A MEETING OF THE FAYETTEVILLE CITY COUNCIL

A meeting of the Fayetteville City Council was held on Tuesday, July 7, 1998, at 6:30 p.m., in the Council Room of the City Administration Building, 113 W. Mountain, Fayetteville, Arkansas.

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

ABSENT: Aldermen Stephen Miller and Heather Daniel

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

CONSENT

MINUTES
Approval of minutes from June 16 meeting.

BID 98-38/WATER LINE REPLACEMENT/ROLLING HILLS
A resolution approving the construction contract with Goodwin and Goodwin, Inc., in the amount of $368,615 for Rolling Hills Area Phase II Water Line Replacement and $44,235 for project contingency and approval of a budget adjustment.

RESOLUTION 87-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

LAND ACOUISITION/SUNBRIDGE
MOVED FROM CONSENT TO NEW BUSINESS

SEWER REPAIR
A resolution approving a change order for an emergency sewer pipe bursting with T. G. Excavating, in the amount of $37,373 and to continue the contingency for the existing contract at $18,654.

RESOLUTION 88-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

Alderman Schaper moved the consent agenda. Alderman Young seconded. Upon roll call, the motion carried on a vote of 6 to 0.

OLD BUSINESS

RZ 98-10.00/HOLLY STREET/DEMAREE MEDIA
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 was left on second reading at the June 16 meeting.

City Attorney Rose read the ordinance for the third time.

Alderman Trumbo stated there has been no public objections to this and the bill of assurance seems more than adequate.

There were no comments from the public.

Alderman Schaper stated he has reservations about doing rezonings for the convenience of the property owner, rather than in conformance with a long-term plan. They put money in this, knowing it was a conditional use. It could stay a conditional use. A new owner could seek a conditional use.

Alderman Williams did not think the R-O designation would be a problem for the neighborhood, especially with a bill of assurance that the building and parking lot cannot be enlarged.

Alderman Zurcher stated the R-O zoning is not well defined. It is not residential, commercial, or mixed use.

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

Upon roll call, the ordinance passed on a vote of 5-2-1, with Mayor Hanna voting yes, Aldermen Zurcher and Schaper voting no, and Alderman Young abstaining.

ORDINANCE 4102 AS RECORDED IN THE CITY CLERK'S OFFICE.

LANDING FEES

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. This was left on second reading at the June 16, 1998, meeting.

City Attorney Rose read the ordinance for the third time.

Alderman Trumbo stated citizens have expressed to him their fears that the Airport is being irresponsible in spending City tax

money for airport improvements when all the business will be going up north. He stated the City has the responsibility to maintain the airport with integrity and efficiency.

Dale Frederick, Airport Manager, responded that any airport capital improvements are the result of direction of the Council. We are developing and maintaining the airport to air carrier standards. Improvements go through the approval process. When Federal money is involved, there are other standards that have to be met. A lot of the money is FAA money or money generated by the airport.

Mayor Hanna stated the improvements will be just as important to one airline as they would be to five airlines. We have a lot of charter flights into the airport. We also have to take care of our private customers.

Alderman Trumbo stated he liked Alderman Schaper's remarks made at a previous meeting about having the Airport Board address when American's lease terminates and giving the preferred space to another airline that is staying.

Frederick stated we cannot run the risk of giving a drop dead date to an airline that could leave a large number of passengers with no way to travel on the airline of their choice. We have to make the transition as smooth as possible for our traveling public. He felt an orderly transition could be accomplished with 10 days notice, not 90 or 60.

Alderman Pettus asked about American's option to extend their lease.

Frederick replied we have a year-to-year contract with the airline. They can drop it with a 30-day notice, by resolution.

Alderman Williams thought the new ordinance would help us keep as competitive as possible and maintain service at Drake Field.

There was no comment from the public.

Mayor Hanna called for the vote.

Upon roll call, the ordinance passed on a vote of 6 to 0.

ORDINANCE 4103 AS RECORDED IN THE CITY CLERK'S OFFICE.

SUTTON STREET/OFFER & ACCEPTANCE
Mayor Hanna introduced a report from the City Attorney on the Sutton Street offer and acceptance.

