A MEETING OF THE FAYETTEVILLE CITY COUNCIL

A meeting of the Fayetteville City Council was held on Tuesday, October 6, 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 Daniel, Alderman Miller, Alderman Pettus, Alderman Schaper, Alderman Trumbo, Alderman Williams, Alderman Young, City Attorney Jerry Rose, City Clerk/Treasurer Heather Woodruff, Staff, Press, Audience

STAFF CHANGES: Mayor Hanna announced staff changes as follows:

Administrative Services Director - Kevin Crosson replacing Ben Mayes
Public Works Director - Charles Venable replacing Kevin Crosson
Assistant Public Works Director - Don Bunn replacing Charles Venable
City Engineer - Jim Beavers replacing Don Bunn.

CONSENT AGENDA

MINUTES: Approval of minutes from September 15, 1998, meeting.

GRASS MAINTENANCE: A resolution approving the maintenance of the proposed buffer strip located between the back of curb and edge of sidewalk along Highway 16 West between Meadowlands Drive and U.S. Highway 71.

RESOLUTION 126-98 AS RECORDED IN THE CITY CLERK'S OFFICE

EDUCATIONAL ACCESS CHANNEL: A resolution authorizing an agreement with the University of Arkansas, Fayetteville, to operate the Educational Access Channel until September 30, 2000.

RESOLUTION 127-98 AS RECORDED IN THE CITY CLERK'S OFFICE

BID 98-53: A resolution approving Bid 98-53 for the purchase of 20 various light- and medium-duty pick-up trucks and utility vehicles from Ron Blackwell Ford.

RESOLUTION 128-98 AS RECORDED IN THE CITY CLERK'S OFFICE

OFF-STREET PARKING: A resolution appointing Bobby Lee Odom to the Off-Street Parking Development District No. 1 Commission.

RESOLUTION 129-98 AS RECORDED IN THE CITY CLERK'S OFFICE

AIRPORT SEWER LIFT STATION: A resolution approving Amendment No. 3 to the construction contract with Goodwin & Goodwin, Inc. in the amount of $700.00 for the addition of a manhole.

RESOLUTION 130-98 AS RECORDED IN THE CITY CLERK'S OFFICE

INTERSECTION IMPROVEMENTS: A resolution approving the reappropriation of $14,091.80 in surplus funds from the Engineering contract to the Construction contract for intersection improvements at Township and North College, and the approval of Change Order No. 2 to the construction contract.

RESOLUTION 131-98 AS RECORDED IN THE CITY CLERK'S OFFICE

WATER IMPROVEMENTS: A resolution approving a contract (Section 1) with Basic Construction in the amount of $891,212.00 with a contingency of $100,000.00 and approval of a budget adjustment in the amount of $350,000 for waterlines.

RESOLUTION 132-98 AS RECORDED IN THE CITY CLERK'S OFFICE

WATER IMPROVEMENTS: A resolution approving a contract with J & L Construction in the amount of $368,500.00 with a contingency of $40,000.00 for a booster pump station.

RESOLUTION 133-98 AS RECORDED IN THE CITY CLERK'S OFFICE

Alderman Pettus stated she wished to abstain from the Consent Agenda due to a conflict of interest with two of the items.

The motion was made by Alderman Daniel to approve the Consent Agenda. The motion was seconded by Alderman Williams. Upon roll call, the motion carried with a vote of 5-0-2, with Pettus and Young abstaining.

OLD BUSINESS

COST SHARE FOR STREET EXTENSION

Mayor Hanna introduced a resolution approving a 50/50 cost share for the actual construction costs to provide a 28-foot local street connecting Barrington Parke Phase II to the existing stub-out on Madison Drive in the Madison Subdivision, dedicating city property as city street right-of-way for the extension project.

Alderman Williams stated that the Street Committee met with the developer and local engineers, and the city aldermen who were present. Basically, the street committee believed this was advantageous to the city for two reasons. It would increase the value of the property because the road would be built with half of the cost paid by the developer of Barrington Parke, and it would be helpful to all citizens who lived in Barrington Parke to have another safe way to enter/exit their housing development. Over the long term, it would be a good project for the city, and the street committee recommended it unanimously.

