A MEETING OF THE FAYETTEVILLE CITY COUNCIL

A meeting of the Fayetteville City Council was held on Tuesday, July 21, 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 Trent Trumbo, Donna Pettus, Stephen Miller, Kit Williams, Len Schaper, Heather Daniel, Cyrus Young, and Randy Zurcher; City Attorney Jerry Rose; City Clerk/Treasurer Heather Woodruff; staff; press; and audience.

ABSENT: None

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

CONSENT AGENDA

Mayor Hanna introduced consideration of items which may be approved by motion or contracts and leases which can be approved by resolution and which may be grouped together and approved simultaneously under a consent agenda:

MINUTES: Approval of July 7, 1998, minutes.

MOBILE DATA EQUIPMENT: A resolution awarding a contract to Communication Specialist in the amount of $104,304 for mobile data equipment for use in vehicles and at the tower site.

RESOLUTION 92-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

PLAINVIEW STREET EXTENSION: A resolution approving a construction contract with Jerry Sweetser, Inc., in the amount of $146,339 for the Plainview Street Extension Project. Also the related budget adjustment and total project contingency amount of $21,950 (15%).

RESOLUTION 93-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

COPY MACHINES: A resolution approving a contract with Xerox Corporation to lease three copy machines to replace existing copy machines currently under lease from Xerox.

RESOLUTION 94-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

YOUTH CENTER: MOVED TO NEW BUSINESS.

OFF-LOADING FACILITY: A resolution approving an agreement with McGoodwin, Williams, and Yates in the amount of $26,867 for engineering services required to construct an off-loading facility for the compartmentalized recycling trucks.

RESOLUTION 95-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

TARGET AREA: A resolution approving Change Order 1 in the amount of $186,424.06 to amend the contract with Jerry Sweetser, Inc., for street and associated improvements in the Community Development Target Area and approval of a budget adjustment.

RESOLUTION 96-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

AIRPORT LIGHTING: A resolution approving an amendment to the contract with Garver and Garver Engineers in the amount of $95,150.06 for the design and supervision of the airfield lighting rehabilitation and approval of a budget adjustment.

RESOLUTION 97-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

HIGHWAY 265: A resolution allowing the City to cost share with the Arkansas Highway and Transportation Department for additional drainage improvements to be constructed with the widening of Highway 265.

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

CIV 98-29: Consideration of an offer of settlement in City of Fayetteville vs. Bramlett, CIV 98-29, submitted by Tom and Cheryl Bramlett. The property was needed for Mud Creek Bridge improvement project.

RESOLUTION 99-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

Alderman Williams noted that the last item on the consent agenda is for the acceptance of the offer, not the consideration of it.

With the above change, Alderman Williams moved to accept the consent agenda. Alderman Daniel seconded.

Alderman Pettus asked if the reading of the ordinance for item I, Chapter 161 code revision, under New Business could be moved to the very end of the agenda.

City Attorney Rose replied it could be put anywhere the Council wants it. He stated he had passed out the changes that are necessary and a copy of the UDO. He explained it became a more complicated project because all the changes that had been made previously were made from the old ordinances, pre-UDO. Staff has not had yet a chance to verify that all the changes have been incorporated. It has been suggested that they need to look at it before it is read before the Council.

It was decided to remove this from the current agenda and to put it on the next one.

Upon roll call, the motion to approve the consent agenda carried on a vote of 7-0-1, with Alderman Young abstaining.

Alderman Trumbo asked if item H, Youth Center, under New Business could be moved to the beginning of New Business, as the Youth Center Board was meeting later that night. It was agreed to do this.

OLD BUSINESS

HOG CITY DINER

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

Alderman Williams handed out two proposed amendments to the lease. The first amendment was to Article 3, Option to Extend. He stated as it reads now, after the initial 10-year period at the option of the Lessee, not the City, the lease can be extended for up to five, five-year periods. He felt the Council sitting ten years from now should have the opportunity to use their own judgement to decide whether or not to continue the lease. That gives the Lessee ten years to recoup expenses. If everything is worked out, the lease could be extended with the approval of the City Council at that point in time.

Michael O'Brien, owner, stated they'd been surprised at the last Council meeting by the objections to the dollar amount proposed and the term proposed. He stated they had had choices in selecting where to build the restaurant. They felt the Old Post Office was an outstanding location, despite the fact that people were leaving the square. They've been willing to risk close to a million dollars, and counting, in this project. He stated objections to the dollar amount and term had caught him off guard, as two other cities are offering tax incentives, concessions, and other things to entice them to put a restaurant in.

Mr. O'Brien stated he has done research since the last meeting. He stated the City negotiated a lease for the plaza portion of the town center with a private individual. It is a 25-year lease with $120,000 up-front payment for 11,500 sq. ft. That equates to $.42 a foot. He stated a number of the Council members had found fault with the proposed $1 per sq. ft. for the restaurant, yet it was double what the City had offered a private individual. He noted the concessions made to the other individual.