City Attorney Rose stated that, based on instructions from the Council, the City entered into an offer and acceptance contract to the owners of the Sutton Street property. The contract was to expire on June 19. On June 23, the City received a letter from Mr. Keating asking for additional time. Rose stated he has received two letters from Mr. Wright. One gave the reasons for the additional time, which were to determine the value of the property and to properly document the value. The other letter reiterated the information being gathered and included what has been found so far. There were attachments regarding improvements to the property, a list of people who signed a petition some time ago against the park property, and a letter from 1994 expressing interest in purchasing the property.

Alderman Pettus stated they have basically turned down our offer and we have to decide if we want to resubmit it.

Wyit Wright, owner, stated they are trying to protect the value of their property and the quality of the neighborhood. He stated they have valid concerns as to why this property was valued at what it was. In talking with neighbors and realtors, the general impression is that it appraised at a very low price. He stated they are asking to have until next week to determine the value of this property.

Alderman Schaper asked if they are trying to make a case that the property and its landscaping should sell for its replacement cost.

Mr. Wright felt it was fair to point out that the properties this was compared with were, for the most part, vacant lots. This property is fully landscaped and well cared for. He stated his motivation is not to profit, but to preserve the neighborhood. He stated his action could be viewed as trying to discourage the City from buying the property.

Alderman Pettus stated the question before the Council is whether or not to give them more time. She saw no reason not to. It would not change the value of the property or anything else.

Mr. Wright stated the only difference is there is not a for sale

sign on the property. People use it as before. It is being mowed and maintained.

Alderman Young stated there is an appraised value and there is a market value. The market value has been set by the owner at $50,000.

Alderman Schaper noted that in condemnation proceedings, the value gets decided after the fact. He doubted that a judge would add $79,000 to the price because that's what it would cost to replace the rock work. He stated the decision on where the public interest lies rests with the Council, not the property owners. He stated he would like to place a condemnation ordinance on the first reading.

Alderman Pettus thought that would be an act of coercion. She urged being patient and working this out without threats of condemnation. She suggested giving them a week.

Alderman Pettus moved to give them to July 17 to make their response. There was no second.

City Attorney Rose stated he had prepared an ordinance, as requested by Alderman Schaper at the agenda session. He stated there is no statutory requirement for notice of an ordinance. He felt it would be appropriate to have a majority vote asking to place it on the current agenda.

Alderman Schaper moved to place the condemnation ordinance on first reading. Alderman Young seconded.

Alderman Williams felt public comment should be heard.

Alderman Young suggested adding the ordinance at the next agenda session, if the offer is refused.

Richard Alexander, 231 Dickson Street, stated the property owners have had plenty of time to consider this offer. He stated the owners do not want the City to buy the property. A certified appraiser has said it is worth $50,000. The land has been for sale for years and has not sold. A significant segment of the public favors this park. He urged the Council to put forth an ordinance to condemn the property and advance it through all readings.

Alderman Pettus stated she has had constituents call and say not

to condemn such a small parcel of land in this situation. The chairman of the Parks & Recreation Board has said he would be very opposed to this condemnation.

Mr. Alexander stated this was bought to keep the City from getting it. This would send a message to future opponents of City projects.

Mr. Wright stated the issue of condemnation was raised before any offer was made to the owners. The City has never condemned a piece of property for a park. He stated they hoped additional time would allow for calming on all sides. He quoted Bill Ackerman, chairman of the Parks & Recreation Board, as saying the Parks Board has almost never had to purchase property. In fact, so many plots have been acquired that the department has a problem maintaining all of them. He stated Kevin Crosson, Public Works Director, has said lagging maintenance stems partly from the parks program success and that the City should slow land acquisition and spend money developing and improving what we already have. Mr. Wright stated mentioning condemnation when making an offer is unprecedented and unfair.

Alderman Williams noted that Mr. Ackerman, Parks Advisory Board, voted in favor of this project, as did the majority of the board.

Alderman Schaper thought it strange that the Parks Board asked that half the money be raised privately.

Alderman Pettus felt this showed they did not want to spend $50,000 for this property.

Chris Krueger, neighbor, supported giving the owners another week. Having information on the maintenance of the park would be beneficial to the Council. She has heard that this property would cost six or eight times what was paid for Gulley Park, which is an issue.

Alderman Young pointed out that if this ordinance were read for the first time and not moved on, the property owners would have at least two weeks to make a counteroffer.

Alderman Williams noted that in the past a condemnation ordinance has been read when the Council was trying to get an unsafe and unsightly property removed. It was not until the procedure was begun that the City got action and did not have to go through with it. This would not close the book on negotiations. There are advantages to selling it to the City, such as having

restrictive covenants to protect the neighbors. He supported putting a condemnation ordinance on first reading.

