the project with all the parking spaces in it. He stated instead of bidding that part underneath, they would just bid the part under the plaza and leave out the ones they were going to put back in that were under the parking decks. Cost-wise, there is not a lot of difference between the lowest level parking and the ones under the plaza. He stated his instructions were to include 230 spaces. We had committed to giving Mr. Bradberry 32 parking spaces in the deck. We are just moving them from under the deck to under the plaza.

Alderman Miller asked if the public would have access to Mr. Bradberry's spaces at night.

Rose replied that the lease reads, "Said area shall be for the exclusive use of the lessor and/or his tenants and guests. However, when not in use by the lessor, said spaces may be utilized by the lessee for public purposes." He felt an arrangement could be worked out with the Bradberrys, when needed for events. He stated they feel it would be best to work this out on a case-by-case basis, rather than having it in the lease. He stated the Bradberrys are committed to the City being able to use the spaces for public purposes when the tenants are not using them.

Alderman Schaper asked what the taxes would be, which the City would be required to pay.

Rose thought they are about $1,100 now. The lessee is generally accountable for taxes. He agreed we would be paying property taxes on what we are building for Mr. Bradberry's use. For all productive purposes, this property is ours.

Alderman Williams asked where the space for garbage disposal would be.

Mr. Alderman replied there are areas on either street for dumpsters and trash pick up.

Alderman Schaper stated the real question is who pays the $120,000. This is part of building the town center.

Alderman Williams stated the A & P has $960,000. In addition to that, they have the $1 million they committed to the project. He stated he has no problem with the City joining with the A & P. This is a civic improvement. He noted that statements had been made to the public that the City would consider putting some money in it. The ballot was to approve the bond issue; nothing on the ballot said the City wouldn't also put money into this project to make it that much better.

Alderman Schaper stated the Council has not decided on that yet.

Rose stated some members on the A & P Commission are receptive to the possibility of this. He suggested asking about this at the next A & P Commission.

Alderman Schaper stated if the Council approves the lease, they are kind of approving that they will pay it.

Rose explained no rent will be paid until possession is taken. Possession is contingent upon the approval of the plans and approval of construction contracts. If no town center is built, there will not be $120,000 passing hands.

Alderman Young asked if the resolution could be passed contingent on the A & P Commission coming up with the money.

Rose replied this could be done.

Alderman Williams suggested leaving it on the table for future public comment.

Bootsie Ackerman, Coordinator of the Downtown Dickson Street Enhancement Project, urged the Council not to table this. The people voted for this project and she urged the Council not to delay it.

Jeff Erff, audience member, asked if citizens would have some idea of the City's contribution before the City signs off on the project.

Alderman Williams responded that the A & P Commission has studied operating costs and that would come out of A & P funds. Some things are yet to be decided.

Alderman Schaper added that future decisions will come before the Council.

David Glasser, University Community Design Center, stated this has been worked on for over a year. He stated this is an extraordinary building project. It will be a major anchor of downtown.

Alderman Williams noted that Alderman Pettus, who has been outspoken against a lease, was not present. He did not favor passing this in her absence, without giving her a chance to again explain her position.

Mr. Glasser stated the town center will put us in a competitive stance with other cities that have beaten us to the punch with meeting space. The $120,000 invested by the City with this lease could be a catalyst that gets this project going.

Alderman Williams stated we can't go forward with anything until we go forward with the bonds. It would not delay the project to delay this one more meeting and look at everything.

Alderman Trumbo moved to approve the resolution. Alderman Daniel seconded.

Steve Ward, Chamber of Commerce, encouraged the Council to approve this at this meeting. This is preferable to condemnation and buying the property, which have been discussed. He stated the A & P commissioners are committed to this. He stated the $120,000 is something the City can well afford. This action will keep the project on track.

Alderman Zurcher stated it is important to look at what zaps a downtown. One thing is having an overabundance of commercial property. If we keep rezoning to commercial on demand, it will always be cheaper to go out to the edge of town.

Upon roll call, the resolution passed on a vote of 7 to 0.

RESOLUTION 86-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

REFUND AND/OR ROLLBACK OF MILLAGE
Mayor Hanna introduced discussion of the Millage Refund/Rollback.