Mr. O'Brien stated his business would bring more people to the square. He asked for an explanation of the Council's action concerning these two lease situations.

Alderman Schaper responded that there is a significant difference between creating a public open space and leasing City land for an individual's profit.

Alderman Pettus agreed it is a double standard. The restaurant will bring a great deal of money and life to the square.

Mr. O'Brien stated he wanted to amend the proposed lease back to his original request of $1 a sq. ft., $1,677 a year, and a twenty-five year lease. He stated if the Council wants them to relocate, their method is inappropriate and unfair.

Alderman Daniel asked if he felt the $1 amount is a fair market price.

Mr. O'Brien replied he'd sat down with staff, based on instructions from the Council. At that time, it was conveyed to him that the town square was valued at $10 to $12 a sq. ft. He'd suggested taking 10% and deducting the cost incurred to build the potting shed and other improvements. This came to $1 a sq. ft., based on 1,677 sq. ft. He stated the improvements would be a beautiful fence, screening, lattice work, pillar columns, the concrete leveled, and a fountain. These would remain if the restaurant ever leaves.

Alderman Daniel agreed that this would be an asset to the square and the restaurant owners deserve some breaks.

Alderman Schaper agreed this would be nice, but it would be done for the benefit of the business owners. He stated he thought this amount had already been agreed to.

Alderman Trumbo stated he had suggested $3 a sq. ft. as compromise. The City's land agent had said the going rate for unimproved property is $1.50. Alderman Trumbo upped this to $3, which he thought was an equitable compromise.

Alderman Miller was open to the amendment, as most leases are up to the landlord as to whether they are open or not. He stated he often walks around the square at night and the only life there at that time is the restaurant. He stated the difference between the proposed rents is a drop in the bucket to the City.

Mayor Hanna stated it is not unusual for cities to give businesses incentives to locate there. It creates jobs, tax money, and, in this case, it brings back something to the square that has been missed. He felt a $1 a sq. ft. was a fair charge for the concrete driveway they already have the use of and will improve.

Alderman Zurcher stated he supports the resolution and does not think the restaurant owners are getting anti-business sentiment from the Council. The Council is trying to get the best deal for the citizens.

Alderman Williams reiterated his desire not to tie the future Council's hands regarding this. Ten years is plenty of time to recoup the investment.

Mr. O'Brien stated the future governing body would know they have him over a barrel, because it would be a very profitable venture and all the improvements would be in place. He did not want to find himself going through this again. He again requested that the lease be amended to the $1 a sq. ft., back to the original amount of $1,677 a sq. ft. Regarding the term, he stated this has been a very unpleasant experience and asked the Council to just say if they want the restaurant to go away.

Alderman Pettus stated that from her experience with commercial leases, ten years is ridiculous.

Alderman Williams stated that if the Council passed the lease without any provision for discretion in the future, it is a 35-year lease.

Alderman Young stated the decision is whether or not the Council wants the patio out there. He noted that according to the lease, the owners would have to comply with all City and State rules and ordinances.

Alderman Williams stated it would have to be a material breach proved in court before the lease could be broken. He asked Mr. O'Brien if he were saying that if the Council approves the lease extension in ten years, he would not want the Council to go forward with the lease.

Mr. O'Brien replied that is correct.

Alderman Williams moved his amendment. Alderman Zurcher seconded. Upon roll call, the amendment failed on a vote of 1 to 7, with Alderman Williams voting yes.

Mayor Hanna stated it has been requested by the petitioner to put the monetary terms of the lease back to $1 a sq. ft.

Alderman Daniel so moved. Alderman Miller seconded. Upon roll call, the motion carried on a vote of 5-4-0, with Mayor Hanna voting yes and Aldermen Williams, Schaper, Young, and Zurcher voting no.

Alderman Williams stated he had a proposed amendment on Article 6, Use. The current proposal states the Lessee agrees to use the leased premises for the purpose of operating an outdoor dining area and for no other purpose. He stated he wants to see outdoor dining but does not want to see a beer garden on the square.

Alderman Williams moved to amend the lease to not allow alcoholic beverages to be sold or consumed on the City's leased premises. There was no second.

Alderman Schaper stated he would not support this. It would be up to the owner to control the patrons and not cause any disturbances.

Alderman Trumbo also did not support this. There are adequate regulations to control this.

Alderman Miller moved the resolution. There was no second.

Alderman Schaper stated he had an amendment to make concerning outdoor music. He read Article 9 and stated he would like to add words to further clarify it: "Such music shall not be loud enough to be plainly audible from the sidewalks of the square gardens." He stated "plainly audible" is a term used in the noise ordinance.

Mr. O'Brien stated if someone stopped behind the patio, they may hear jazz but it would not be disruptive or offensive. The desire is for background music that allows for conversation but obscures nearby conversation. He stated this amendment is fine with him.

Alderman Daniel seconded the amendment.

Alderman Young stated any music will be plainly audible.