Alderman Pettus felt putting it on the first reading would be coercive.

Alderman Trumbo stated he favors free enterprise and did not support condemnation.

Alderman Williams stated condemnation would not be appropriate, if this were still Ms. January's property and she did not want it to be used for a city park. He stated she did want it to be a City park. This is a rare circumstance.

Paula Marinoni, audience member, stated this is a very special and important piece of property. The Arkansas Historic Preservation Program in Little Rock confirmed that the area just a block south of this property, called Big Spring, was the earliest documented settlement in Fayetteville. During the Battle of Fayetteville, minor skirmishes took place throughout the surrounding countryside. This area has never been developed. It has rock work, but the land has never been altered. The Council needs to think about preserving this area. It may be archaeologically significant. She quoted from Section 7.9 of the 2020 Plan regarding historical resources and their relationship to the community. She stated she discussed this in great detail with Ms. January over a year ago and Ms. January said she would like it to be preserved. In March, Ms. January again expressed her desire for this to be a park and preserved. The day before the Parks Board meeting recently, Ms. January said she would still like for this to be a park and that she would sell it to the City for $50,000. The current owners upped their offer knowing the City was intending to purchase the property. Ms. Marinoni stated she is working on a midtown trail that has over 50 historic sites. This could be added to that.

Mayor Hanna called for the vote.

Upon roll call, the motion to put a condemnation ordinance on first reading failed on a vote of 4 to 2, with Aldermen Trumbo and Pettus voting no and Mayor Hanna declining to vote.

HOG CITY DINER

Mayor Hanna introduced a resolution approving a patio area lease between the City of Fayetteville and Hog City Diner.

Alderman Pettus asked how many plants would have to be moved.

Richard Alderman, architect, showed drawings. They want just enough room along the curb to get in and get the work done. The contractor is required by the specifications to build the project from the inside out and not have any access or any movement through the gardens. They need two feet to put the posts in. He referred to site plan No. 1. He showed where a few plants would have to be moved.

Susan Ferrall, Square Gardens Manager, stated there is a lot of plant material that would have to be dug up in the heat of the summer. Everything will have to be potted, as there is no place to put it at this point. That park will have to be redesigned. She stated she would prefer to see this done after the freeze. This is the height of the season.

Mr. Alderman stated that from a financial standpoint, it is important to have this done by fall, when the students come back. He stated they have made every effort to restrict the contractor and to come up with a sequence of events to control the activity. He showed the back elevation as it will look. He stated it would take four to six weeks to complete.

Alderman Young asked what exactly will be constructed. He had envisioned a board deck.

Michael O'Brien, Cafe Company, stated they are proposing to level it with concrete, which would result in a retaining wall in an area that is now prone to flooding, sloping the concrete to distribute it. This also suits the American Disabilities Act and will be a smoother approach to the lift that will be placed at the entrance of the patio. He stated they would basically tie into the existing concrete at its highest level. If this ever were to revert back to the City, it will be an improved space. They will tie the drains from the building into an underground drainage system that will tie into the City's. The drainage problem will be corrected. It will be basically what is there now, but level.

Mr. Alderman stated decking is hard for a wheel chair to roll over and would have spaces which things could fall through.

Mr. O'Brien estimated the outdoor dining area would seat 75 to 80 people. He thought the outdoor area could be used about five months out of the year. He would like to see three to four table turn overs in the evening and two at lunch.

Alderman Schaper calculated the potential revenue from the outdoor dining to be $3,000 a day, gross. Rent typically goes around two to two and a half percent of the gross on an annual basis. He stated this would be a lot more than the dollar a square foot per year being proposed.

Mr. O'Brien responded that formula is based on improved space. This is unimproved, exterior space being used five months out of the year. All the improvements are at their expense.

Alderman Schaper stated the proposed terms represent a tremendous bargain. It is conservatively worth 10 times more.

Mr. O'Brien stated the City will get something for space that is not producing now. It will invigorate the town square and produce tax revenue.

Alderman Williams had concerns about the length of the lease. This lease is almost a deed. He stated citizens have expressed concern about increased noise from music and conversation.

Alderman Young was concerned about the option to extend on the same terms.

Alderman Schaper stated the question is whether this is a good idea, conceptually, or not. He has had calls from folks saying Dickson Street is the place for lively, outdoor eating. The square gardens are special. We need more public input on whether this is a wise thing to be doing.

