A MEETING OF THE FAYETTEVILLE CITY COUNCIL
December 1, 1998

A meeting of the Fayetteville City Council was held on December 1, 1998, at 6:30 p.m. in the City Administration Building, 113 West Mountain Street, Room 219, Fayetteville, Arkansas.

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

ABSENT: Alderman Schaper

Mayor Hanna called the meeting to order. First item of business was to appoint a new alderman to fill an unexpired term, Robert Reynolds, to be sworn in by Judge Moore.

Alderman Williams moved to elect to appoint Mr Reynolds to his ward. Alderman Pettus seconded the motion. Upon roll call, the motion carried with a vote of 6-0-0.

CONSENT AGENDA:

MINUTES: Approval of minutes from November 17, 1998 meeting.

RADIO MAINTENANCE: A resolution awarding the radio maintenance contract of the Motorola 800 MHZ Smartnet Trunking System to Motorola, Inc.

RESOLUTION 156-98 AS RECORDED IN THE CITY CLERK'S OFFICE

SPAY/NEUTER PROGRAM: A resolution approving a cost share agreement with the Humane Society of the Ozarks to implement a Low Income Spay/Neuter Program. Alderman Trumbo asked Lib Horn of Animal Services for clarification as to whether the city would spay/neuter all drop-offs at the animal shelter or only pets that are adopted by the city. Ms. Horn stated that the city is mandated by state law to assure that every animal adopted from the shelter is spayed/neutered. The Humane Society handles the low income portion of the program; they will determine eligibility, notify Animal Services and pay for this part of the program. The Melissa Henderson Trust Voucher Program is a Humane Society program giving a reduced fee for all participating veterinarians. Some of the veterinarians that Alderman Trumbo spoke with weren't clear about the Melissa Henderson Trust or other programs. It was proposed to have a luncheon for veterinarians with the Animal Shelter staff and Humane Society director to clarify the voucher program, and that the only city program is the adoption program.

RESOLUTION 157-98 AS RECORDED IN THE CITY CLERK'S OFFICE

Alderman Trumbo moved to approve the consent agenda. Alderman Daniel seconded the motion. Upon roll call, the motion carried with a vote of 7-0-0.

OLD BUSINESS

PROPERTY ACQUISITION: Discussion of purchase options for property located between Washington County roads #648 and #649, south of Highway 16 West and north of Highway 62, for the possible location of a second waste water treatment facility. Properties to be acquired from James McClelland Jr., H.M. and Norma Lee Ship, Broyles Farm Inc., and Calvin and Wanda Sue Hammond.

Mayor Hanna noted that some of the parties have been out of town so that they haven't been able to get an agreement about the options; he suggested that they table the issue for another two weeks. Charles Venable agreed. Alderman Williams agreed with the mayor, expressing concern over spending $270,000 of city money that won't be returned or credited to the purchase price. Mayor Hanna asked that staff have answers by next Tuesday's agenda session, noting that members of the public had come to this meeting prepared to hear and discuss the issue. Alderman Pettus asked if a motion was needed; it was determined this was only a discussion.

Alderman Young asked to discuss if we bought the land earlier than a year if the money could apply to the purchase.

Mayor Hanna stated they would try and have some definite answers by next Tuesday.

NO ACTION

OFF-STREET PARKING LOT DESIGN: Mayor Hanna introduced an ordinance revising the UDO, Off-Street Parking Lot Design requirements, in reference to landscaping.

Mr. Rose read the ordinance for the third and final time.

Alderman Williams stated the proposed ordinance had been to the Ordinance Review Committee and the Planning Commission. He felt this proposal was a great improvement over the existing ordinance.

Alderman Daniel moved to approve the ordinance.

Ms. Fran Alexander, an area resident, stated the Tree and Landscape Committee had not discussed the revisions to the ordinance. She thought the committee should be allowed time to review the changes. She stressed the need to have trees in parking lots to reduce the heat in parking lots. She thought the spacing of the trees needed to be discussed. She added the committee was scheduled to meet this Thursday.

Mr. Kevin Crosson, Steve Davis, and Kevin Springer presented a summary of the 1999 budget highlighting the major changes.

Mr. Davis stated because of the uncertainty of the financial future of Drake Field, $865,000 of capital projects had been deleted since the approval of the 1999 to 2000 Improvement Program.

In response to questions from Alderman Pettus, Mr. Davis stated this would be the first year in a long time that the airport would have a deficit.

