A MEETING OF THE FAYETTEVILLE CITY COUNCIL

A meeting of the Fayetteville City Council was held on Tuesday, September 15, 1998, at 6:30 p.m., in the Council Room of the City Administration Building, 113 W. Mountain, Fayetteville, Arkansas.

PRESENT: **Mayor Fred Hanna, Alderman Young, Alderman Trumbo, Alderman Pettus, Alderman Miller, Alderman Williams, Alderman Daniel, City Attorney Jerry Rose, City Clerk/Treasurer Heather Woodruff, Staff, Press, and Audience.**

ABSENT: **Alderman Schaper**

NOMINATING COMMITTEE REPORT: Alderman Daniel made a motion to appoint the following:

Environmental Concerns Committee: Tim McDonald and Bruce Manchon
Library Board: Marty Goff and Lorraine Brewer
Tree and Landscape Committee: Beverly Melton

Alderman Young seconded the motion. Upon roll call the motion carried with a vote of 6-0-0.

CONSENT AGENDA

MINUTES: Approval of minutes from September 1 and September 8, 1998 meetings.

FIRE STATION: A resolution approving a contract change order with Wittenberg, Delony and Davidson, Inc. in the amount of $37,561.13 for additional fees for Fire Station #6 (Hollywood) and Fire Station #4 (Plainview). The additional fees reflect the increase in estimated cost for the prototype fire station.

BID 98-65: A resolution awarding Bid 98-65 to Harrison Davis Construction Company for the construction of Fire Station #6 located at 900 Hollywood St. and the approval of a contingency and a budget adjustment.

OFF-LOADING FACILITY: A resolution approving the lowest qualified bidder for the construction of an off-loading facility for the Solid Waste Division and approval of a budget adjustment.

AIRPORT HANGER: A resolution approving a contract with Garver & Garver Engineers in the amount to $26,300.40 to administer and oversee the construction of an eight-bay T-hanger for the airport.

Alderman Miller moved to approve the Consent Agenda. Alderman Pettus second the motion. Upon roll call the motion carried with a vote of 6-0-0.

OLD BUSINESS

TOWN CENTER BOND ISSUANCE: Mayor Hanna introduced an ordinance providing for the execution of documents needed to complete the issuance of the Hotel and Restaurant Gross Receipts Tax Bonds, Series 1998, the proceeds of which will be used to partially finance the construction of the Town Center and Parking Garage on the south side of the downtown square. In addition, the City Council is requested to grant the authority for the Budget Coordinator to execute any budget adjustments necessary to recognize the bond proceeds and bond issuance cost. The item was tabled at the April 21, 1998 meeting after its second reading.

Alderman Miller made a motion to take the ordinance off the table. Alderman Williams seconded the motion. Upon roll call the motion carried 6-0-0.

City Attorney Rose read an amendment to the ordinance.

Alderman Williams made a motion to amend the ordinance. Alderman Miller seconded the motion. Upon roll call the motion carried 6-0-0.

City Attorney Rose read the ordinance as amended.

Mayor Hanna asked for comments.

Mr. Ben Mayes, City Administrative Services Director, stated the A & P Commission had approved the revised lease agreement. He stated that the A & P commission had passed a resolution recommending that the Council issue the bonds.

Alderman Pettus asked the Bond Council to address the bond funds which she had okayed in a letter to them. She asked if given a broader definition of what might be spent, would their answer still be the same.

Ms. Ann Parker, spokeswoman for the Bond Council, stated it was her opinion that the letter was correct.

Alderman Pettus stated the voters had been led to believe that only A&P funds would be used for the town center. She believed it would cost more. She wondered if this would be misleading to the voters.

Ms. Parker stated any change would be very fact specific. She thought it was impossible for her to answer broadly Alderman Pettus' question.

Alderman Young stated the people of Fayetteville voted for these bonds. He felt it was his duty to protect their interest. He asked Ms. Parker if the proposed town center met the requirement listed on the ballot.