Mayor Hanna stated he has been worried about the lack of activity around the square at night. There are not many people there to be disturbed at night. He stated the City will be getting their two percent just from the HMR tax. Many visitors have been disappointed not to find a restaurant in the middle of the square.

Mr. O'Brien stated the lease term of 25 years ties in with their commitment. They envision the revitalization of the downtown area.

Alderman Williams stated we need to look at the lease very carefully. Some people enjoy the quiet of the square.

Mr. O'Brien responded that he has had impressive, positive feed back from his customer base, which is 2,500 to 3,000 people a week.

Alderman Trumbo would like to see the lease have five-year increments, $3 a sq. ft., and CPI escalator clauses on the annual index for increases.

Mayor Hanna asked if Mr. O'Brien would be comfortable with an initial lease term of 10 years with five-year renewals and some kind of escalator clause.

Mr. O'Brien replied he would be.

Alderman Zurcher stated he was not sure this is a good concept, but he would consider a ten-year lease with five-year increments and all the numbers multiplied by ten and a guarantee that construction would not be started until after the first freeze.

Alderman Schaper suggested a five-year initial term.

Mr. O'Brien stated the proposal of ten years is acceptable.

Alderman Williams stated the City still needs to have some power and discretion and not have the lease automatically renew.

Alderman Schaper stated the outdoor music is a sensitive issue for him. The City owns this property. It is right next to the square gardens and he wants to protect the people who want to enjoy the gardens without intrusion.

Mayor Hanna asked if the City could have some kind of control over the music.

Mr. O'Brien stated that would be no problem.

Alderman Pettus asked about the cost of moving plants.

Mr. O'Brien stated they would absorb the expenses incurred. They would leave it up to Susan Ferrall to determine the costs. They could also provide assistance in relocating the plants. The time to develop the project is now. The market changes in the fall and waiting for the freeze would put them in the middle of bad weather and the Christmas light program.

Alderman Zurcher thought they should be able to wait one season, if they are in this for the long term.

Mayor Hanna asked if the lease could be reworked incorporating the items discussed and be voted on at the next meeting.

Mr. O'Brien stated their preference would be for a ten-year lease, not five years.

Alderman Pettus asked about the clause in paragraph 20 of the lease which reads, "...not to conduct any business thereon..."

City Attorney Rose explained this refers to running a business other than this. He agreed to insert the word "other."

Mr. O'Brien stated time is of the essence to them. He asked if it could be voted on at this meeting, if they agreed to the ten-years terms, the $3 figure, and assisting Susan Ferrall as she dictates.

Alderman Williams stated the biggest mistakes made by the City have been when decisions were hurried.

Bill Stiles, 117 Rock, did not agree that this real estate is so valuable. There are a bunch of empty buildings on the square. The square is dying. This man wants to do something to bring people back to the square and the City should let him do it.

Paula Marinoni, citizen, stated she has expertise in judging the ambiance of a garden. She can tell what a garden has going for it and what it needs. Consistency is part of what makes a garden desirable to people. The square is not as vital as it used to be. She asked what guarantee there is that there would be no live, amplified music. People may want something different from Dickson Street, but she does not believe this will happen. These people have only been in business three or four months and we do not know them well; but they are getting ready to totally change the centerpiece of Fayetteville and drastically change the ambiance in the garden. She asked if it could be put in the lease that they can't have live, outdoor, amplified music.

Mayor Hanna stated they have told the City they wouldn't have and under the terms of the lease they can be told they can't do it.

Richard Alexander, resident of the historic district, downtown/Dickson St. developer, and board member of the Downtown Dickson Street Enhancement Project, encouraged the Council to view this project favorably and to get the best terms possible in the lease. The City's efforts to revitalize the downtown are aimed not just at tourism but at supporting businesses. The battle to save the square is not over. This project offers an ambiance and another reason to go to the gardens.

Bootsie Ackerman, Director of the Downtown Dickson Enhancement Project, stated they have asked citizens of Fayetteville what they'd like to see in the community. Outdoor dining is always mentioned. She stated the owners of this business want nothing more than to improve our community and add a beautiful business.

Ron Bumpass, representing the owner of the building, stated they supported the garden long before the City put money in it. He mentioned other cities that have revitalized with outdoor restaurants. The improvements made here will create more activity. No one else will use the property. He urged coming up with fair terms.