Alderman Daniel stated this was the first time since she had been on the council that they had to make cut backs. She expressed concern about reducing the Cable funding by approximately 50%. She stated she would not have voted the way she had on some items, had she known they would be cutting some of the programs.

Alderman Russell asked for a more detailed reason on why the funding had be cut for the Cable department.

Alderman Trumbo asked for an explanation of the prioritizing process.

Mr. Davis explained the staff would go through a process which went through the services the city had traditional provided. The Community Access Television was a relatively new service which was being provided in comparison to other traditional services. When it came time to make funding recommendations, they would look at the services which had been added that could be phased out. The Dickson Street Enhancement Project and the Walton Arts Center had started out with funding, but they had been phased out.

Alderman Trumbo noted that the city had provided funding for some projects such as the Walton Arts Center and the Transit System until they could find other sources of funding. He asked if the Community Access Television had tried to find alternate sources of funding, such as fundraising. He noted some cities allowed people to pay for community access channels on their cable bill.

Alderman Pettus asked how the money got allocated to each department.

Mr. Davis explained the city did a resource-based budget. The city lived on consumption taxes, which were sales taxes and franchise taxes. In September there was a 1.7% increase in sales taxes collection above the city's budget. Historically, they had averaged 8% growth in sales tax. People were not spending as much money, so the city's revenues would be tighter. He added because of the projected revenues from taxes, they had established target budgets for each division adjusting for inflation. This year the only adjustment for inflation was a modest increase for personnel. They did not allow any inflation for routine operating expenses. Even without increasing, the operating divisions within the general funds could not meet their basic operating requirements for 1999. Additional funding was not available to meet all the needs. They needed the money for more basic things that the city needed. They did not have the luxury to fund some of the extra items.

Mr. Richard Drake, President of the Community Access Television, stated the community access channel had shown the city in all its diversity and promoted freedom of speech. They were committed to diversity. He stated the budget cut would cripple the channel. He stressed they were a service to the city.

Mr. Rowland McKinney, Cable Board, stated the Cable Board felt the Community Access channel was important to the city. He stated the CAT had provided direction and skills to young people which allowed them to advance themselves. He asked the council to maintain the existing budget of $63,000 for 1999. He added traditional media, such as the library, were being converted to Internet and digital systems, which would be converging in the future. He felt the community access television was an extension of the library.

Mr. Bob McKinney, CAT Board, stated the original group which had started the access channel had gone to the cable provider and received funding from them. The provider had given them $170,000. Later they were taken in by the city. They had tried, diligently, in the past to raise money for the CAT channel, but attempts had been unsuccessful. They were dependent on the city for funding. He stated they had some of the best programming in the country as far as community access television went.

Alderman Williams stated when the franchise fee had been taken away from Community Access Channel and placed into the city fund, they had promised to fund their program at an adequate level to continue their program. The city needed to continue to uphold their promise.

Ms. Marion Orton, League of Women Voters and former Mayor, stated the League had worked with Public Access for over nineteen years. The channel was the only true public access channel. The channel helped provide an avenue for freedom of speech.

Mayor Hanna asked Ms. Orton if the League of Women Voters would help fund the Access Channel.

Ms. Orton stated the League did not have the funding to help support the program.

Mayor Hanna stated the city was in the same position. He felt some of the people who watched or used the station should help fund it.

Ms. Orton stated the CAT station was a service to the community, like the recreation program

Ms. Kim Hesse., Landscape Administer, stated she had sent the proposed revisions to the committee members. She reiterated the committee as a whole had not discussed the revisions.

Ms. Candy Clark, Tree and Landscape Committee, stated the committee had some definitive comments on the revisions. They were wanting time to discuss the ordinance. She asked them to postpone a decision on the ordinance until they had time to present a recommendation.

Alderman Pettus thought it was a reasonable request.

Alderman Daniel's motion died for lack of a second.

Alderman Williams moved to table the ordinance until the next meeting. Alderman Young seconded the motion. The motion carried unanimously, 7-0-0.

OVERLAY DISTRICT: Mayor Hanna introduced an ordinance revising the Overlay District provisions of the zoning ordinance to eliminate sections contained within the Commercial Design Standards.

Mr. Rose read the ordinance for the second time.

Alderman Williams stated this revision had also come from the Ordinance Review Committee. With the help of the Planning Department, they were trying to remove conflicts between the city-wide ordinances and the Overlay District ordinance.

Alderman Daniel thought the proposed ordinance was a good improvement.

Alderman Williams suggested leaving the ordinance on the second reading so it could be reviewed with the landscaping ordinance at their next meeting.