Ms. Parker replied she was not the proper person to be answering questions because she stated she had not been attending meetings and had not seen drawings of this project. Since she did not live here locally and was not privy to all discussions, Alderman Young needed to ask others who were involved. She did not have the knowledge.

Mayor Hanna asked City Attorney Rose what his opinion of the ballot title was and if it reflected what the City Council and the A & P Commission were proposing.

City Attorney Rose assumed they were building what the ballot title stated. He could go back and read the ballot title again, if necessary. He stated in his mind it matched up with those words, and he would be pleased to defend it in court. He read the ballot title bond money was being used for the construction of a Fayetteville Town Center, as a new multipurpose Civic Center to be used for meetings, conventions, exhibitions, entertainment events, related uses and parking.

City Attorney Rose in response to questions from Alderman Trumbo, stated it was his understanding of the law that the ballot and the ballot title are the controlling factors one must look to in a court of law as to what was being built and what was being done. He stated he had never seen any reference with any case law in which advertising or sales potpourri was a part of a promise made on a ballot. He felt it was encumberment upon the Council to be sure this project matched what those documents said. City Attorney Rose asked Ms. Parker if he had stated that correctly.

Ms. Parker replied he had said it exactly right and agreed with him.

Alderman Trumbo stated the cash flow from the HMR tax could only support $6,950,000 worth of the project.

Alderman Pettus expressed concern on this issue. She asked if the cost of the Center exceeded the HMR Tax, would the City be asked to contribute the rest of the funds to finish this project and if so, did it match the ballot title.

Mr. Mayes stated the City could not spend additional money on the Town Center without the approval of the Council. He explained, in the worst case scenario, if a construction bid came in at $15 million instead of $7 million, the City and the A & P would go back and decide what to do.

Alderman Pettus asked what would happen to the bonds if the town center could not be built..

Mr. Mayes replied the bonds would have to be paid off or retired. There was a call provision in the Bonds that if the proceeds are not used for its intended purpose that they are used to retire the Bonds.

He felt the estimates were very accurate and conservative. He added the state would allow negotiation with the lower builder, if the estimates were within 20 %.

Alderman Trumbo asked if the town center could not be built how much money would be lost.

Mr. Mayes said there were issuage costs on the bonds in the amount $110,000. Approximately $62,000 to the underwriters of the bonds and $20,000 to $30,000 to the Underwriters Council and the Bond Council.

Alderman Trumbo asked if this was City money or A & P money.

Mr. Mayes replied A & P money. This would be out of the million dollars the A & P put up to finance the Center.

Alderman Pettus expressed concern over Mr. Mayes statement about the Council voting to spend more money on the center instead of the people voting.

Mayor Hanna explained that the Council had received an estimate from the architect of $5 million to $8.5 million to construct this project. When added with the million dollars from the A & P there was $7,950,000. If the project did not bid in this range, they could negotiate the low bidder. If there is no way to get within the budget and extra money was needed, a decision will have to be made to pursue or call off the project.

Alderman Williams stated the City needed the bonds to legitimately ask for bids on the Town Center.

Alderman Trumbo commented he was personally satisfied with the work everyone had done on the project.

Mayor Hanna stated the need to authorize issuage of the bonds. He commented the public had been kept well informed with this project through public meetings.

Alderman Miller commented on how many people actually voted.

Mayor Hanna asked for public comment.

Mr. Jeff Erf, an area resident, asked if the final drawing of the facility was completed.

Mayor Hanna replied there had been a meeting and the drawings were published in the newspaper.

Mr. Erf stated there was some confusion on whether or not there was going to be a tower. He asked if there was going to be a small community room and will there be 230 parking spaces.

Alderman Young replied it was dependent upon the money.

Mr. Mayes explained the Council has instructed the architect to design a parking deck that contained approximately 230 parking spaces.

Mayor Hanna stated the ordinance was on its third and final reading and final reading. Mayor Hanna called for the roll. Upon roll call the ordinance passed with a vote of 5-1-0 with Alderman Pettus voting nay.