Alderman Daniel mentioned that no complaints had been received on the issue.

Mayor Hanna asked if anyone in the audience would like to address the street construction issue.

Fran Alexander, area resident, asked for the configuration of Fox Hunter Road as it comes out of Barrington Parke, goes through public property, then out to Highway 45. Her concern was in regard to plans for bike trails and sidewalks to facilitate students getting to schools. She asked that this be taken into consideration as the area develops.

Alderman Miller remarked that the city has set standards for sidewalks and these would be followed.

Mayor Hanna asked for further comments. There were none.

Alderman Williams made a motion to pass the resolution. The motion was seconded by Alderman Daniel. Upon roll call, the motion carried with a vote of 7-0-0.

WATER BOOSTER STATION

Mayor Hanna introduced an ordinance authorizing the City Attorney to seek court-authorized possession of 0.473 acres of land owned by Ruth A. Morris for the purpose of constructing a water booster station thereon.

City Attorney Rose stated Ms. Morris's representative, David Horne, was not present. He reassured that he had spoken with Mr. Horne explaining that the City needed immediate possession of the land. He added he and Mr. Venable would continue to negotiate with Ms. Morris.

Mr. Venable stated they had been working with Ms. Morris for several months and still had not come to an agreement.

Mayor Hanna asked the staff to look at the pump station in Tyson Park. He felt it was a good example. The station had the appearance of a small brick house.

In response to questions, Mr. Venable stated there should not be any noise from the station.

Mr. Don Bunn, Assistant Public Works Director, reiterated the station would be fenced and screened with vegetation. He added the pumps would be located above ground inside the building.

In response to questions, Mr. Venable stated the new water line would run toward Goshen and would be used in conjunction with the new water tower being built. This would offset the low water pressure in that area.

Alderman Williams moved to suspend the rules and go to the second reading. Alderman Pettus seconded the motion. Upon roll call the motion carried by a vote of 7-0-0.

Mr. Rose read the ordinance for the second time.

Alderman Trumbo moved to suspend the rules and go to the third and final reading. Alderman Williams seconded the motion. Upon roll call the motion carried with a vote of 7-0-0.

Mr. Rose read the ordinance for the third time.

Mr. Charles Seifert, 3125 Warwick Drive, stated citizens should be fairly compensated for their property. He suggested the city use an outside appraiser.

Mayor Hanna called for the vote. Upon roll call the ordinance passed with a vote of 7-0-0.

ORDINANCE 4122 AS RECORDED IN THE CITY CLERK'S OFFICE

PLANNING COMMISSION APPEAL

Mayor Hanna introduced a resolution appealing the Planning Commission's denial of a preliminary plat for CMN Business Park, Phase I.

Mr. Rose explained the Council needed to vote to hear the appeal.

Alderman Trumbo moved to hear the appeal. Alderman Pettus seconded the motion. Upon roll call the motion carried by a vote of 7-0-0.

Jim Irwin, project representative stated the Planning Commission had voted 4-4-0 to approve the plat. He explained they had filed a preliminary plat to address questions from the 1995 rezoning of the property.

During the 1995 discussion CMN had agreed to escrow funds from any sale of property for the construction of the north-south road connecting Shiloh and Joyce. He reiterated they were now filing the preliminary plat to address those issues.

Alderman Trumbo asked Mr. Irwin why they had waited three years before starting the development process.

Mr. Irwin explained they were having problems marketing the property without specific answers to questions regarding streets and required improvements. He stated they would begin with phase I then work into phase II.

Alderman Williams asked when they would begin work on phase II.

Mr. Irwin replied they would begin on phase II after phase I was underway.

In response to questions regarding the zoning of the property, Mr. Irwin presented a map illustrating the zoning of the property. He explained the property was zoned both C-1 and C-2.

Alderman Williams recalled the reasoning behind the rezoning was to help the traffic flow around the mall. He expressed concern that the preliminary plat showed Van Ache, Steel Boulevard going from a four-lane boulevard to a two-lane street.

Mr. Irwin replied they were complying with the Master Street Plan.