Mr. O'Brien stated he agreed with the amendment in principle, but you get into the definition of plainly audible. There is the public sidewalk and then there is the brick walkway in the garden about six to eight feet from the proposed screening.

Alderman Schaper stated his intent is the public sidewalk and describing it differently would be fine.

Alderman Young felt the original wording, which restricts the music to the premises, covers what Alderman Schaper is trying to do. As long as it is not intrusive, everyone will be happy.

Mr. O'Brien, upon further consideration, stated the phrasing in the lease is sufficient. If it is changed, it could come back to haunt them through one person's complaint. It is very subjective.

Alderman Trumbo agreed the language in Article 9 is more than sufficient.

Upon roll call, the amendment failed on a vote of 3 to 5, with Aldermen Williams, Schaper, and Zurcher voting yes.

Alderman Young moved to approve the lease handed out at the agenda session with the one change on the price the Council amended. Alderman Miller seconded.

Alderman Williams asked about parking spaces.

Alett Little, Planning Director, stated that under the parking proposal in the zoning ordinance for properties in C-3 and C-4., so long as those areas are not expanded, they are not required to provide additional parking. The question becomes is this area being expanded. The way the ordinance is currently written, parking for restaurants is calculated at one space per two hundred sq. ft. This would require eight or nine parking spaces.

There are two ways to address this. If there is adequate public parking within 600', a decision made by the Planning Commission, no additional parking is required. A waiver may be requested. The applicant would bring to the Planning Commission a request for shared parking with a signed agreement with a private landowner, or they could pay the fee of $1,200 per space waived. The applicant is the person leasing the property.

Alderman Schaper stated there is clearly adequate public parking within 600'.

Upon roll call, the resolution passed on a vote 7 to 1, with Alderman Williams voting no.

RESOLUTION 100-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

CRACKER BARREL

Removed from agenda at applicant's request.

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 second time.

Alderman Miller stated he has always believed a city council should be paid a living wage. It was a fight to get even $350 a month. The present council is all college educated and running a business of over $80 million a year for $4.50 an hour. He said the additional $64,000 would not pay the Mayor's wages or the City Attorney's. It won't even buy a bathroom in a park. This is not a venue for the rich and famous. It is so everyone can dedicate the time needed to do the job right.

Alderman Daniel stated council work is rewarding but also stressful. Even so, she would not support a raise. She does not feel it would keep people from running.

Alderman Young reported that most people he's heard from have supported the increase.

Alderman Williams does not oppose an increase but thinks this is too much. The Council does not serve for money.

Alderman Zurcher stated the point is not why aldermen serve, it is can someone afford to do it.

Alderman Schaper quoted from a salary survey provided in the agenda. He noted much smaller communities being paid more or the same as Fayetteville. He stated he would like to amend his ordinance to restate the amount as $500 a month.

Alderman Schaper moved to amend the amount to $500. There was no second.

There were no comments from the public.

This item was left on second reading.

SUTTON STREET

Mayor Hanna introduced an ordinance authorizing eminent domain proceedings for the City to obtain land for parks purposes, which is located in the 400 block of Sutton Street.

City Attorney Rose read the ordinance for the first time.

Alderman Daniel stated she cannot support going to the extreme of using eminent domain in this case. Though she agreed in principle with acquiring land, in this case too many citizens are against this, especially around the Sutton site. This would be expensive as far as maintenance and manpower. We have the Summit Water Tower site that the City has nearly $100,000 in so far. It is a beautiful site in the same quadrant. A vacant lot is for sale at the top of Dickson. There are other opportunities to acquire land in the historic district.

Alderman Miller referred to a letter from Mr. Keating stating he was not granted extra time. Alderman Miller stated two weeks have elapsed and fear was disseminated through the neighborhood about what will happen when the City takes the park away. He stated a letter from Mr. Wright saying the neighborhood does not want the City to have this property is untrue. The immediate area is evenly divided, but calls to him have been running 7 to 1 in favor of this park. He stated he does not like the way the owners of this property bought it. The City was negotiating for it and worked the price down because the owner wanted it to be a park. The purchasers bought it in a way that the owner did not know who they were, which was not honorable. The will of the majority should not be thwarted by people with checkbooks. In this one case, he supports eminent domain.

Alderman Trumbo stated he is against condemnation. The deal was between a willing and able seller and buyer. The City did not condemn the Bradberry property for the town center and should be consistent. Condemnation should be used for something vital to the City.

Alderman Young reminded the Council they would have to remember this when a developer wants a condemnation to make his development viable. He stated this would not be a controversy if the Parks Department had just said yes or no.

Alderman Zurcher pointed out the City condemned land for a water line to Goshen. He asked how many citizens of Fayetteville benefited from that.

Alderman Pettus stated the question is whether or not this is a valid public purpose. This property has been under private ownership. Nothing has changed in that respect. The Council has said if Mrs. January still owned the property, the City would not be condemning it. All we have is a change of ownership. The new owners have said they will maintain the property and not destroy it. She sees discrimination here, which is an improper motive, and also an element of revenge, which makes condemnation an inappropriate abuse of power.

