A MEETING OF THE FAYETTEVILLE CITY COUNCIL

A meeting of the Fayetteville City Council was held on Tuesday, August 18, 1998, at 6:30 p.m., in the Council Room of the City Administration Building, 113 W. Mountain, Fayetteville, Arkansas.

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

ABSENT: **None**

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

CONSENT AGENDA

MINUTES: Approval of the minutes from the meeting of August 4, 1998.

MINUTES APPROVED.

AIRFIELD LIGHTING: A resolution approving Amendment #1 to the contract with Chris King Electric, Inc. in the amount of $5,140.00 for the Airfield Lighting Control Project and approval of a budget adjustment.

RESOLUTION 110-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

LAKE LUCILLE SPILLWAY: A resolution authorizing the Mayor and City Clerk to execute a construction Contract with Sweetser construction for the Lake Lucille Spillway Replacement Project for $59,649.00 plus contingency of $12,000.00.

Alderman Kit Williams moved to accept the Consent Agenda. Alderman Miller second the motion. The motion carried with a vote of 6-0-0. Alderman Daniel was not present to vote.

RESOLUTION 111-98 AS RECORDED IN THE CITY CLERK'S OFFICE

OLD BUSINESS

ORDINANCE REVISION: Mayor Hanna introduced an ordinance revising Chapter 161: Physical Alteration of Land. The ordinance had been left on the first reading.

Alderman Stephan Miller moved to suspend the rules and go to the second reading. Alderman Schaper second the motion. Upon roll call the vote carried 6-0-0. Alderman Daniel not present for the vote.

City Attorney Rose read the ordinance.

Alderman Williams stated that this ordinance had be in the planning for over a year and with the help of the Engineering Department the ordinance was ready to approve. Alderman Williams thanked the Engineering Department and staff for all of their work on this ordinance.

Alderman Miller stated he had been concerned with development on hillsides. He felt the committee had done a really good job. He was extremely please with this ordinance.

Alderman Williams moved to suspend the rules and go to the third and final reading. Alderman Schaper second the motion. Upon roll call vote carried 6-0-0.

City Attorney read the ordinance.

Mayor Hanna called for the vote. Upon roll call the ordinance passed with a vote of 6-0-0.

ORDINANCE 4113 AS RECORDED IN THE CITY CLERK'S OFFICE.

NEW BUSINESS

BID 98-60: Mayor Hanna introduced a resolution awarding Bid 98-60 to TNT Construction and approving a contract for the replacement of playground and picnic equipment at Hotz Park. The bid amount is $45,908.43 plus $3,000 contingency.

Alderman Williams stated he had requested this resolution be placed under new business because there had been two bids received for this project. Alderman Williams stated that one of the bids was a lower bid and that it was not in compliance with the Council's request. He showed the members of the Council a picture of the new playground equipment. He added that it seem to be a lot of money, but he felt that it would be well spent. Alderman Williams asked Alderman Schaper if he had spoken with any of the neighbors surrounding Hotz Park.

Alderman Schaper stated the University Heights Neighborhood Association approved of this resolution. He expressed concerns about the amount of the money, but felt the current equipment needed to be updated. He stated this was the kind of neighborhood park that he liked.

Alderman Schaper moved to approve the resolution. Alderman Miller second the motion. Upon roll call, the motion carried with a vote of 7-0-0.

RESOLUTION 112-98 *AS RECORDED IN THE CITY CLERK'S OFFICE.*

RZA 98-13.00: Mayor Hanna introduced an ordinance annexing 3.07 acres located at 4070

Huntsville Road. The request was submitted by Jack Butt on behalf of Paul and Geraldine Bond.

RZ-98-14.00: An ordinance rezoning 3.07 acres located at 4070 Huntsville Road from A-1 to R-S, Residential Small Lot. The request was submitted by Jack Butt on behalf of Paul and Geraldine Bond.

City Attorney Rose read the annexation and re-zoning ordinance.

Mayor Hanna state that it should be known that the Planning Commission approved the annexing with a vote of 7-0 and the re-zoning by a 6-1 vote.

Alderman Miller expressed his gratitude to Jack Butt for excepting a R-S zoning instead of an R-2 zoning.

Attorney Butt stated at this time the Bond's had no immediate plan for developing the parcel of land . He added the Bonds were annexing to connect to the City's sewer system.

Alderman Trumbo made the motions to suspend the rules and go to the second reading. Alderman Miller second the motion. Motion carried 7-0-0.

City Attorney Rose read the ordinance.

Alderman Williams asked if any of the neighbors across the road had been notified of this rezoning. He stated that he would prefer not to go to the final reading until the public had been notified.

City Clerk/Treasure Heather Woodruff stated the City's ordinances required adjoining property owners to be notified in the Planning Commission meeting.