ORDINANCE 4121 AS RECORDED IN THE CITY CLERK'S OFFICE

NEW BUSINESS

SEWER REHABILITATION: Mayor Hanna introduced a resolution approving the construction contract for sewer rehabilitation with Building and Utility Contractors in the amount of $1,127,809 and a contingency of $56,390.

Mayor Hanna asked for comments.

Alderman Miller stated the town was growing and it was the right thing to do. He explained the less the system leaked the less water had to be treated.

After much discussion, Alderman Daniel made a motion to approve the resolution. Alderman Young seconded the motion. Upon roll call the resolution passed with a vote of 6-0-0.

RESOLUTION 125-98 AS RECORDED IN THE CITY CLERK'S OFFICE

COST SHARE: Mayor Hanna introduced a resolution approving a "50/50" cost-share with Ben Caston of Caston Construction for the construction of a 28 foot local street as recommended by the Planning Commission for the Barrington Parke Subdivision Phase II.

Ms. Alett Little, Planning director, explained the Planning Commission had given the developer an option to either extend the street to Fox Hunter or to extend the street to Hartford.

Alderman Young asked the distance between the property line & Madison Drive.

Mr. Charles Venable replied 557 feet.

Mr. Mel Milholland, Milholland Engineering, explained the proposed connections.

Alderman Trumbo asked how many houses were proposed in the new addition and how many houses were in Phase I.

Mr. Milholland replied 49 houses were in the current addition and 87 houses were proposed.

In response to questions from Alderman Trumbo, Ms. Little stated the Planning Commission had left the developer with an option to either connect to Madison Avenue or extend to East Fox Hunter Road.

Alderman Daniel asked how this cost share would save the city money.

Ms. Little explained the Planning Commission had required Madison Avenue Subdivision to stub out. They required the Barrington Parke to stub out. There was now a way to connect the two. If the City did not gain half of the cost of that road from this developer, then the City would be responsible for 100% of the cost of the street when it was constructed..

Mayor Hanna stated the City could sell the property. Then the new owners of the property would have to develop the street.

Alderman Williams suggested the Fayetteville City Street Committee needed to review this issue.

Alderman Trumbo commented on the condition of the existing roads and preferred one entry to a subdivision. He noted there were many subdivisions with only one entry.

Alderman Miller stated several members of the Council felt that one way in and out was a mistake. He asked if there was another entrance from Fox Hunter Road.

Mr. Venable explained there was another entrance from Highway 45 but it was not a very good entrance.

Mr. Milholland presented the plat which had been approved in March of 1994.

Mayor Hanna agreed with Alderman Williams' suggestion to let the Street Committee review this issue.

Alderman Young asked if there was a right-of-way at the southwest area and if it would be on the final plat.

Mr. Milholland replied yes.

Alderman Young stated the question before the Council or the Street Committee would be whether to build a street. He asked Ms. Little if the Street Committee and the Council decided not to do this cost share, would there still be a right of way or stub out towards Madison.

Ms. Little replied yes there would.

Alderman Pettus questioned how much property the City owned on this location and how did the City acquire this land. She also asked why the City would want to sell it.

Mayor Hanna replied seven acres. The City's water line runs through the property.

Alderman Miller stated that if the City built the road, the property value would go up.

Alderman Miller stated the project needed to be sent to the Street Committee.

Alderman Williams asked if they could just refer it to the Street Committee.

Alderman Miller made the motion to refer the item to the Street Committee for review. Alderman Daniel seconded the motion. Upon roll call the motion carried 6-0-0.

Mr. Milholland introduced Mr. Ben Caston.

Mr. Caston, the developer, stated the issue needed to be resolved as soon as possible.

Alderman Williams replied the Street Committee was scheduled to meet Thursday at 5:00 p.m. in room 111, of the City Administration Building, and stated that maybe the tour could be scheduled for the following week.

Mr. Caston asked if the process could be sped up any because winter was going to be here soon.

