A MEETING OF THE FAYETTEVILLE CITY COUNCIL

A meeting of the Fayetteville City Council was held on Tuesday, August 4,1998, at 6:30 p.m., in the Council Room of the City Administration Building, 113 W. Mountain, Fayetteville, Arkansas.

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

ABSENT: None

NOMINATING COMMITTEE REPORT

Alderman Daniel moved to nominate Tommie Perkins to the Construction Board of Adjustments and Appeals; Louis Gottsponer to the Library Board; Mathanki Kalapathy and Aubrey Bernath to the Juvenile Concerns Committee; Woody Charlton, Barbara Stripling, Rowland McKinney, and Ron Warren to the Cable Board; Jana Clynch, Janet Coleman, and Candy Clark to the Tree and Landscape Committee; and Annee Littell to the Environmental Concerns Committee. Alderman Young seconded the motion. Upon roll call, the motion carried on a vote of 8 to 0.

CONSENT AGENDA

Mayor Hanna introduced consideration of items which may be simultaneously approved by motions or resolutions.

APPROVAL OF MINUTES: July 21 minutes;

BID 98-54: A resolution accepting Shipley Motor Equipment Company's bid of $62,552 as the lowest qualified bid for an 18' flat bed dump truck.

RESOLUTION 103-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

BID 98-58: A resolution awarding Ark-O Petroleum a contract in the amount of $44,400 plus a contingency of $6,660 to upgrade the underground storage tanks at the Fayetteville wastewater treatment facility and the sludge management site.

RESOLUTION 104-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

LIBRARY MASTER PLAN: A resolution awarding a contract with Meyer, Scherer & Rockcastle, Ltd., in the amount of $36,747 to provide the Fayetteville Public Library with a master plan development study and the approval of contingency in the amount of $3,675 and a budget adjustment.

RESOLUTION 105-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

LIBRARY BOARD: A resolution increasing the Library Board to seven members, in addition, the appointment of three new board members.

RESOLUTION 106-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

PROJECT TELESTAR: A resolution certifying local government endorsement of Project Telestar to participate in the Advantage Arkansas Program--also known as the Arkansas Enterprise Zone Program, Act 947 of 1993.

RESOLUTION 107-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

FAYETTEVILLE MILLENNIUM CELEBRATION: First Night Fayetteville requests funding for 1999/2000 New Year's Celebration.

RESOLUTION 108-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

Alderman Miller made a correction to the minutes. He stated he did not move the resolution to not allow alcoholic beverages on the Hog City Diner. Alderman Williams stated he had made the motion.

Alderman Williams moved to accept the consent agenda. Alderman Miller seconded. Upon roll call, the motion carried on a vote of 8 to 0.

OLD BUSINESS

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. This item was left on second reading.

City Attorney Rose read the ordinance for the third time.

Alderman Miller stated the political implications of doubling the wages seemed too much for people to take. He said Alderman Schaper's suggestion at a previous meeting to drop this to $500 was a good one.

Alderman Miller moved to make the raise to $500 a month. Alderman Schaper seconded.

Alderman Daniel stated she has not heard any anything negative from constituents regarding the raise.

Alderman Trumbo supported the $700 figure. He stated the City is an $85 million business that takes an educated person with common sense to understand the issues, and that person should be compensated.

Alderman Pettus also supported the $700 figure. Everybody should receive fair compensation for the work they do. This might set a precedent for other communities.

Alderman Young agreed with Aldermen Trumbo and Pettus.

Alderman Miller withdrew his motion.

Alderman Williams had trouble supporting the $700 amount because it doubles the current pay and would make Fayetteville the highest paid in the state. He would support $500.

Alderman Schaper also had a problem with becoming the highest paid aldermen in the state.

Alderman Schaper noted he did not withdraw his second and thought this should be voted on.

Upon roll call, the motion to amend to $500 failed on a vote of 3 to 5, with Aldermen Williams, Schaper, and Daniel voting yes.

Mayor Hanna called for the vote on the original ordinance increasing the pay to $700.

Upon roll call, the ordinance passed on a vote of 6 to 2, with Aldermen Williams and Daniel voting no.

ORDINANCE 4109 AS RECORDED IN THE CITY CLERK'S OFFICE.

AUGUST 4, 1998

SUTTON STREET
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. The ordinance was left on first reading.