Alderman Williams asked if the neighbors across the road had been notified.

Alderman Schaper asked attorney Butt if the said neighbors had been notified. Butt replied the Planning Department had taken care of the notification. He noted the property across the road was zoned R-2.

Alderman Williams stated he was reluctant to proceed to the final reading on the re-zoning.

Mayor Hanna asked Mr. Butt if delay in the re-zoning would cause a hard ship to his clients.

Attorney Butt replied it might cause a problem for his clients, because the Bonds were concerned with connecting to the sewer system.

Alderman Miller stated they would be able to connect to the sewer, if they were annexed.

Alderman Williams made the motion to suspended the rules on the annexation and go to the third and final reading of the re-zoning. Alderman Miller second the motion. Upon roll the motion carried 7-0-0.

City Attorney Rose read the annexation ordinance.

Alderman Trumbo made an motion to suspended the rules and go to the third and final reading. No second motion was made. The re-zoning ordinance was left on the second reading.

Mayor Hanna called for the vote on the annexation. Upon roll call the motion passed 7-0-0.

ANNEXING ORDINANCE 4114 AS RECORDED IN THE CITY CLERK'S OFFICE.

REZ0NING LEFT ON THE SECOND READING

WRMC ASSISTED CARE DEVELOPMENT: Mayor Hanna introduced a resolution from Council concerning a proposed cost-share for the cost difference between construction Longview as a 36 ft. Collector vs. A 28 ft local street for approximately 1450 ft at the WRMC Assisted Care development.

Alderman Schaper stated that he did not know if this policy was in the City's best interest.

Alderman Williams replied the reason behind the policy was that it is assumed that many other people other than that developer and his tenants will be using the collector. We do require a larger right way.

Alderman Trumbo made the motion to move the resolution as presented. Alderman Pettus second the motion. Upon roll call the motion carried 7-0-0.

RESOLUTION 113-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

ORDINANCE AMENDMENT: Mayor Hanna introduced an ordinance amending Section 97.016 of the Code of Fayetteville to allow the Mayor or his designee to establish fees for the use of City Park Ballfield for tournaments.

City Attorney Rose read the ordinance.

Alderman Williams made the motion to suspend the rules and go to the second reading. Alderman Miller second the motion. The motion carried 7-0-0.

City Attorney Rose read the ordinance.

Alderman Williams made the motion to suspend the rules and go to the third and final reading. Alderman Miller second the motion. The motion carried 7-0-0.

City Attorney Rose read the ordinance.

Upon roll call the motion was approved with a 7-0-0 vote.

ORDINANCE 4115 AS RECORDED IN THE CITY CLERK'S OFFICE.

NON-RESIDENT PARKING: Mayor Hanna stated that this item had been removed from the agenda and forwarded go to the Street Committee.

No action taken.

NO ACTION. SENT TO THE STREET COMMISSION.

LEASE AGREEMENT: Mayor Hanna introduced the review, comment, and approval of a lease agreement for the Town Center between the City of Fayetteville and the Advertising and Promotion Commission.

City Attorney Rose read the resolution.

Alderman Schaper asked if the State law required the A & P Commission to manage the Convention Center because of the issuance of the bonds.

City Attorney Rose replied no.

Alderman Schaper asked if the center could be managed by anyone?

City Attorney Rose replied yes and he thought the City would be hard press to find someone willing to do it as well as pay for the operation and maintenance of the building.

Alderman Pettus asked if there was any reason why the City of Fayetteville could not manage center.

City Attorney Rose answered no.

Alderman Williams asked if there was a provision in the lease that stated that if the A & P default that the City would manage the Center.

City Attorney Rose answered the bonds were issued strictly go to the A & P. He explained that the bonds were issued from the HMR tax. No City funds were committed to this project. The City, would not be responsible for the default of the bonds. The City would not have to pay money under the terms of this agreement. He reiterated the only thing committed was the HMR tax.

Alderman Young stated if they default, then City could start to take over.

In response to questions from the Aldermen, Ben Mayes, Administrative Services Director, stated that Section 10 stated that if the A & P default for any reason, the leasor, which was the City, may re-enter and take possession of the leased premises without terminating the agreement. He added the City can step in if necessary.

Alderman Williams asked what the maturity of the bonds were and when they would be paid off.

Mr. Mayes replied it would depend on the market conditions at the issuance of the bonds. If the bonds were issued now they would be for twenty years. Even though the election allowed for twenty-two years.

Alderman Trumbo asked why the term of the lease did not match the terms of the bonds.

Alderman Pettus expressed concern that the lease gave the A & P a lot of control and the City practically none. She knew the City could step in if the A & P were to default. She noted that the City would have no recourse if the A & P mismanaged the faculty.