In response to questions, Mr. Venable stated he was comfortable with the traffic projections for the development made by Mr. Peters, traffic engineer for the development.

Alderman Young asked if they were going to construct the road all at once before getting a final plat.

In response to arguments from Alderman Young, Ms. Harrington stated the agreement between the developer and the City regarding the escrow of money from the sale of property for the obstruction of the road had been discussed throughout the entire process.

Mr. Irwin stated the agreement with the city allowed CMN to sell lots before obtaining a final plat.

In response to arguments from Alderman Young, Ms. Little, Planning Director, stated the agreement superseded the normal development procedure. The city was committed to follow the agreement.

Alderman Young expressed concern about this being the largest single development ever proposed in the city of Fayetteville or in Northwest Arkansas.

Ms. Harrington read the November 2, 1995 letter which read, "In the event the owners sell a part of the entire ownership prior to construction of the north-south road, all of the sales proceeds generated from the sale shall be held in escrow until the north-south street is constructed. The escrow funds shall be used for part of the construction of the north-south street. Specific language for the escrow agreement shall be drafted by the City Attorney and the owner's attorney." The staff, the Planning Commission and everyone else working on the development had agreed this plat was ready to move forward.

Mr. Rose stated an agreement had been made regarding the entire parcel of land, not just Phase I.

In response to concerns voiced by Alderman Young, Ms. Harrington stated the owners had every intention of building the road, and that there was only one reason they were at the council meeting which was for permission to begin construction of the street.

Alderman Young reiterated if the council approved the preliminary plat that they were granting the developers the right to precede with he development of 170 acres.

Ms. Harrington stated all the property that was sold would go into escrow to build the street.

Alderman Young stated the city's normal procedure was to approve a preliminary plat, then allow the developer to construct the infrastructure. When the improvements had been made, then the developer would come back to the city for a final plat, which would allow them to sell lots.

Alderman Williams agreed this was a very large section of property. He thought it made a lot of sense to have an overall development scheme. The rezoning had been a hotly contested issue at the time, but the majority of the city council had voted for the rezoning because they wanted the road to be completed to have another access to the mall. He agreed the normal procedure was to construct the road first, however, this was a very expensive road with a major bridge. The council had made an agreement with the developer to allow them to sell some property, but the proceeds from the sales had to be escrowed in an account for the construction of the street. He felt the escrow agreement would protect the city and the new property owners by insuring that the road would be constructed.

Alderman Trumbo stated conditions had been set forth three years ago, and the escrow agreement had been talked about and agreed upon. He added these developers had produced good quality projects. He thought the city's flexibility would promote an excellent commercial development. He added the development would increase city sales tax and property taxes for our schools.

Alderman Schaper stated it had not occurred to him that the escrow agreement would supersede the normal development process. He wanted to make sure the street would be constructed.

Mr. Irwin stated they had the property under contract at one time for six months, but they could not answer some of the questions regarding required improvements.

In response to questions, Mayor Hanna stated they had agreed upon the escrowing of funds three years ago. He had no problem with the agreement and explained the developer would not receive any of the money from the sale of land until the road was constructed.

Alderman Trumbo stated this developer had a good reputation and had followed through with their promises. He added he could not see the downside on giving them approval to do this. He felt it would help them sell the lots and construct the road quicker.

Alderman Williams agreed that it would help in getting the road constructed sooner. He added he thought the city should participate in the building of a boulevard from the beginning. He did not believe a two-lane road could support the traffic around the mall. He added Fayetteville was lucky that the mall was inside Fayetteville City Limits. If it wasn't there would be millions less in tax revenue for our police and fire as well as other services.

After discussion, Alderman Williams suggested the right-of-way be increased south of Van Ache on Steele Boulevard to 90 feet.

Alderman Pettus moved to reverse the opinion of the Planning Commission and to grant the appeal, subject to the change in the right-of-way (90 feet south of Van Ache to the connection).

In response to questions from Alderman Schaper, Alderman Williams stated he thought the city could participate in the construction of the four lane road because it would be used by more citizens than by the traffic generated by the development. He added the development would generate more sales tax revenue to pay the city dividends through the years.