City Attorney Rose stated the Council had a bill of assurance which was passed out at the last agenda session. The provisions include that the property is to be limited to one single-family dwelling unit located on the eastern 90' of the lot. The remaining property is to continue to be park-like in nature. Twenty feet of the western most property is to be allowed to be deeded to the adjoining property owners. It is not to be further diminished by subdivision, lot split, or lot line adjustment. Covenants and restrictions are to be enforced by adjoining property owners and/or the City. The bill of assurance is conditioned upon agreement that the City shall erect and enforce no-parking signs within 90 days.

Alderman Trumbo thought this would accomplish what a lot of people want. Condemning this would not set a good precedent.

Mayor Hanna stated this bill of assurance is what the Council asked for. He asked if it needed to be voted on.

City Attorney Rose replied it was offered by the owners and does not require approval. The condemnation ordinance is before the Council.

Alderman Schaper moved to suspend the rules and go to the second reading. Alderman Miller seconded.

Alderman Young suggested tabling this, if the bill of assurance is accepted. It would only take one vote now but could be brought back if the owners don't come through.

Alderman Williams felt a resolution of the issue was needed. If voted down now, condemnation could be reintroduced if needed later.

Alderman Schaper felt all the owners are offering is to not further develop the property, which would be difficult anyway. The issue is whether or not it makes sense to have this be a public park or a private back yard.

Upon roll call, the motion to move to second reading carried on a vote of 8 to 0.

City Attorney Rose read the ordinance for the second time.

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

City Attorney Rose stated he had read the wrong ordinance for the second reading. He now read the correct one.

Alderman Williams moved to 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.

Alderman Young asked if the owners would agree to sign the bill of assurance if the condemnation was voted down.

Mr. Wyit Wright, owner, replied the bill of assurance is freely tendered.

Alderman Schaper stated the real issue goes back to the desire of the City to have neighborhood parks. New neighborhoods get neighborhood parks built by the developer. We are debating whether or not it is a wise thing to create neighborhood parks in existing neighborhoods as the opportunity arises. There is no park in this neighborhood. If it stays in private hands, there is no guarantee of access. There is no guarantee it would be maintained as it is now. He felt the fears of the neighbors will soon dissipate. He advocated, if condemned, having the highest safeguards for the neighborhood. He favored granting Mr. Wright the additional 20'. He would restrict hours of operation and say no radio playing or boisterous activity. He stated the public interest is served by making this a park.

Alderman Trumbo stated this does not serve the public interest as it is six times per acre what was paid for Gulley Park. We are not getting value for the money, especially in light of the fact we can't maintain what we have.

Alderman Young stated if price is a consideration, we would only have parks on the outer edge of the city.

Alderman Daniel stated there are too many objections from adjacent landowners. It will be preserved as greenspace.

Alderman Pettus stated this is private property. There has never been any guarantee of public access in the past, though it was allowed. This private ownership will not make it different from what it was in the past. Serving the public interest is an excuse used from the beginning of this country to take something that doesn't belong to the government. The power of condemnation should not be used in this circumstance. Reasonable promises have been made to preserve the property.

Mayor Hanna stated the Council asked if something could be worked out short of condemning the property. The owners have offered the bill of assurance and now we are back to debating the condemnation.

Alderman Williams stated the Council had asked for a conservation easement. The major problem with the bill of assurance is that "park-like nature" is not defined. He stated he'd suggested protective covenants, which was rejected, as was the conservation easement. He stated this is good value for the money. There have been extensive improvements by previous owners. Regarding condemnation, these owners have owned the park only since the Parks Department decided to purchase it. The proponents of the park did everything the Parks Department asked them to. The overwhelming majority of the neighborhood supports this.

Alderman Miller stated if this were a family farm or home, he would not support condemnation. Under the present circumstances, he would reluctantly vote for condemnation.

Alderman Young asked who would sign the bill of assurance. He was told they could sign separately or whoever was owner of record at the time.

Alderman Zurcher stated if it was condemned he would support Alderman Schaper's safeguards and erecting no-parking signs.

Mayor Hanna called for the vote.

Upon roll call, the ordinance passed on a vote of 5 to 3, with Aldermen Pettus, Daniel, and Trumbo voting no.

ORDINANCE 4110 AS RECORDED IN THE CITY CLERK'S OFFICE.

VOLUME BASED PROPOSAL

Mayor Hanna introduced a request to bring the volume based proposal off the table for further discussion.