Alderman Trumbo moved to table this until the next meeting. Alderman Pettus seconded. Upon roll call, the motion carried on a vote of 6 to 0.

REFUND AND/OR ROLLBACK OF MILLAGE

Mayor Hanna introduced discussion of the millage refund/rollback.

Alderman Williams stated he would like to have input from the fire and police pension boards.

Eldon Roberts, Assistant Police Chief and employees' representative to the Police Pension Board, stated there are two pension plans. He foresees no financial problems regarding the new one. The old one is suffering. He gave a history of the police pension plans. Even with this increase, benefit increases cannot be given to people who retired long ago. He stated they cannot stand to lose any of the fund's assets and opposed use of the assets for any reason other than paying benefits. He supported not giving the money back until and unless we have to.

City Attorney Rose stated it might be conceivable to reimburse the pension funds out of the general fund, if the City desired.

Pete Reagan, Fire Captain and Fire Pension Board member, stated they have two systems. This millage affects the old pension system. The .5 mil produced $230,000 last year. The insurance turn back money is another source of income. There are no built-in cost-of-living increases in their fund. There have been benefit increases because the fund has done well at different times. He stated the fund is no longer actuarially sound. In order to receive funds, the millage would have to be increased to a full mil. They are currently $1.295 million under funded. He

stated the settlement could be paid out of funds other than the pension funds, if the City makes that choice.

City Attorney Rose thought this could be done. He agreed that the estimate for the court-ordered rollback is close to the settlement, but this increases with each year that goes by. He surmised an appeal could run a year and a half. The settlement offer is not open indefinitely.

Rose explained the primary defenses. We would advocate that the term "county-wide reappraisal" encompasses a re-appraisal of all taxable property in a county before the tax adjustment or rollback of Amendment 59 is triggered. We would allege there was no comprehensive county-wide reappraisal. Amendment 59 requires a base year to be established. The base year is the year in which all adjustments are to be made from. Base year is defined as being part of the state-wide reappraisal program. We would allege there has been no state-wide reappraisal here. Act 758 and Act 836, which repealed Act 758, mandate a review and reevaluation every five years. We would allege these acts do not call this multi-year, cyclical review part of a comprehensive, county-wide reappraisal for purposes of Amendment 59.

Rose stated acceptance of the settlement would require something affirmative from the Council, like a resolution. He stated he believes his instructions are to continue on with this case and present the above defenses.

NEW BUSINESS

PUBLIC HEARING/PETITION FOR REFERENDUM/HUMAN DIGNITY RESOLUTION
Mayor Hanna introduce a public hearing for all who wished to be heard on the question of whether or not the petition for referendum was signed by the requisite number of petitioners.

City Attorney Rose stated the Council is required to do this by ordinance.

There were no comments from the public.

PETITION FOR REFERENDUM/HUMAN DIGNITY RESOLUTION/SIGNATURES/DATE
Mayor Hanna introduced a resolution finding that the referendum petition on Resolution 51-98, a resolution declaring the Human Dignity policy of the City of Fayetteville, was signed by the

requisite number of petitioners and setting a date for the referendum election.

City Attorney Rose acknowledged the petition set the date of the election; the Council would be instructing the election commission to have it in accordance with the petition.

Alderman Williams moved to certify November 3, 1998, as the date. Alderman Pettus seconded. Upon roll call, the motion carried on a vote of 5 t 0, with Alderman Zurcher absent for the vote.

CRACKER BARREL

Mayor Hanna introduced an appeal of a Planning Commission decision to deny a variance request to erect one free-standing pole sign for Cracker Barrel restaurant.

City Attorney Rose stated an appeal may be heard by the Council only if a majority of the Council votes to hear it.

Alderman Williams moved to hear the appeal. Alderman Pettus seconded. Upon roll call, the motion carried on a vote of 5 to 2, with Mayor Hanna voting yes and Aldermen Zurcher and Schaper voting no.