City Attorney Rose reminded the Council that last year the City, along with the Fayetteville School District, the City of Springdale, and the Springdale School District, was sued in a class action lawsuit that alleged that a county-wide reappraisal had taken place beginning in 1994. It alleged that Amendment 59 required either a roll back of our rates or millage taxation or a refund of millage already collected. Rose stated he initiated answers to that lawsuit. Up until December, he had thought the City wished to proceed with those defenses and take the lead with the Fayetteville School Board in alleging there was no rollback needed because there was no county-wide reappraisal.

Rose stated that in December, the Council passed Resolution 119-97 and there was discussion about whether the Council wanted to go ahead and roll back or make refunds based on whatever figures we got from Washington County and that the Council no longer wished to proceed with the defenses in the lawsuit.

Rose stated the figures were received from Washington County and provided to the Council. Based on that, he stated he thought his instructions were to try to seek a refund and settlement of the lawsuit. Accordingly, he contacted the attorneys for the plaintiffs and they have agreed to a settlement based on the figures received from Washington County and on the plaintiffs' theory of this lawsuit. The case can be settled by refunding the sum of $152,374 on a pro rata basis to the property tax payers in Fayetteville.

Rose stated the refund would be for the 1996 property taxes that they claim were exacted prematurely and the 1997 taxes that are alleged to be collected in excess of the 10% allowed by Amendment 59.

The attorney fees would be 25% of that. An administrative cost would be deducted from the total amount. The plaintiffs' counsels would supervise the refund in a manner approved by the court. The settlement would have no impact at all, at the present time, on any future year and no rollback would be required.

Rose asked for further instructions from the Council on how to go forward.

Alderman Trumbo expressed concern about leaving the school board to pursue this by themselves and possibly getting a ruling that goes the other way.

Alderman Williams explained his reasons for drafting Resolution 119-97 were that it had been certified that there had been a county-wide reappraisal and he didn't want Fayetteville to have to be dragged to court to pay money back to its taxpayers and also out of fear of a long litigation process. It was not to support a settlement between attorneys. Now we are only two months away from a trial and the figures are much more than what was anticipated.

Dale Evans, plaintiff attorney, asked why, if passing the resolution then was the right thing to do then, it would be any different today. Also, the conclusion of the case will probably not occur in August. It could be several years away.

Alderman Zurcher stated that after reading the ballot title and the opinions from several judges and other information, the right thing to do is to refund the money. The City should not have to be forced to give money back that doesn't belong to it.

Mr. Evans challenged the Council to read the ballot and come up with a different meaning than what the plaintiffs are claiming.

Alderman Schaper asked about how the numbers were arrived at.

Mr. Evans explained that no one knew exactly what the numbers were. The amendment is set up for certain exclusions to be taken out of the money. Those records had not been kept that way for some period of time. This was not determinable until the last few months.

Ben Mayes, Administrative Services Director, stated there are several ways to determine this. He remembered estimating approximately $70,000 a year-and-a-half ago.

Alderman Williams stated the plaintiffs' theory is that there are two years that the $70.000 couldn't be collected, instead of one year.

Rose stated you can argue over whether there was a county-wide reappraisal and whether 1994 was the base year. They are being argued in good faith and can continue to be.

Mr. Evans stated he is asking whether or not the people asked for a cap to be implemented and has it occurred.

Alderman Schaper asked if the Council accepts the settlement, would they be prejudicing the other defendants in this.

Rose did not think so. No admissions of fault would be made in the settlement offer:. It would have a psychological effect and their interest is much greater than ours.

Alderman Trumbo supported letting the court decide.

Alderman Daniel agreed.

Alderman Zurcher agreed.

Alderman Williams was not in favor of passing the resolution at this time, as it is complicated material.

Mr. Evans stated settlements are time related. This is not an open-ended offer.

Mr. Evans stated the settlement could include that this cures any exposure the City of Fayetteville has.

Alderman Williams stated he would like to table this and have it as old business at the next meeting.

Alderman Williams moved to table this. Alderman Zurcher seconded. Upon roll call, the motion carried on a vote of 7 to 0.

ADJOURNMENT

Mayor Hanna adjourned the meeting at 9:30 p.m..