Alderman Williams moved to take the ordinance off the table. Alderman Miller seconded. Upon roll call, the motion carried on a vote of 8 to 0.

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

City Attorney Rose read the ordinance for the second time.

Kevin Crosson, Public Works Director, pointed out that staff's recommendation would be to start this program in the year 2000, if the Council approves the ordinance, in order to have adequate time to set the program up and for public education.

Alderman Daniel asked if any changes would occur in 1999.

Cheryl Zotti, Environmental Affairs Administrator, replied one change will be the change to a bin program, the curbside recycling program using bins instead of bags. Trash will remain the same, if the new program is delayed until 2000.

Alderman Williams stated this will be a substantial change and we need to make sure there is a good reason for it. He asked why we need to discontinue the type of service we've been providing and go to a volume based system.

Zotti replied there are several reasons. This program will bring equity to our billing and collection program. We are in search of a tool to increase recycling efforts in our city. An ongoing goal is to decrease landfill usage. The Committee and staff want residents to think about waste management in their homes. This has come forward now to dovetail with the bin program.

Alderman Williams asked if there were estimates on how much this would lower our landfill amount.

Zotti replied it is conservatively estimated at 10% of the residential trash, which is about 35% of the total trash in the city. She agreed most trash comes from the commercial sector.

Alderman Williams asked about the life span of the Cherokee Nation Landfill.

Zotti replied they are working towards constructing a long term landfill.

Alderman Trumbo asked what the savings would be not to have to truck it all the way to Oklahoma.

Zotti stated it would be an immediate savings if we drop $2 a ton on transportation. It would save us about $35,000 per year total.

Alderman Williams noted that no one's rate would go down in this plan. Some would go up. He asked if other plans had been looked at where rates would be lowered and the bags sold instead of given away.

Zotti replied they have looked at a second year plan involving a lower base rate and selling the bags. This has not been worked out with the Environmental Concerns Committee. Disposal is not the most significant cost in the residential budget.

Alderman Williams stated this plan has no carrot, only a stick; if you use too much, you will pay extra. He was also concerned about convenience. He would like to see the bags sold at grocery stores.

Alderman Schaper stated there is a concern for illegal dumping when every bag has to be bought.

Alderman Zurcher noted there is no number of bags in the ordinance on the table.

Alderman Zurcher proposed an amendment to include the number 78 in section B1A. Alderman Young seconded.

Alderman Trumbo suggested two bags a week.

Alderman Williams stated that even with that increase, 30% of households would have to buy more bags.

Alderman Schaper said that is what volume based is all about. Raising the number would make it no longer a volume based system.

Zotti stated staff had originally suggested 104 bags a year.

Alderman Miller stated the Committee had struggled with the number for three hours. He personally thought 78 might be a drastic cut for some. He would hope that using 104 bags would help educate people and get them into the habit.

Alderman Daniel had it confirmed that the amendment was to go into effect in 2000.

Upon roll call, the amendment failed on a vote of 4 to 5, with Aldermen Schaper, Daniel, Young, and Zurcher voting yes and Mayor Hanna voting no.

Alderman Young moved to amend the ordinance to 104 bags the first year and 78 thereafter. Alderman Zurcher seconded.

Alderman Pettus supported 104 bags the first year, but not 78 the next year.

Alderman Young stated having 78 bags the next year would force the future Council to evaluate it, otherwise it might remain 104 forever.

Zotti stated staff is already working on a second year plan.

Upon roll call, the amendment to 104 bags carried on a vote of 5 to 3, with Aldermen Pettus, Williams, and Trumbo voting no.

a member of the audience spoke in favor of the ordinance but wanted the bags easy to obtain. He stated we should recycle numbers higher on the plastic chain.

Alderman Miller explained that a market has to be found before more plastics can be added.

Janis Ryan, citizen, stated the purpose of the program is to reduce trash, which means limiting bags. People are not aware of what can be recycled. We can recycle more or generate less trash to begin with. She showed examples of alternatives to throw-away products. She also spoke about a master composting program soon to be implemented by various county organizations. She stated there is no place to throw things away any more and dealing with trash is everyone's personal responsibility.

Alderman Miller moved to suspend the rules and go to the third and final reading. Alderman Zurcher seconded. Upon roll call, the motion carried on a vote of 7 to 1, with Alderman Williams voting no.

City Attorney Rose read the ordinance for the third time.