Jim McCord, attorney representing Cracker Barrel, stated a packet had been distributed that includes photographs of the site. Per ordinance, the appeal specifies the reasons for appeal. Cracker Barrel believes that the Planning Commission erred in not finding that the low elevation of the site together with the trees to the north are special conditions which severely reduce the visibility of the signs permitted under the existing ordinance and that these conditions are not applicable to other lands in the overlay district. He stated the sign restrictions in the overlay district ordinance would deprive Cracker Barrel of rights enjoyed by other properties in the overlay district, particularly sign visibility and business identification. Regarding putting a logo on the exit ramp sign, Mr. McCord stated there is only one space left on that sign and it will be allocated on a first come first serve basis when construction begins. Construction of this would not start for approximately five months. He stated this is a serious issue to Cracker Barrel senior management. It is not the decisive issue. If this is granted, Cracker Barrel may or may not locate a restaurant here; if this is denied, they may or may not locate a restaurant here. There are other serious variables being evaluated. They would like the appeal granted and are

suggesting a very unobtrusive sign, a sign permitted by ordinance if this property were not in the overlay district.

Alderman Schaper stated there are two spaces left on the highway sign.

Mr. McCord responded that he'd been told by the State highway department that there is only one space available.

Mr. Kevin Kerbo, project manager in charge of signage, reviewed the booklet handed out and the target test that was done. There is about a 7.5' difference between the road grade and where the sign will be. He stated that logo boards are good but are non-illuminated at night and can be blocked from view by other traffic. They can be damaged and not quickly replaced. He stated the pole sign could be designed in any way the City wants.

Alderman Schaper stated the highway department has plans to move the southbound exit further north. He is concerned that even with the pole sign, Cracker Barrel will not have the visibility they want. He confirmed for Mr. Kerbo that billboards are not allowed in the City limits along Highway 71.

Alett Little, Planning Director, stated Cracker Barrel had been informed of this way before they came to Planning Commission.

Mr. Kerbo acknowledged he is aware of the highway department's plans and it has been the topic of a lot of conversations at the home office. He stated he is concerned the sign won't be visible.

Alderman Schaper stated he understood the Planning Commission said Cracker Barrel could have signage on the south side of the building and on the front of the building. The motel next to this has a sign on the portico that is very visible from the southbound lanes and meets the ordinance requirements. He thought if Cracker Barrel were situated properly, this would be just as visible as a pole sign for them.

Mr. Kerbo felt this is a construction issue, which is not his bailiwick. He stated the company just doesn't like putting signs on the sides of the buildings.

Alderman Schaper stated he would rather grant a variance for a sign on the north side of the building than for a pole sign.

There was discussion about visibility from the north.

Mr. McCord stated the burden is on the applicant to demonstrate entitlement to a variance. He feels this burden has been met by demonstrating this site has extremely low elevation and is obscured by trees to the north.

Alderman Williams stated the immediate neighbor to the north, which has the same grade, has been able to work within the ordinance. He stated the appeal might be premature. The sign on the logo board may be more favorable. If there is no space left when construction begins, that would be a stronger position for appeal. He felt visibility from the south, as people enter town, is more important than visibility as they leave.

Mr. McCord stated that waiting until construction begins would be a mult-million-dollar gamble that they might get a logo sign and not have a pole sign.

Alderman Trumbo stated they have proven this site is different from its neighbors. Certain circumstances dictate varying from the ordinances and this is one of them. He noted the Planning Commission was split 4-4. They have proven this is a lower area, there are larger trees, it will add $150,000 in tax money, and they do it in a first-class way. They have demonstrated their case.

Alderman Young asked about future decisions and would this open up the floodgate.

Alderman Pettus responded it is a case-by-case decision.

Alderman Zurcher stated one of the points of the ordinance is that pole signs are ugly.

Mr. Kerbo stated the height they are asking for is 22' above Futrall Road, which may be lower above Highway 71. They are willing to make it look as least like a pole sign as possible, using whatever material the City wants.

Mr. McCord observed that this is not the standard sign that Cracker Barrel puts in. It is much smaller than what they put in nationwide. Noting that two aldermen were absent, he asked if the Council would consider tabling this.

Alderman Williams moved to table it until the next meeting. Alderman Pettus seconded. Upon roll call, the motion carried on a vote of 5 to 1, with Alderman Zurcher voting no.

VAC 98-5.00/CRACKER BARREL
Mayor Hanna introduced an ordinance approving a right-of-way vacation request submitted by CEI Engineering on behalf of Cracker Barrel for property located south of 6th Street and east of Highway 71 and Futrall Drive. The request is to vacate approximately .37 acres of City right-of-way extending approximately 315' east of Futrall Drive.

City Attorney Rose read the ordinance for the first time.

Alderman Schaper 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 to 0.

City Attorney Rose read the ordinance for the second time.