Alderman Schaper asked what the performance metrics were for the A & P Commission under this lease.

Alderman Schaper asked if the lease could be terminated if they did not generate a minimum number of days per year lease income.

Alderman Schaper noted there were no provisions to terminate the lease if the A & P did not manage the Center go to the City's expectations. He also questioned what would happen to the money if they turned a huge profit. He suggested the additional money be used to pay off the bonds.

Alderman Pettus stated that perhaps a percentage could be paid back to the people of Fayetteville.

Alderman Schaper replied he had concerns about this lease agreement. He said he saw no control in the ordinance.

Mr. Mayes suggested a meeting between the Council members and the A & P. He stated that A

& P was controlled by state statues of the HMR Tax. The center itself will operated at a loss not a gain that is the projections based on studies done by an independent party not the A & P. But the A & P are total at risk and that is why they have control over the center Mr. Mayes again suggested further meetings, he didn't think that staff could answer the type of questions that were being asked.

Alderman Schaper replied the A & P Commission was and was not at risk. He noted that their only source of revenue was the A & P tax. He commented if necessary the revenue could go to pay the bonds. Because they have a broader taxing authority, the city doesn't have too, but it could bail out this project if necessary.

City Attorney Rose replied there was no legal obligation on the City's part.

Alderman Pettus noted the City needed more control in the operation of the Center.

City Attorney Rose stated he was just representing the City's best interests. He suggested a meeting between the two parties.

Mayor Hanna also requested a meeting.

Alderman Pettus suggested the Public send in questions that they would like the Alderman to ask the A & P Commission.

Alderman William stated he thought both parties were on the same side and they were both trying to build an effective and beautiful Town Center. He expressed concern about the length of the lease and concern about protecting the non-profit organizations.

Alderman Schaper asked in Section 502, access to non-profit ship, that premises should be made available for use by non-profit groups located in the City of Fayetteville. He expressed concern about non-profit groups not be able to reserve the premises for more than thirty days prior to the date that it will use the lease premises. He asked if the non-profit group reservation was guaranteed. He suggested sixty days instead of thirty days to give non-profits time to advertise their events.

Alderman Pettus noted that lease does not state how often the non-profits can use the center. She expressed concern that the Center would choose conventions over the non-profit groups.

Alderman Williams stated it would be leased to conventions a quarter of the time. He would like to see an area in the Town Center that would be only used for non-profit community groups.

Mr. Mayes remarked the intent was to guarantee reservations and thirty days was so that groups could not reserve the center a year or more in advance.

Alderman Young stated his concerns that they were narrowing it to one kind of non-profit organization and would like the lease to say non-profit groups.

Alderman Schaper asked about the requirements?

Mr. Mayes replied the center could not be exclusively used for non-profit use, it then would be a non-public faculty under this A & P Law and Federal Law. Another example would be if you built a town center and leased it out go to a major corporation for three years the IRS would say that the corporation was using the city's tax exempt status to build a convention center for their training center.

Alderman Schaper asked if the City pays the rent for A & P and it is deemed additional rent, then how would this provision works?

Mr. Mayes replied the A & P was still responsible for their obligations. He then deferred go to City Attorney Rose.

City Attorney Rose stated the City had many options they could take if this should occur.

Alderman Schaper stated he would like to see some of the provisions stated more clearly.

Alderman Pettus agreed with Alderman Schaper on this aspect. She asked City Attorney Rose if the A & P Commission and their activities in managing the Convention Center were subject to the Freedom and Information Act.

City Attorney Rose said to his understanding the answer was yes.

Alderman Pettus commented the Center was to be financed out of the bonds and other monies. She asked what other monies?

Mr. Mayes replied the A & P Commission agreed to contribute one million dollars toward the construction of the Town Center.

Alderman Young asked if the Turn back funds were to be used.

Mr. Mayes stated the Turn back funds were not for construction and there was only two sources of monies those of the A & P Commission and the bonds.

Joe Fennell, Chairman of the A & P Commission, stated he appreciated all the concerns and comments of the Aldermen. He would welcome a joint meeting.

Mayor Hanna request a meeting be set for 5:30 next Tuesday afternoon in room 326.

Alderman Williams suggested the discussion be tabled until the next meeting.

Jeff Erf asked who wrote the contract?.

Mr. Mayes replied he wrote the draft.

Mr. Erf asked why the City was responsible for paying the insurance?

Alderman Miller said the City was not responsible for paying all the insurance.

Mr. Erf then replied why was the City paying for the premises, furniture, and fixtures.

Mr. Mayes said the A & P Commission felt it was more appropriate for the City to pay for their own liability and property insurance and the A & P Commission to pay for the building insurance.