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

ORDINANCE 4111 AS RECORDED IN THE CITY CLERK'S OFFICE.

NEW BUSINESS

VA98-8.00/2097 HAILEY DRIVE/RUSH

Mayor Hanna introduced an ordinance approving a utility easement vacation requested by Richard Rush for property located at 2097 Hailey Drive. The northeast corner of the house extends into the utility easement approximately 1.73 feet. The request is to vacate only that part of the easement on which the house encroaches, approximately five square feet.

City Attorney Rose read the ordinance for the first time.

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

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 7 to 0, with Alderman Daniel absent for the vote.

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 4112 AS RECORDED IN THE CITY CLERK'S OFFICE.

ORDINANCE REVISION/PHYSICAL ALTERATION OF LAND
Mayor Hanna introduced an ordinance revising Chapter 161: Physical Alteration of Land.

Alderman Williams asked that this item be considered later on the agenda. Its reading would be lengthy and many citizens were present to speak regarding the next item, Mount Sequoyah Gardens.

There was a consensus to move this.

MOUNT SEQUOYAH GARDENS
Mayor Hanna introduced a resolution dedicating City land on the east side of Mt. Sequoyah as a City park and the immediate development of the park.

Alderman Williams removed the third paragraph of his resolution. He stated he presented the resolution to preserve and establish a park where the old water towers were removed. This has a beautiful view and would be an excellent place for a park.

Connie Edmonston, Parks Director, agreed it is a pretty site but had concerns. This land is sloped and will be hard to mow. A mower with a low center of gravity would be needed. She noted there was favorable public comment about this at the Parks Board level but no vote was taken. She felt the Board shared her maintenance and development concerns.

Alderman Williams stated he did not envision a high-maintenance park. He hoped native trees would be planted and offered to transplant trees from his land.

Alderman Trumbo suggested having this follow the procedural process and go to the Parks Board.

Alderman Zurcher did not need the Parks Board to tell him this is a great spot for a park. This resolution just says this is what the City wants.

Alderman Williams agreed it is very general in nature and not a developmental plan. It just states it should be a park and develop as a garden setting rather than as a sports park, skateboard park, or some other type. He stated the Council does set policy. This is City land and it is proper to go forward and assure the neighbors what this will be used for.

Alderman Trumbo again stated this should go through the regular process, especially to address the budget concerns.

Alderman Pettus felt the Council could say they want it to be a park and then let it go through the process for planning and budgeting.

Louise Montgomery, 213 Summitt, encouraged the Council to adopt the resolution so that the City can plan for this park. She would like to see it remain a low-maintenance park. It already belongs to the City, so they are already responsible for its maintenance. This has been discussed at two Park Board meetings. She recalled no neighborhood opposition and could see no reason for the public to have to appear at another meeting to discuss this.

Lyle Gohn, Rogers Drive, thanked the City for removing the water tank tower. This is now a beautiful site. He agreed there is no reason for further meetings with the Park Board. He felt the Parks Board fully supported the concept. He has found only one person who opposes this in the neighborhood.

Michael Green, Texas Way, commended the City for restoring this scenic location. This area needs a park and he encouraged the Council to continue with this concept.

Ron Austin, neighbor, appreciates what the City has done. He asked if the Council would consider leaving it as it is for awhile to let the Parks Department study this and to solicit private and corporate donations to finish it.

Patsy Brewer, Habitat for Humanity, stated they were interested in part of this property. She passed out a proposal for locating three houses on part of the land. She noted the hillside was not suitable for building. She asked the Council to consider other uses that might benefit the citizenry that would not be addressed by just a general park.

Alderman Daniel stated she would like to see Habitat for Humanity build in the central part of the city. She did not favor putting houses on this spot.

Alderman Williams agreed this is not an appropriate location for residential development.

Alderman Schaper also agreed. He would rather see the Habitat houses built one by one and fit into existing neighborhoods.

Dan Coody, resident, stated this is a unique site because of the view. He stated they will soon owe the City $3,300 for parks fees soon. He would like to see it go directly into developing this site into some kind of garden as the resolution promotes. There is no controversy surrounding this and he hoped the Council would move it forward.

Alderman Pettus stated the resolution is dogmatic as written. She suggested using, "It is suggested. . ." rather than ". . . should be established."

Alderman Williams agreed to make that amendment to the resolution. He stated this is just a concept suggestion from the Council on how this could be developed. It is not meant to dictate exactly how the park is to be developed.