Alderman Zurcher moved to suspend the rules and go to the third reading. Alderman Schaper seconded. Upon roll call, the motion carried on a vote of 6 to 0.

City Attorney Rose read the ordinance for the third time.

There were no comments from the public. Mayor Hanna called for the vote.

Upon roll call, the ordinance passed on a vote of 6 to 0.

ORDINANCE 4104 AS RECORDED IN THE CITY CLERK'S OFFICE.

ORDINANCE AMENDMENT/RIDING FIRE DEPT. VEHICLES
Mayor Hanna introduced an ordinance amending Section 33.049 of the City code of ordinances to allow certain designated non-Fayetteville Fire Department personnel to ride Fayetteville Fire Department vehicles within prescribed Fire Department policies.

City Attorney Rose read the ordinance for the first time.

Alderman Williams stated this would allow visiting firemen to ride and also a scout troop. Everyone would have to sign a waiver of liability.

Marion Doss, Assistant Fire Chief, stated this is an educational thing but is against City ordinance. They do have to sign a

waiver and be under the supervision of Fayetteville firemen.

City Attorney Rose stated that the waivers coupled with tort immunity would make the City as safe as it could get.

Alderman Williams moved to suspend the rules and go to the second reading. Alderman Trumbo seconded. Upon roll call, the motion carried on a vote of 6 to 0.

City Attorney Rose read the ordinance for the second time.

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

City Attorney Rose read the ordinance for the third time.

There were no comments from the public. Mayor Hanna called for the vote.

Upon roll call, the ordinance passed on a vote of 6 to 0.

ORDINANCE 4105 AS RECORDED IN THE CITY CLERK'S OFFICE.

RZ98-11.00/SCHOOL DISTRICT

Mayor Hanna introduced an ordinance approving a rezoning request submitted by Hailey/Amirmoez Associates on behalf of Fayetteville School District for property located north of Mount Comfort and west of Salem Road. The property is zoned R-1, Low Density Residential. The request is for P-1, Institutional, and contains approximately 20 acres.

City Attorney Rose read the ordinance for the first time.

Alderman Williams 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 to 0.

City Attorney Rose read the ordinance for the second time.

Alderman Schaper moved to suspend the rules and go to the third reading. Alderman Zurcher seconded. Upon roll call, the motion carried on a vote of 6 to 0.

City Attorney Rose read the ordinance for the third time.

Alderman Williams stated this is for the new middle school on the west.

Alderman Young stated the school district evidently doesn't like parks and he would rather have this to the north.

There were no comments from the public. Mayor Hanna called for the vote.

Upon roll call, the ordinance passed on a vote of 6 to 0.

ORDINANCE 4106 AS RECORDED IN THE CITY CLERK'S OFFICE.

LAND ACOUISITION

Mayor Hanna introduced a resolution approving the acquisition of land for the extension of Sunbridge Drive from Villa Boulevard to College Avenue and approval of a budget adjustment providing funding for the purchase.

Alderman Williams reported that the Street Committee did not take action on this. They are concerned about the cost of that small parcel. He stated he would like to see some off-site-improvement help by some of the developers.

Mayor Hanna stated this has been part of the CIP master street plan since 1995.

Alderman Schaper stated one of his concerns is that we will be opening up more land for commercial development when there are parcels along College that need redevelopment.

Alderman Williams stated it would be best to do both Drake Street and Sunbridge, but there is limited money. It would be difficult to put over $1 million almost next to Sunbridge to finish Drake Street.

Alderman Schaper asked if a benefit/cost analysis had been done.

Alderman Williams stated we haven't looked into getting help from developers, which we have done at other locations.

Alderman Schaper suggested putting this off until we get more data.

Alderman Young stated the odds are if we don't do it now, we never will.

Alderman Trumbo favored moving forward with this project.

Alderman Williams stated he would like to explore the off-site development costs. We can't go back after we build the road.

Alett Little, Planning Director, stated that after a large scale is filed, it is considered in process and no changes are made. The more appropriate time to have made the assessment was when the subdivision was filed. It was talked about at Planning Commission. As the remaining lots come before the City, there would be opportunity to assess whatever proportionate share of the traffic they would generate to the cost of this improvement. It would be a very small cost, because individual businesses will not generate as much traffic as this particular connection is going to carry. She stated these are not commercial lots, they are Residential Office lots.