NEW BUSINESS

EMINENT DOMAIN: Mayor Hanna introduced an ordinance authorizing the City Attorney to seek possession of property owned by Jill R. Jacoway located at the southeast corner of Old Missouri Road and Zion Road by the power of eminent domain, in association with the required right-of-way and easements for the Old Missouri/Zion Intersection Improvement.

Mr. Rose read the ordinance for the first time.

Alderman Pettus asked if there had been any discussion with Ms. Jacoway since the Agenda

Session.

Mr. Venable stated he was not aware of any new information.

Alderman Reynolds asked if every avenue had been exhausted.

Mr. Venable stated Ms. Jacoway was requesting things that were not possible with the purchase.

Mayor Hanna asked if Ms. Jacoway's request for a rezoning could be considered with any negotiations.

Mr. Rose stated the City was trying to purchase an easement across a piece of property. They were trying to give a fair price. A zoning decision was a separate decision, one which was made through the Planning Commission, then through the City Council by ordinance. They were two separate considerations. It would be difficult to tie the two together.

Mayor Hanna asked if there had been a request made to the Planning Department for a rezoning.

Ms. Little was not aware of any request being submitted.

Alderman Daniel stated this was a dangerous intersection and this would benefit everyone to straighten the existing angle.

Alderman Williams stated they needed to go forward with the condemnation and negotiations.

Alderman Williams moved to suspend the rules and go to the second reading. Alderman Daniel seconded the motion. The motion carried unanimously, 7-0-0.

Mr. Rose read the ordinance for the second time.

Alderman Williams asked if Ms. Jacoway had been notified that the condemnation was on the agenda.

Mr. Don Bunn, Assistant Public Works Director, stated it was their procedure to notify the owner, however, he was not positive she had received notice.

Alderman Williams requested that Ms. Jacoway be notified before the next meeting.

1999 BUDGET: Mayor Hanna introduced a resolution adopting the 1999 Annual Budget.

and library.

Ms. Paula Marioni, an area resident, thought the budget should be increased. She questioned the reasoning behind cutting the CAT budget by 50% and on the other hand constructing a street for a developer near the mall.

Mayor Hanna explained the developer near the mall had agreed to construct a 32-foot wide street when the property was rezoned. What the city had requested was to add two additional lanes to the bridge and street. The developer was willing to construct the two-lane road, but the city was going to provide additional funding for the additional lanes.

Ms. Marinoni requested that the city to find the money for the cable funding because they provided a valuable service for the city.

Mr. Randy Zurcher, an area resident, expressed concern about the downtown development in comparison to the mall development. He questioned the basic services of the city and their priorities. He thought the CAT program provided for some of the needs of the citizens.

Ms. Eden Tombolin, CAT Board, stated she was also a CAT Producer. She discussed some of the quality programs the program had produced. She urged the council not to cut their budget.

RZ98-19: Mayor Hanna introduced an ordinance approving a rezoning request, RZ 98-19, submitted by Tom Terminella for property located north of Township East extension. The request is to rezone 45.87 acres from A-1, Agricultural, to R-1, Residential.

Mr. Rose read the ordinance for the first time.

Mr. David Jorgensen, Jorgensen and Associates, stated he was representing Mr. Terminella. Mr. Dave Chapman, the owner, was also with him to answer questions.

Alderman Williams asked the staff if the city's sewer plant could handle the additional inflow with this development. He expressed concern about continuing to rezone land from Agricultural to R-1 density, if the city was really at capacity. Rather than doing a moratorium on sewer taps, they needed to think about not rezoning more land until they could get a handle on the sewer plant problem.

Alderman Daniels stated she was also concerned about further development. She thought it would be risky to rezone this land which would lead t o a number of sewer hookups which they would not be able to handle. They could not tell when they would get a new sewer plant.

Alderman Trumbo stated he would agree with Aldermen Williams and Daniel, however, he did not believe it would be right to do so in the middle of the development process, after the developer had gone through expensive preparations, to all of sudden stating they were not going to rezone any more property. He stated they needed to look at this project on the Planning Commission's recommendations, then look at not rezoning any more property until the problem was addressed.

Mayor Hanna stated he did not think the risk was with the city, but with the developer. The developer was aware of the problem. Anyone with land would be at risk. He noted there was a risk, however, he did not see it in the rezoning, it was in the waste water treatment plant capacity.

Alderman Young stated the Planning Commission did not know about the capacity of the plant. They had been told there was adequate capacity.