Alderman Schaper stated there are concerns about using $50,000 for this piece of land vs. another. There are questions of accessibility and other problems. There are questions of limiting access once it becomes public property. He asked about the condition of the rock structures and whether or not they need to be ADA accessible.

Kevin Crosson, Public Works Director, replied that a detailed evaluation has not been done by the City, but an evaluation was done by someone not on staff. The bridge would probably have to be replaced. The wishing well has some problems. He stated there would be repairs to be made but did not know to what degree. Whether or not the repairs and improvements have to be ADA accessible is a great debate. He stated it is his understanding that when improvements are made, they have to be ADA accessible.

Mayor Hanna added that ADA compliance is usually complaint driven.

Alderman Zurcher stated this is a legitimate walk-to park. It doesn't require parking.

Alderman Williams responded to Alderman Pettus's remarks on revenge. The City first unanimously offered a thousand dollars more to buy the property. The City then waited a month and a half before acting. Attempts were made to avoid a vote on condemnation. He has asked Mr. Wright to work with the City for protective covenants. The Council would like to see the neighborhood be healed, but this looks like a no win situation.

Jim Whitehead, 517 E. Lafayette, stated his family has lived in this neighborhood since 1965. He stated this property is too small, parking is unsatisfactory, and a park will violate the integrity of the neighborhood. He was relieved when a private buyer purchased the property. The plan to use eminent domain to condemn this property boggles the mind. No reasonable definition of the concept would bring about a dangerous expropriation of private property. Condemnation would represent a rude and extreme use of governmental authority. Citizens fear the possibility of such excess. Sutton Street is not the place for a park. He asked the Council not to condemn but to maintain the neighborhood for homes and families.

Cindy Long, audience member, read from a letter from Betty Lighton which supported the City acquiring the property. This is one of the few sites left in the neighborhood available. The present owners have stated they purchased the property in order to preserve it, but it is Ms. Lighton's opinion that it would be more likely preserved by the City than private citizens. She urged the City to acquire the property in whatever way seems most practical.

Ms. Long stated she has been working on this project for seven months. She stated the neighborhood agrees that they want this property to remain exactly like it is. The conflict is how to do this. The owners want to build a house on it. Opponents want the City to buy it as a historic, walk-by park with covenants governing its use. They faithfully went through the process to see this done. They understood they would be asked to contribute to the purchase of the property. They'd acquired $7,000 in pledges and a donor. The day the offer was made to Mrs. January, they'd gone to the real estate office and offered $1,000 in earnest money and offered to put their responsibilities in writing. They wanted Mrs. January to know they were organized and committed. They were told they did not understand the process and could not put up earnest money because they were private citizens and this was an offer and transaction between the City and Mrs. January. They were told the City Attorney had said the offer was going to come from the City and the neighbors did not need to be there. She stated this is not about condemnation. It is about accountability and upholding decisions that were made by going through the process.

Richard Lloyd, N. Willow Ave., stated he shares a desire to preserve the neighborhood. There are more signs along Sutton and Willow opposing this than supporting it. The property's beauty can best be protected by keeping it in private hands, as it always has been. The property is not suited to public use. It is surrounded on three sides by houses and the park would be adjacent to these backyards. There are already parking problems in the neighborhood. The idea of a walk-to park is not realistic. There would be an increased risk of vagrancy, crime, and vandalism. Handicap access and safety standards are important questions. It would be costly and change the character of the property. Maintenance would be costly. It was reasonable for the City to offer to buy when it was for sale, but condemnation is another question and a misuse of power.

Orland Maxfield, 533 N. Roland Willow, supported the acquisition and has been given the endorsement of the Historic District Commission for this property to become a city park. He stated the Federal government does not guarantee equal access to all national parks and monument system. He stated anything that benefits one neighborhood benefits the city at large. Sports parks do not benefit everyone. He stated the current owners have no tenure beyond the few weeks they have owned it. We are not talking about a family homestead being wrenched from a century-old family. His private citizen's right to a neighborhood park goes back to 1946. He is gratified that the Council is showing more responsibility for the greater good of the citizenry. This is an issue of societal rights. He asked the Council to meet this responsibility head on.

Chris Krueger, Sutton Street, opposed the City condemning the property and it becoming a public park. This property was maintained by private owners for years. They controlled who used it. That's why it has stayed beautiful. Public use will mean a lot more wear and tear. Historically, public ownership has not served preservation well. The current owners maintain beautiful residences on this street. She hoped the concerns of the immediate neighbors would matter to the Council. When this began, they were assured their concerns mattered because they are the ones most affected. This is a case of want vs. need. She presented a document with 43 signatures circulated in the neighborhood opposing the park. This property is not large enough to serve a significant number of citizens and there are safety considerations. The area is congested already. There are no sidewalks, curbs, gutters, or guardrails on this part of Sutton. There is no buffer zone. It is bowl shaped and noise carries. It will require ongoing maintenance at a time the City is straining to maintain its parks. She stated a single family home would be welcome on the property. Condemning this property to satisfy the demands of a vocal group of people is a drastic measure. It would being setting a terrible precedent.