Alderman Williams moved the resolution. Alderman Zurcher seconded. Upon roll call, the motion carried on a vote of 8 to 0.

RESOLUTION 109-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

ORDINANCE REVISION/PHYSICAL ALTERATION OF LAND

Mayor Hanna introduced an ordinance revising Chapter 161: Physical Alteration of Land.

Alderman Pettus asked to move this to the end of the agenda.

There was consensus to do this.

CONDEMNATION/226 NORTH SCHOOL STREET

Mayor Hanna introduced an ordinance condemning property located at 226 North School Street.

Mayor Hanna reported that this should not yet be read as an ordinance, as the City has not had an appraisal or made an offer. He did feel it was proper to discuss this.

Richard Alderman, architect, stated his firm has been retained to work with this project. They have been given assurances from the owner that he is ready to move forward. A meeting has been set to look at preliminary concepts.

Alderman Williams stated the Council has heard this before but nothing has ever happened. The owner was given a year and then another year and the property is still in an ugly, dangerous condition.

Mr. Alderman stated the owner-approved time line says that within the next 30 days they would like to work through the schematic design process.

Alderman Schaper asked if the parking waivers were still valid.

Kevin Crosson, Public Works Director, offered to check on this, but thought they were still good.

Alderman Williams reminded the Council they had received a letter over a year ago from the owner stating he had retained an architect and including a schedule for completion that stated construction would begin in the spring of 1998. Mr. Klinger was given another chance at that time and was told the City would take action if this was not done.

Mr. Alderman responded that it takes time and effort for a private individual to put together a project like this. He is ready to move it forward now. He confirmed that the owner has a line of credit set up. He stated construction should begin in late December or the first of January.

Alderman Schaper asked if there is precedent for making a contingent condemnation stating if this is not under construction by the fist of February it will be condemned.

City Attorney Rose did not know of that every being done. He stated he wants to be sure that the primary reason for going forward with the condemnation is the belief that the land is best suited for a public purpose and not to punish Mr. Klinger. He asked the Council to articulate for the record their reasons for wanting to condemn this property.

Alderman Williams explained his comments pertained to the raze and removal.

Mr. Alderman stated there are several other properties in that area in much worse shape than this one. This owner has tried to make this not be a public nuisance and has done whatever the City inspector has asked.

Alderman Schaper stated the City can use more off-street parking in that area. The issue is how long to wait for this kind of private investment to take root.

Alderman Williams stated this is across the street from the Walton Arts Center, which the City is half owner of, and is an eyesore.

Alderman Miller stated this structure was left open until the City pressured the owner to board it up. He does not want to see more parking. Though he is impatient to see improvement, he felt some progress is being made. If no progress is made, he will condemn it.

Alderman Williams pointed out no progress was made until this was put back on the agenda.

Mr. Alderman offered to bring the plans to the Council to show that progress is being made.

Alderman Pettus asked for a drop-dead deadline.

Mr. Alderman stated he could not tell his client when to spend his money, but he could tell him when he will have a plan ready. He stated a conceptual plan could be brought forward in 45 days.

Alderman Schaper wanted to see a commitment from the owner, a drop-dead date for time of construction.

Alderman Williams suggested leaving it on the table to see what happens.

This item was left tabled.

ORDINANCE REVISION/PHYSICAL ALTERATION OF LAND
Mayor Hanna introduced an ordinance revising Chapter 161: Physical Alteration of Land.

City Attorney Rose read the ordinance for the first time.

Alderman Williams stated the Ordinance Review Committee has looked at this for years. The intent of this ordinance is to preserve hillsides and ensure quality development.

City Attorney Rose asked for any found errors to be submitted to him in writing for correction.

Ms. Benedict, League of Women Voters, stated the League supports standards that minimize erosion and pollution caused by development on hillsides and along streams in Fayetteville. She commended the Council for this revision and asked them to continue working on zoning so there will be less density on steep slopes.

Alderman Young asked about measuring the maximum length of any cut or fill along the ground. He thought the intent was along the slope.

It was agreed that was the intent.

This item was left on first reading.

ANNOUNCEMENTS & ADJOURNMENT

Alderman Zurcher read a prepared statement announcing his immediate resignation from the Council due to his move from Ward One.

Mayor Hanna adjourned the meeting at 9:00 p.m.