After discussion regarding the requirement for right-of-way for a four lane boulevard and requirement for a connection from Van Ache to Gregg .

Alderman Williams moved to amend the motion to increase the right-of-way from 90 feet to 96 feet and to require the developer to construct the connection from Van Ache to the west to Gregg Street with the completion of the sale of 75% of the property in Phase I. Alderman Pettus seconded the motion. Upon roll call the amendment carried by a vote of 7-0-0.

Mr. Charles Seifert, 3125 Warwick, stated the council should be dealing with the current traffic and drainage problems.

Bob Brandon, area resident, stated he lived in the Wilson Park neighborhood and he was concerned about the preservation of the historical neighborhood. He felt this new connection would add traffic to his neighborhood, which was not equipped to handle the current traffic. He asked the council to address the current traffic problems in his neighborhood before spending money on a new development.

In response to concerns voiced by Mr. Brandon, Alderman Williams stated the city had been addressing problems in his neighborhood by improving the railroad crossing. He added the University generated most of the traffic problems in his neighborhood and not the mall.

Mayor Hanna added the city had plans to extend Prospect Street over to Cleveland, across the railroad tracks, which should help the traffic somewhat.

Mr. Venable stated the Engineering department was in the design stage now. It would be next year before they began construction.

Ms. Fran Alexander, an area resident, asked if a high priority would be placed on keeping a green space if the boulevard was ever expanded. She added the city did not have a written policy on the preservation of median greenspace. She asked the difference between this proposed cost share and the cost share with Barrington Parke.

Alderman Miller explained that Barrington Parke was across city land which would increase the value of the property if the city decided to sell at a later date.

Ms. Alexander suggested a written policy for defining whether or not the city was subsidizing private enterprise and private development with tax dollars.

Alderman Williams replied that the city was not really subsidizing residential developments; in fact, developers were subsidizing our roads. The city was allowing Barrington Parke to use their land for the construction of a road, which would in turn increase the value of the city's property.

In response to questions from Ms. Alexander, Alderman Williams explained the developer of CMN was going to construct the road, however, the city was asking the developer to donate additional right-of-way to increase the size of the road beyond what the developer was required to construct.

Ms. Little requested clarification on the motion.

In response to questions from the council, Ms. Harrington stated they had agreed to the staff conditions of approval.

Alderman Pettus moved to amend the motion to include all the conditions listed on the staff report and to include all Planning Commission requirements. Alderman Trumbo seconded the motion. Upon roll call the motion carried by a vote of 7-0-0.

For clarity Ms. Little read the Planning Commission's motion for approval and the additional requirements to obtain a 96 foot right-of-way on Steele Blvd. south of Van Ache to Gregg Street. And in addition the developer would be required to complete Van Ache to Gregg Street in the same manner as Steele Boulevard upon sale of 75% of the acreage in Phase I. She added there was a total of 21 conditions placed upon the approval of this development.

Upon roll call the motion carried by a vote of 5-2-0. Aldermen Schaper and Young voted nay.

REAL AND PERSONAL PROPERTY TAX

Mayor Hanna introduced an ordinance adopting real and personal property tax rates for 1998 for the Police and Fire Pension Funds. The rate to be adopted is 0.5 mils each for both the fire and police pension fund. No millage was proposed for the general government operations.

City Attorney Jerry Rose read the ordinance for the first time.

In response to questions from Alderman Williams, Assistant Fire Chief Marion Doss explained the two plans were different and had different benefits. But both were governed by the State.

Alderman Williams asked the percentage the retiree would receive.

Mr. Doss stated the old plan sealed benefits at 65% of the salary at which they retired. The new plan was an average of the salary and time served. He added theoretically the closed plan would be shrinking over time. He added an actuarial study was done every two years. This year's study showed the fund being underfunded. There were currently 21 firemen under the old pension relief plan.

Alderman Pettus questioned if the tax would always be needed.

Alderman Williams reiterated his concern about treating both retirement plans equally.

In response to questions from aldermen, Mr. Doss stated the State Law set the minimum for 20 years of service at 55%. He reiterated the fact that the actuarial study had shown the plan to be underfunded.