Kathy Thompson, historic district resident, stated this began as a simple request to save this beautiful place. Now they are asking it to be acquired as a public-use park, a walk-by, historic park. The Council and Parks Board voted for the park, knowing all the problems the park would bring. She stated this group has played the game fairly. When asked to show support for this, they conducted a survey and circulated a petition. Not wanting condemnation, they have been forced into this situation because of the way the land was purchased. The citizens had attempted to pay half of the purchase price. She reminded the Council that Mrs. January did not know who she was selling the property to. She had been told she had to make a decision that night. The Keatings have said they will build a house on the property, which does not sound like preservation. This is a bit of history and beauty that should not go away. Voting for condemnation means this park can be used by everyone, not just a few.

Tina Buxton, 312 N. Willow, stated there is a lot of misinformation flying around that may have influenced the Council. This is not the only undeveloped property in the historical district. There are several large pieces of undeveloped land within a block of this. There was no conspiracy to buy this from under the City. Mrs. January had two offers, one from the City and one from somebody else. She chose somebody else. She did not want it to be a park and the current owner does not want it to be a park. She asked how many people who signed a petition supporting the park found the property and thought about parking, handicapped accessibility, noise levels, and neighbors. This property is not like Hotz Park and the park on Mill Street, as has been stated. People who have stated they enjoy living next to a public space were able to make that choice before purchasing their home. Park proponents are asking the Council to take away from their neighbors the right to chose whether or not they want to live next door to a public space.

She urged the Council to put the money towards something that more people would use.

Alderman Schaper stated there was never an offer from the City. There was a recommendation from the Parks Board that was to come to the Council, but the Council never had the chance to act on it.

City Attorney Rose stated there had been an offer and acceptance signed by the Mayor, but it was contingent on the Council approving it.

Richard Alexander, 231 Dickson Street, stated issues are being rehashed. Democracy is a slow process which encourages citizen participation. This began with a small group of citizens who went to the Parks Board and did what was asked. Two governmental bodies made the decision to acquire this for a park. Nothing has changed since then. The new owners have had it for three weeks. He asked what the neighborhood is. He did not think it is just Sutton Street, but rather the historic district. He stated the majority of the people from the historic district support this park. He stated the new owners do not intend to sell this to the City and never have, so condemnation is not an unexpected development. He stated the Keating brothers are real estate professionals and must have known condemnation was a possibility. This is a unique situation. This property was bought to keep the City from getting it and they've changed the focus of the argument against the park to an issue of private property.

Bill Ackerman, Chairman of the Parks & Recreation Board, stated when first pursued, the cost of this land was prohibitive. There was no money allocated at that time for a neighborhood park. After the property had been on the market a long time and citizens had asked that it be looked at once again, the price had not changed and budget restraints remained. They were encouraged to pursue it further and did so with public hearings. They asked for a show of support from the immediate neighbors. Letters and petitions came back listing immediate neighbors. There was not a show of strong, strong support. The Board evaluated the pros and cons and said if the land owner is truly interested in this being a park, they would go half way, subject to the Council's approval, and support the acquisition of that park. Staff advised there would be maintenance problems and expenditures. The Parks Board had no intention of spending any money for improvements. This was to be a quiet, neighborhood park for use by those who walk by and treat it with respect, as has always been permitted. He stated the Board asked the group to negotiate a contract through the City and subject to the approval of the City Council, after an appraisal was done that valued the property at $50,000. Once the appraisal came in, the Parks Board said it would cooperate and offer 50% participation. There is precedent for citizen participation. The community sponsored $25,000 for Gulley Park. He stated he did not think Mrs. January was deterred by uncertainty that the public could not come with their part.

Mr. Ackerman informed the Council that staff has prepared a report that shows the Parks Department is $13 million short of funds for the existing parks in the next five years.

Mr. Ackerman stated he personally opposes condemning the property. He did not see anything strange with the fact that the Council had offered $52,000 for the property that the Parks Board had only offered $25,000 for, because the Parks Board looks at things differently than the Council does.

A neighbor directly next door to the park stated he would like to see it become a city park. He stated there is a 5.5' strip beside Sutton Street that could provide parking for 10 cars.

Wyit Wright, owner of the property, explained his comments made at the previous meeting about this being unprecedented and unreasonable. He stated it is unprecedented because the City has never, ever condemned property for a park. It is unreasonable because such a small percentage of the City would benefit from such an expense. He stated he could not respond to a letter written by Alderman Williams because it asked for terms of surrender in asking how it could be sold to the City. He has always maintained that selling is not an option.