In response to concerns from Alderman Young, Mr. Venable stated the staff would be meeting with Mr. Murray Fleming. They would be making a presentation later on the plant.

Alderman Williams noted the construction of a new sewer plant would take four to six years and the city had approved a rezoning of large tracts of land.

Mr. Venable replied Ms. Little had given him the number of approved buildable lots in the city. This information would be used to determine the number which could be constructed.

Alderman Williams stated they needed to look closely at the information because if their plant did not work properly they would be fined by the EPA. They had spent millions of dollars on upgrading the existing collection system.

Mr. Crosson stated the city was approaching capacity. They had been working on the study for over three years and the staff had been telling them they were approaching capacity all the time.

Alderman Pettus stated they had been told two months ago they were okay on the sewer capacity. Now they were being told they were not okay.

Mr. Crosson stated their consultant had told them they would not be in danger of getting fines from the EPA if they were making progress towards a new sewer plant. The council had made a decision not to proceed with the plant by not acting on the purchase of the property.

Alderman Pettus replied they had made a decision to look at other options.

Alderman Trumbo stated that with their sewer rehabilitation they had a net/net no gain additional value based on the infiltration rehabilitation as compared with new sewer hookups.

Alderman Reynolds stated he had been on the Planning Commission for six years and during that time he had never heard that they were running short of sewer services. Last week was the first time anyone on the Commission had heard of the shortage. He added this developer had gone through the city's process and had been approved and should not be cut off now. If they were going to stop rezoning they should start at the Planning Department.

Alderman Williams noted the Planning Staff report stated the increase in population should not overburden the public services including schools, water, and sewer facilities.

Alderman Reynolds stated the moratorium needed to start in the Planning Department and not at the Council level.

Mayor Hanna stated the city needed to quit pretending they had all the time they want to build another waste water treatment plant or to expand the existing plant.

Mr. Jorgensen stated the citizens were becoming more aware of the need for a new plant. He did not believe the problem would be solved for the next five to six years. He thought it would be too drastic to place a city-wide moratorium on taps. He suggested limiting the moratorium to the west side of town where the problem was. He believed the subject of a moratorium needed to be discussed in detail. He added they would like to proceed with their development.

Alderman Williams noted the land was located on the east side of town, where the city did not have a collection problem. He added the city needed to look closely at future development and the development in the surrounding towns which the city serviced. If Fayetteville was going to slow their development then they should also slow the flows from the surrounding cities.

Alderman Young asked if the City contract with the surrounding towns would allow them to limit their sewer taps.

Mayor Hanna thought if they were to place a moratorium on sewer taps it would also affect the surrounding communities they serviced.

Mr. Dave Chapman, owner of the development, stated they had planned only sixty lots. He asked the council to consider the rezoning, until they had more information on the sewer plant.

The item was left on the first reading.

UNDERGROUND UTILITY ORDINANCE: Mayor Hanna introduced an ordinance approving changes to the Underground Utilities Ordinance which was forwarded to the Planning Commission from the Ordinance Review Committee for their review and comment.

Mr. Rose explained there had been an ordinance submitted which would have exempted certain utility lines from being placed underground. The proposed ordinance had been forwarded to the Planning Commission for comments. The Planning Commission's response was different from the Council proposal. He asked if the revisions should be forwarded to the Ordinance Review Committee.

Alderman Williams replied there was a disagreement between the Ordinance Review Committee and the Planning Commission about the major line, 12.4 KV, whether or not they should be placed underground. He stated he would like the Ordinance Review Committee to review the changes. He added they had exempted the major distribution line for the hospital in CMN Park, which had been an existing line. The Planning Commission proposal would still require existing lines to be buried.

Alderman Young agreed the Ordinance Review Committee should review the revisions.

The item was forwarded to the Ordinance Review Committee.

RECORD DESTRUCTION: Mayor Hanna introduced an ordinance authorizing the destruction of records.

Alderman Pettus asked if the records had been microfilmed and the records would not be lost.

Alderman Trumbo moved to approve the resolution. Alderman Pettus seconded the motion. Upon roll call the motion carried unanimously.

HVAC RENOVATION: Mayor Hanna introduced an ordinance awarding Bid 98-88, Fayetteville City Administration Building HVAC Renovation to Airworks, Division of MCC, Inc. in the amount of $662,836, approval of a project contingency of $46,400, and approval of a budget adjustment.

Mr. Crosson explained this contract would replace the existing HVAC inside the City Administration Building.