Alderman Miller asked how much the insurance would cost.

Mr. Mayes replied he did not know, but would find out and supply that information.

Alderman Schaper replied that the City was responsible for the expense of the Town Center and the insurance was part of that expense.

Mr. Erf asked if there were any other expense in the contact that the City of Fayetteville had to pay.

Alderman Pettus replied she was not aware of any other expense.

Mayor Hanna asked if there were any other questions or comments.

No action was taken. The Item was place on the next agenda.

TABLED TO NEXT MEETING. NO ACTION TAKEN.

VA 98-9.00: Mayor Hanna introduced an ordinance vacating approximately three feet of a utility easement for property located at 2394 Big Oak Drive. The request was submitted by John and Lesley Green and is only for the portion of the of easement on which the house encroaches.

City Attorney Rose read the ordinance.

Mayor Hanna asked for questions.

Alderman Williams made the motion to suspend the rules and go to the second reading.

Alderman Miller second the motion. Upon roll call the vote passed 7-0-0.

City Attorney Rose read the ordinance

Mayor Hanna asked for comments.

Alderman Schaper made the motion to suspend the rules and go to the third and final reading. Alderman Daniel second the motion. Upon roll call the vote passed 7-0-0.

City Attorney Rose read the ordinance.

Mayor Hanna called for the vote. Upon roll call the vote passed 7-0-0.

ORDINANCE 4116 AS RECORDED IN THE CITY CLERK'S OFFICE.

VA98-10:00: Mayor Hanna introduced an ordinance vacating approximately 6.5 feet of a utility easement for property located 2911 Birdie Drive. The request was submitted by Lyle and Kelley Nicholson and is only for the portion of the easement on which the house encroaches.

City Attorney Rose read the ordinance.

Alderman Williams made the motion to suspend the rules and go to the second reading. Alderman Miller second the motion. Upon roll call the vote passed 7-0-0.

City Attorney Rose read the ordinance.

Alderman Miller made the motion to suspend the rules and go to the third and final reading. Alderman Daniel second the motion. Upon roll call the vote passed 7-0-0.

City Attorney Rose read the ordinance.

Mayor Hanna asked for any more comments.

Mayor Hanna called for the vote. Upon roll call the vote passed 7-0-0.

ORDINANCE 4117 AS RECORDED IN THE CITY CLERK'S OFFICE.

SPECIAL ELECTION: Mayor Hanna introduced an ordinance calling for an election on the issue of Sunday sales of alcoholic beverages.

Mayor Hanna called upon John Gilliam.

Mr. Gilliam stated the ordinance could be passed by resolution or by petition. He asked the City Clerk if she had started counting the signatures yet.

City Clerk/Treasurer Heather Woodruff replied they had started counting the signatures today.

Alderman Williams asked Mr. Gilliam if Marilyn Johnson-Snapp had counted the signatures.

Mr. Gilliam answered yes.

Alderman Schaper asked City Clerk Heather Woodruff how long it would take to verify the signatures.

City Clerk Heather Woodruff replied three days.

Alderman Daniel replied that she would be hesitate to pass the resolution tonight.

Alderman Pettus remarked the resolution was to place the petition on the ballot.

City Attorney Rose read the ordinance.

Alderman William asked if the resolution would automatically be placed on the ballot after the City Clerk verified the signatures.

City Attorney Rose replied that was correct.

Alderman Williams made the motion to suspend the rules and go to the second reading. Alderman Miller second the motion. Upon roll call the vote passed 7-0-0.

City Attorney Rose read the ordinance.

Alderman Miller made the motion to suspend the rules and go to the third reading. Alderman Pettus second the motion. Upon roll call the vote passed 7-0-0.

Mayor Hanna asked for comments.

Mayor Hanna called for the vote. Upon roll call the vote passed 7-0-0.

ORDINANCE 4118 AS RECORDED IN THE CITY CLERK'S OFFICE.

SUTTON PARK VETO: Mayor Hanna introduced the Sutton Park Veto pursuant to ACA

Section 14-43-504 the Mayor's veto of Ordinance No. 4110. An ordinance authorizing Eminent Domain Proceedings for the City to obtain land for park purposes which is located in the 400 Block of Sutton Street.

Mayor Hanna called for any motions.

Alderman Miller went on the record as saying that he was disappointed in the way things turned out and that it was time to move forward.

Alderman Schaper commented there was not enough votes to override the Mayor's veto. He addressed the many calls and letters received concerning this ordinance.

Mayor Hanna replied the rules stated that the Council could override the veto or let the veto lay.

No motion was made to override the veto. The veto was let lay.

NO ACTION TAKEN.

ANNOUNCEMENTS & ADJOURNMENT

Mayor Hanna adjourned the meeting at 7:55.