Mayor Hanna replied the issue could probably be resolved at the next City Council Meeting and asked when this went through the Planning Commission.

Ms. Little stated the issue went through the normal process and was approved by the Planning Commission on August 24, 1998. She added any plat was automatically void after a year and had to start the process over. Mr. Caston had approval to build the subdivision, but his year had elapsed and he had to start over.

Mr. Milholland asked if it was possible to have Council approve the stub out so they could go forward and the developer could put up a bond for his half of the road.

Mayor Hanna stated what Mr. Milholland was saying was for the Council to make a motion to accept the 50/50 Cost Share, if the Street Committee approved the street.

Alderman Williams asked if the plat showed two stub outs. He asked City Attorney Rose if they need a motion to incorporate the suggestion.

City Attorney Rose replied yes, they needed a motion. He asked if he understood the concept correctly that it was a motion to refer to the Street Committee the idea of having the Madison Street extension as a 50/50 split. Secondly, the Council has required the developer to put up a bond in the amount of 50% if the decision is to go forward with that extension. That bond would be refunded if the decision was not to go forward.

Alderman Trumbo and Daniel replied yes.

Ms. Little explained the decision that was called for was where the additional outlet was going to be. The Planning Commission decided the developer could only use Fox Hunter or Madison connections.

Alderman Young stated he would vote for the Madison connection. He commented the only question was if the City wanted to spend money to connect at this time.

Alderman Williams asked if the City did vote not to spend money plus was the plats approved invalid.

Alderman Young replied no.

Ms. Little explained if the City decided not to help build the street, the developer had to decide whether he was going to extend out to Fox Hunter or pay 100% of the cost of the street extension with the City's approval of the use of City land.

Mr. Milholland stated the developer was given the choice to pay 50% of the cost of the road. The reason they negotiated this was to keep his cost equal to the bond. The Planning Commission felt this was a better alternative. The reason the Planning Commission did the 50% was because the developer's cost was going to be more to extend to Madison than to Fox Hunter.

Mr. Milholland stated this delay would cause a six to eight month delay in developing this property. This was an inconvenience to the citizens of Fayetteville that were buying and building houses in this project.

Alderman Pettus made a motion to accept Mr. Caston's bond and to accept the wording to the motion as stated earlier by City Attorney Rose. Alderman Trumbo seconded the motion.

Ms. Little read the minutes from the Planning Commission regarding this issue. She stated Planning Commission was not asking for the Council to approve the bond and not give permission to build to Madison.

Alderman Trumbo stated the Council could overrule the Planning Commission and he wanted to move forward.

Mayor Hanna stated there was a motion to accept the bond and let the Street Committee decide to accept the cost share.

In response to questions, Ms. Little stated there was a procedure to file an appeal from a P.C. decision She said this was not an appeal.

Alderman Pettus asked since there is a time limit on when you could appeal, what does the developer do after the time as elapsed.

Ms. Little stated the developer could go back to the Planning Commission and ask for reconsideration of the conditions given to them from the Street Committee. They have fifteen days to appeal.

Alderman Pettus asked Mr. Milholland if they would go through the appeal process or would they just build to Fox Hunter.

Mr. Milholland stated he thought they would stub out to Fox Hunter.

After further discussion, upon roll call the motion was passed with a vote of 6-0-0.

PRIVATE CONCERNS: Mayor Hanna introduced a resolution prohibiting the City from inquiring into private concerns of its employees and prospective employees regarding non-job-related activities and private beliefs.

Alderman Williams stated he introduced and read the resolution. He hoped this resolution would resolve some of the questions and concerns people had about the City delving into the private lives of its employees.

Alderman Miller addressed a newspaper article that was published in a local newspaper concerning his statement made to the press on this issue.

Alderman Williams made a motion to accept the resolution. The motion died from a lack of a second.

ADJOURNMENTS AND COMMENTS

Alderman Miller stated there was a Trails Committee meeting tomorrow night. There would not be an Environmental concerns meeting this month.

The meeting adjourned at 8:20 P.M.