Jim McCord, representing the Curry family, stated an offer and acceptance has been executed by the Curry family. They did not ask for this project. They lost an option to sell to Wendy's. They feel they have reached an equitable settlement. The offer and acceptance provides for a 30-day closing and will expire. With staff's recommendation, the Currys had thought this would go through at this meeting. He stated they are not going to do any additional development, so there would be no basis for requiring off-site improvements from them.

Wade Bishop, audience member, stated this street did not exist three or four years ago, even on paper. He stated they've been working on Gregg Street since the early 70's. Contributions have been made by individuals and by the City toward that street. They have been told over and over that Gregg Street is in the five-year plan. Last year, they were told the engineering would be done this year. It has all disappeared into thin air. He stated he was disappointed to see a city park installed, landscaped, with playground and parking and all on the easement on Drake where it intersects Gregg. Large rocks were left in the easement. Gregg Street is a four lane road, 75% completed. There may be a time when this two-lane road will become obsolete.

Ed Connell, City Land Agent, stated the other party's time limit has expired. This is the property to the south of the Curry property. They had agreed to extend it until this meeting, assuming its approval.

Mayor Hanna stated it would be a mistake not to proceed with this.

Alderman Trumbo supported staff's recommendation.

Alderman Schaper agreed with the Mayor.

Alderman Trumbo moved the resolution as presented. Alderman Pettus seconded. Upon roll call, the resolution passed on a vote of 5 to 2, with Mayor Hanna voting yes and Aldermen Zurcher and Williams voting no.

RESOLUTION 90-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

FUEL FARM/DRAKE FIELD

Mayor Hanna introduced a resolution approving a contract with John P. Marinoni Construction Company, Inc., for construction of the airport's above ground fuel farm for the amount of $517,130 and also approval of change order No. 1 reducing the contract amount to $487,830 and a contingency of $48,783 and approval of a budget adjustment.

Alderman Trumbo asked if there is a reason to do this project on a grand scale, even though we don't know how much traffic will be lost.

Don Green, Airport Operations Supervisor, replied this has been considered. Our current airlines are all in favor of this. We are currently operating under inspection waivers from the airlines because the tanks are underground. The airlines would like to be able to inspect them. It is an appropriate size. We are under an EPA mandate to do either above ground or refurbish the existing tanks, which could cost an estimated $60,000. Having above ground tanks will mitigate environmental problems.

Alderman Schaper asked why almost the same fuel capacity was needed when we will be losing half our airplanes.

Green replied corporate traffic is increasing. That won't be declining.

Dale Frederick, Airport Manager, stated this project has been ongoing and has been through the decision process, including the Airport Board. It has become more and more difficult to maintain

below ground tanks and the rules keep changing. Today we have the money to do it. This is airport revenue money.

Alderman Young said if above ground tanks are polluting it can be seen and dealt with.

Alderman Williams moved the resolution. Alderman Pettus seconded. Upon roll call, the resolution passed on a vote of 6 to 0.

RESOLUTION 91-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

COMPENSATION FOR ALDERMEN

Mayor Hanna introduced an ordinance amending Section 31.16 of the Code of Fayetteville by increasing compensation for aldermen from $350 per month to $700 per month.

City Attorney Rose read the ordinance for the first time.

Alderman Williams asked about previous studies of other municipalities.

Ben Mayes, Administrative Services Director, replied they would need to be updated and that could be done.

Alderman Zurcher stated raising the pay would make it easier for middle and low income people to run for public office. This is close to a fair rate of pay for the service provided.

Alderman Pettus stated the Council will continue to be faced with more complex issues. The quality of our council will improve in direct proportion to the value placed on it.

Mayor Hanna stated a lot of people consider these to be community service positions, but lack of compensation does prevent some people from seeking office as it takes away from their income.

Alderman Schaper noted that elections have become more expensive. This is an expense that community service positions don't have.

Alderman Trumbo agreed this would open more doors across all income brackets.

Wyit Wright, audience member, calculated council members are making $4.50 an hour. Only people with extraordinary public

dedication seek these positions and many more people cannot afford to. We need to attract a broad section of citizens. Since all positions will be open for this election, this is a good time to do this.

Alderman Trumbo stated this is an $85 million business to be run. It takes people with not only academic intelligence but also common sense who are willing to give up their time and effort.

This item was left on first reading.

ADJOURNMENT

There were no announcements.

Mayor Hanna adjourned the meeting at 10:45 p.m.