Mr. Wright stated good government is not a popularity contest. This is not a show of strength, but a show of reason and whether it makes sense. He stated the majority of signers of the pro-park petition do not live near the park, hence are more likely to drive to it. The nature in which the signatures were gathered is suspect. A recurring theme is that Mrs. January wanted this to be a park. He stated that Mrs. January has had enough of people announcing her intentions. He stated she called him; he did not call her. He is aware that she called Aldermen Trumbo, Williams, and Young. He hoped they would share what she said with the other Council members. He knows she has talked to Cindy Long and Kathy Thompson. He was surprised that Kathy Thompson would say that Mrs. January wants this to be a park. That is not true. He stated Mrs. January told him that this property was never used as a public piece of property. She thinks it would be a mistake if it were to become a park. She is comfortable knowing it is in the hands of the present owners.

Mr. Wright quoted comments from Kevin Crosson, Public Works Director, that the City should slow acquisition and spend money developing and improving land it already has. He quoted Connie Edmonston, Parks & Recreation Director, as saying the stone work is a potentially huge problem for the City. Much of it is unstable and would require removal or renovation. He read from a letter written by Frank Burggraff, emeritus professor of landscape architecture at the University, calling this a mistake even if it were a donation. It is useless as a public park for many reasons and establishes a precedent.

Mr. Wright asked the Council, if they don't trust the owners' intentions, to empower someone to negotiate assurances that what they say are their intentions are in fact their intentions. He asked if the Council would have left this in the hands of the Januarys whose plans were identical to the new owners, why would the Council not leave it in the current owners' hands.

Alderman Schaper asked if Mr. Wright and the Keatings would be willing to sign a conservation easement stating their intentions to build in the southeast corner and leaving the rest of it untouched.

Mr. Wright replied this is exactly what he means to discuss with someone appointed to discuss this with him. Regarding his request for an extension, he'd felt he was being asked to take the $52,000 and could not find any middle ground. He did not want to sell it with concessions. He felt there was opposition to any mention of a home on the property.

Alderman Williams thought the option of a conservation easement should be looked at seriously. It could meet a lot of the concerns on both sides.

Mr. Wright felt having members of the public present at the negotiations would not be appropriate. He doesn't mind who the City talks to, but he wants to deal just with the City. If a conservation easement is what he thinks it is, he felt something could be worked out.

Alderman Trumbo moved to suspend the rules and go to the second reading. Alderman Pettus seconded. Upon roll call, the motion

failed on a vote of 5 to 3, with Aldermen Williams, Schaper, and Zurcher voting no.

This item was left on first reading.

Mayor Hanna announced a short break.

After reconvening the meeting, Mayor Hanna announced that two agenda items would not be discussed at this meeting. An ordinance revising Chapter 161, Physical Alteration of Land, needs further work by the engineering staff. He stated the Solid Waste volume based proposal was tabled because of the lateness of the hour. It will appear early on the next agenda, under Old Business.

NEW BUSINESS

YOUTH CENTER
Mayor Hanna introduce a resolution approving $79,800 and a budget adjustment for a comprehensive planning study for necessary future development.

Alderman Trumbo explained that the Reynolds Foundation has appropriated this portion of the money to fund this in-depth, master planning process for the City of Fayetteville. The Fayetteville Youth Center Endowment Foundation has authorized $15,000 of the overall cost of the study and is asking the City of Fayetteville to come up with the rest of it. They will get a grant to fund all this, but that is a good show of faith to fund half the expenditure. New Solutions was selected to do the master planning.

Alderman Williams stated if we don't go forward, we don't have much chance to get the grant.

Alderman Schaper stated he had been concerned that $150,000+ is a lot of money to spend on a planning study. He has since got a better idea of the massive scope of the study and now sees it is worth doing. It is an opportunity to do something first class for the youth of Fayetteville.

Alderman Zurcher also agreed with the expenditure and would not mind spending more to include older children in the study.

Tim Webb, Fayetteville Youth Center Board, clarified this will be much greater than a study. They are looking for a plan that will show what we want to do in the next 20 years and how to get to that point. The Youth Center's focus has changed to youth and families. The Youth Center will be a family center.

Alderman Zurcher stated he is concerned about teenagers.

Mr. Webb stated the study will address the teen population and a teen center.

Alderman Miller moved the resolution. Alderman Pettus seconded. Upon roll call, the resolution passed on a vote of 8 to 0.

RESOLUTION 101 AS RECORDED IN THE CITY CLERK'S OFFICE.

ELEVATED WATER TANK
Mayor Hanna introduced a resolution authorizing the Mayor and City Clerk to execute an agreement between the City and PDM, Inc., for the construction of an elevated water tank at the contract price of $874,400 and approval of a project contingency of $40,000.

Alderman Williams moved the resolution. Alderman Daniel seconded. Upon roll call, the resolution passed on a vote of 8 to 0.

RESOLUTION 102-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

PLANNING COMMISSION APPEAL
Mayor Hanna introduced an appeal of a Planning Commission decision submitted by Kurt Jones of Crafton, Tull, and Associates on behalf of John Griffin for the Trichell Medical office Building. The request is to allow two access points along Millsap Road.