Alderman Schaper moved to suspend the rules and go to the second reading. Alderman Young seconded the motion. Upon roll call the motion carried by a vote of 6-1-0. Alderman Pettus voting nay.

City Attorney Rose read the ordinance for the second time.

Mr. Lamar Pettus, area resident, questioned if the tax was necessary.

Mayor Hanna explained the Firemen and Policemen were Civil Service employees. Their rules and regulations were set by the State and the DROP Plan was also handled by the State. He explained the reason why the plans were set up like they were was because some cities were using the money for other things rather than to pay retirees.

Mr. Charles Seifert, area resident, stated the importance of having a well-funded retirement program and the need to hire qualified people.

The ordinance was left on the second reading.

PRE-EXISTING NONCONFORMING SIGNS

Mayor Hanna introduced an ordinance amending Section 161.21 Design Overlay District, of the Code of Fayetteville, to add subsection D5f Pre-existing Nonconforming Signs to provide for the removal of pre-existing non-conforming signs within a period of five years; and to amend Section 161.21 to add Subsection 5 to exclude signage as an exemption.

City Attorney Rose read the ordinance for the first time.

Alderman Schaper stated he had brought the proposed ordinance forward to enhance the ability of new businesses along the by-pass to compete with pre-existing businesses along the by-pass. He felt it was unreasonable to have the existing non-conforming signs there indefinitely. There was a precedent for existing signs to be removed, such as the billboards. He felt the proposed ordinance would equalize everyone under the existing regulations.

Alderman Miller stated he would be supporting the proposed ordinance.

Alderman Pettus asked if they were required to remove the existing sign, would they be allowed to install a conforming sign.

Mr. Rose explained they would be allowed to install a sign under the current sign ordinance. He suggested she refer to her code book for more information regarding signage.

In response to questions, Ms. Little stated the Board of Sign Appeals could grant exemptions for off-premises signs.

Mayor Hanna recalled that existing developments and platted developments were excluded from the Overlay District.

Ms. Little recalled that several subdivisions had already been subdivided, but had not been developed. Those subdivisions would be excluded from the Design Overlay requirements. Alderman Pettus stated she was not in favor of tampering with the current ordinances. She noted the signs would not be there forever and that they would be phased out. She added if a business ceased to operate then they would be required to remove the sign.

In response to questions regarding how the rules applied to businesses changing ownership, Ms. Little stated that she and Mr. Rose had differing interpretations. She felt if the business changed ownership then they would need to come into compliance. Jerry felt the new owners had a vested interest and that they were there before the Overlay District was formed and they would be allowed to keep the sign.

Alderman Daniel thought the new owners should be brought into compliance.

Mr. Charles Seifert, an area resident, referred to Cracker Barrel and the unobtrusive sign they had proposed. He added they would have generated considerable revenue for the city.

Steve Ward, Chamber of Commerce, stated he was concerned about the development along 71 bypass. He requested the council not to act on the ordinance that night.

Andrea Forney, an area business person, stated she was in favor of the amendment because it would promote the beauty of the town and help promote growth.

Ms. Marion Orton, former Mayor, stated she had worked on the original sign ordinance. They had wanted a strong sign ordinance. She noted Fayetteville's ordinance was not as strong as some cities; however, she was proud of the one they had passed. She had been under the impression that when a business changed hands, the signs would have to be brought under compliance. She was surprised to hear that was not the case. She added it was a very legal way to get rid of non-conforming signs. She reiterated it had taken a long time to pass the original ordinance. She asked that the council not do anything that would weaken the current ordinance.

Mr. Rose encouraged the aldermen to read over the section regarding the Overlay District. He noted the Overlay District did not apply to undeveloped or partially developed lots in nonresidential subdivisions lying within the design Overlay District for U.S. highway 71 corridor which received preliminary or final plat approval before June 28, 1994. They were exempt from the overlay and not grandfathered in. The law never applied to them. The law does not apply to those people. The proposed ordinance would be removing that exemption. The ordinance would remove only one exemption, the signs.

The meeting adjourned at 9:45 p.m.