Alderman Young announced he would not participate in the discussion and would abstain on the vote.

Alderman Schaper stated this is not an appeal by right and is the sort of decision that should be left to the Planning Commission. He did not think the Council should hear this.

Mayor Hanna felt this was an appeal generated by a bad ordinance.

Alderman Pettus moved to hear the appeal. Alderman Daniel

seconded. Upon roll call, the motion carried on a 6-1-1 vote, with Alderman Schaper voting no and Alderman Young abstaining.

Alett Little, Planning Director, explained this is a large scale development for a two-storey medical office building. The Planning Commission approved the large scale development with one point of entrance into the side. The request is for two points of access in the side. There are 96 parking spaces on site. It is on Millsap Road. The Planning Commission's idea was not to create additional traffic points of conflict by allowing too many points of access. There is access to the east through private property and access to the south, which was key to Planning Commission's decision. She stated it was the developer's decision not to have one ingress and one egress, which the Planning Commission would have allowed.

Kurt Jones, of Crafton, Tull, and Associates, stated their argument is the application of Sec. 159.54. They do not feel two drives for this project creates a dangerous situation. He offered the option that if the rear access point is connected to a public street, they would close one of the drives on Millsap.

Alderman Daniel stated she could not agree to that as it would be hard to undo once it is done. She noted there are lots on Millsap that haven't been developed.

Mr. Jones pointed out that the lots that have been developed and which have comparable parking lots have two exits.

Little stated this lot has 210' of frontage. Most of the other lots have more frontage. We are trying to limit the number of curbcuts and points of conflict.

Mr. Jones felt limiting this to one point of access would encourage drivers to take risks to get out in order not to back up traffic in the parking lot.

Little explained the location of the access on the east side of the property being only 50' away from John Cole's point of access. They had considered putting it in the center, but decided where it is is the better location because of an island.

Alderman Schaper asked where the next driveway to the west is. He received no answer to this. Alderman Schaper said if the goal is to cut down on and separate conflict points, you don't want to locate driveways 50' from each other.

Alderman Pettus felt it is inappropriate to have access across John Cole's parking lot. That access is in conflict with the covered entry and there will be major congestion.

Little responded that the applicant had the opportunity to move the covered entry. Cross access is one of the things planning has been asked to provide under commercial design standards.

Alderman Williams supported the Planning Commission's decision as they have the expertise.

Mr. Jones reiterated their appeal is on the interpretation of the ordinance itself.

Alderman Pettus stated the Council would need more information about the access points to the west.

Alderman Williams moved to deny the appeal. Alderman Schaper seconded. Upon roll call, the motion carried on a vote of 6-1-1, with Alderman Pettus voting no and Alderman Young abstaining.

RZ98-12/SUNSET ADDITION/SCHMEIDING

Mayor Hanna introduced an ordinance approving a rezoning request submitted by Lantech Engineering on behalf of Schmeiding Enterprises, Inc, for property located in Sunset Addition, block 2, lots 1-6. The property is zoned R-2, Medium Density Residential. The request is for R-O, Residential Office.

City Attorney Rose read the ordinance for the first time.

Alderman Schaper stated they started out wanting a C-2 then changed to R-O. He asked what was to be put here.

Leonard Gabbard, Lantech Engineering, replied the north half of this block is zoned R-2 and they want to put in an office space on the north half and have it zoned R-O. They were told that would be an acceptable transition from a C-2 zone.

Alderman Williams stated it makes a lot of sense for this area of the city.

Alderman Williams moved to suspend the rules and go to the second reading. Alderman Daniel seconded. Upon roll call, the motion carried on a vote of 8 to 0.

City Attorney Rose read the ordinance for the second time.

Alderman Zurcher felt R-O is more appropriate than C-2 or R-2.

Alderman Miller moved to suspend the rules and go to the third reading. Alderman Zurcher seconded. Upon roll call, the motion carried on a vote of 8 to 0.

City Attorney Rose read the ordinance for the third time.

There were no comments from the audience.

Mayor Hanna called for the vote.

Upon roll call, the ordinance passed on a vote of 8-0.

ORDINANCE 4107 AS RECORDED IN THE CITY CLERK'S OFFICE.

VAC 98-6.00/BELLFLOWER
Mayor Hanna introduced an ordinance approving a utility easement vacation submitted by Butch Robertson for property located at 4297 West Bellflower, lot 32 in Meadowlands Subdivision. This is zoned R-1 and contains approximately .25 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 8 to 0.

City Attorney Rose read the ordinance for the first time.

Alderman Schaper moved to suspend the rules and go to the third and final reading. Alderman Daniel seconded. Upon roll call, the motion carried on a vote of 8 to 0.

City Attorney Rose read the ordinance for the third time.

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

Upon roll call, the ordinance passed on a vote of 8 to 0.

ORDINANCE 4108 AS RECORDED IN THE CITY CLERK'S OFFICE.

AD 98-19.00
Mayor Hanna introduced discussion of the process of condemnation for the purpose of securing right-of-way for a connection to Wood Street. The request was submitted by Tom Embach for proposed large scale development.

Alderman Young stated the company he works for is involved in this project, so he would abstain on this item.

Mayor Hanna explained this came about from the Planning Commission's desire to have Wood Street connected to 12th Street.

Alett Little, Planning Director, reported that none of the neighbors have been notified about this.

Alderman Williams suggested denying this. Wood Street is not connected to 12th Street. Anyone going onto Wood Street would have to go to another street. A condemnation would only get to another street that is almost a dead end. He didn't think it would be used.

Kurt Jones, engineer, asked if a vote to deny would also waive the Planning Commission's requirement that the street be constructed.

City Attorney Rose stated the Council first has to vote on whether or not to hear the appeal. If they vote for the waiver, a condemnation would be unnecessary.

Little stated the waiver was requested at the Planning Commission. The Planning Commission required an access to the west to Wood Street. The developer found only one property owner willing to do that, but the property owner wanted to sell the house and all the property for $135,000. It was taken back to the Planning Commission as an administrative item. Their recommendation was for condemnation for just the portion necessary for the street.

Alderman Pettus moved to hear the appeal. Alderman Daniel seconded. Upon roll call, the motion carried on a vote of 7-0-1, with Alderman Young abstaining.

Little confirmed the developer would still need a stubout toward the west.

Mr. Jones stated they could slide that stubout anywhere up and down the street.

Alderman Williams moved to grant the waiver. Alderman Pettus seconded. Upon roll call, the motion carried on a vote of 7-0-1, with Alderman Young abstaining.

CIV 98-20
Moved to Consent Agenda.

VOLUME BASED PROPOSAL
Tabled to next meeting.

YOUTH CENTER
Moved to beginning of New Business.

ORDINANCE REVISION
Postponed to next meeting.

DICKSON STREET IMPROVEMENT DISTRICT
Mayor Hanna introduced discussion on Dickson Street Improvement District assessment against the Walton Arts Center.

City Attorney Rose stated the Arts Center Council leases from the University of Arkansas and the City of Fayetteville the Walton Arts Center. The Arts Center Council is responsible for the payment of taxes and assessments on the WAC property. The WAC Council is in negotiations with the Dickson Street Improvement District over how much, if any, they owe in assessments. The WAC Council claims two exemptions. One is that since they have been exempt from property taxation since 1995, they are also entitled to an exemption from the Dickson Street Improvement District assessment since that time. Secondly, they claim an exemption because of a State statute which allows for an off set for improvements done by property owners within an improvement district that have been found to improve their own property in such a manner that the improvement may be made a part of the general improvements of the kind in the district. The Dickson Street Improvement District has made no decision at this time as to whether or not to allow that exemption. When they do make that decision, the City will either abide by it or he will bring forward a proposal to appeal the decision.

Alderman Pettus asked if the taxes are in default, who ultimately pays the taxes.

Rose replied it would be the owners of the property, the City and the University. There is no indication from the Arts Center Council that they are unwilling to pay any assessment they are responsible for.

Lamar Pettus, Dickson Street Improvement District tax payer, stated the original plan of improvement filed with the City in 1988 provided that the improvement endorsed by this district was to build 532 parking spaces. That plan was abandoned. The City took over that project. He stated one of the reasons he asked for this to be considered is that the Arts Center has been attempting to get some action out of the Dickson Street Improvement District since 1991. In 1991, the last official minutes of record show Mr. Collier was instructed to collect the delinquent taxes. There are a lot of delinquent taxes; the City being the largest. He stated there is no assessment against the Walton Arts Center. It is against the City, $16,000 a year. The City owes $127,000. In 1989, the Dickson Street Improvement District made a contract with citizens against unfair taxation. They promised to collect only $1 million in taxes. By their inaction and by the cooperation of the City, they have delayed every year collecting the $16,000 from the City. If the City gets an exemption, so should he.

Mr. Pettus stated the City has to take some responsibility as they create bodies empowered to tax for life. He stated his argument is that the Improvement District does not have the authority to grant the Walton Arts Center a credit or an exemption. The statute is clear that the owner of the property has to make that request. He stated the burden is on the City to go forward. He asked if the City were going to pay the taxes due.

Alderman Pettus asked if they had been collecting taxes.

Mr. Pettus replied they had been collecting from the select few that would voluntarily pay them. They have collected over $.5 million according to their last report.

Rose stated the Arts Center Council is responsible, under their lease, for the taxes and assessments. The Improvement District is not confused about who owns the property. The City and

University want to cooperate with the Arts Center Council to get the exemptions, if entitled. He stated the Improvement District needs to meet and act on the exemption requests from the Arts Center Council.

ANNOUNCEMENTS & ADJOURNMENT

Alderman Williams read a prepared statement announcing his intention not to seek re-election to the Council.

Mayor Hanna adjourned the meeting at 10:35 p.m.