Mayor Hanna stated the installation was more expensive because the Administration Building was an older building.

Alderman Daniel added it was an expensive item, however, it needed to be done.

Alderman Young asked if the noise and vibrations would be reduced.

Major Hanna asked Mr. Mike Green if this would eliminate the water running off the building.

Mr. Green replied there would be a new cooling tower. He thought the new system would serve them for a long time. The main problem with the existing system was that the company which manufactured the system was no longer in business and it was becoming more and more difficult to find parts to keep the system running. Some of the capacity problems were due to the fact that some of the compressors were not operating and they were not able to get the full capacity out of the existing system. The new system was highly efficient with modulating air volume into the spaces rather than having individual units above the ceiling. The noise and vibrations should be contained within the main mechanical rooms by the elevator. Most of the difficulty and expense of the system was because it would be installed over the offices while they maintained operations. Some money could be saved if the offices were shut down.

In response to questions from Alderman Daniels in regards to savings, Mr. Green replied the new system should have a service life in excess of thirty years and should pay for itself within that time period.

Alderman Daniel asked if this system would help health conditions related to air quality.

Mr. Green replied when the current system was designed and installed the main concerns were on energy conservation and not air quality. The outside air per cubic foot had been increased in the new system which increased the outside air by three or four times. It would increase the amount of energy required to temper the air, but it flushed out the building interior air spaces. It had been shown to improve health.

Alderman Trumbo moved to approve the motion. Alderman Williams seconded the motion. The motion carried unanimously.

Alderman Young moved to approve the motion to approve the contract amendment to Green Anderson Engineering. Alderman Pettus seconded the motion. Upon roll call the motion carried unanimously.

PLANNING COMMISSION APPEAL: Mayor Hanna introduced a request to appeal the Planning Commission's decision to deny a rezoning request at 716 W. Sycamore Street.

Alderman Pettus stated she would be abstaining because her law firm had represented the applicant in another case.

Alderman Reynolds stated he would be abstaining because he voted on rezoning at the Planning Commission meeting.

Mr. Rose stated there were still five council members to vote. It would require a majority of those elected to council to pass anything. He stated it was an appeal by right. The council would need to vote on whether or not to uphold the Planning Commission decision or not. If they voted not to uphold the Planning Commission they would have to have an ordinance to rezone the property, which would have to be read three times.

Mr. Richard King stated he was owner of the building and that they had new information. The Planning Commission had thought that they could not have a tavern at that location, but they *would* be allowed to have a tavern in that location. They were requesting to rezone the property to C-2. They had not been able to rent all their space in years, now they had a serious person willing to rent the property who was going to place a tavern there. They were requesting the property to be rezoned to C-2 which would allow the applicant to have a conditional use for a dance floor.

Mayor Hanna asked if the dance floor would be for patrons.

Mr. King replied it would be for patrons.

Mayor Hanna asked if there would be entertainment like Regina House of Dolls.

Mr. King replied they would not.

The property owner explained that the Planning Commission had been given misinformation. They had been told in I-1 zoning districts they were not allowed to have a tavern. By right a tavern can be located in I-1. They would not need a rezoning for a tavern; however, they would like C-2 zoning so they could apply for a conditional use for a dance hall. The conditional use for a dance hall would require them to upgrade the parking lot and to change the landscaping.

Ms. Little clarified that "taverns" and "night clubs" are allowed in a use unit that were not allowed in I-1 zoning districts, however, I-1 did allow private clubs. She noted not even a private club could have a dancing activity by patrons without the conditional use approval by the Planning Commission.

Alderman Young asked if they could apply for a conditional use for dancing with I-1 zoning.

Ms. Little replied they could not. She explained in order for them to apply for a conditional use they would need to have C-2 zoning. C-1 would allow restaurants, which would allow the serving of alcohol, but they would not have to opportunity to apply for a conditional use for a dance floor.

Alderman Daniel noted there had been some objections from apartments, but thought it was a matter of economics.

In response to questions from Mayor Hanna, Ms. Little replied that a sexually-oriented business would be allowed in C-2 zoning districts. She added the Gentlemen's Club was not a sexually-oriented business by the definition used by the Alcoholic Beverage Commission or the City's ordinances. As long as they are selling alcohol they are governed by the Alcohol Beverage Commission, which had a set of standards as to what items of anatomy had to be clothed.

Alderman Williams believed that a commerical zoning would make more sense in that location. He thought C-1 would be a more appropriate use, than C-2.

In response to questions from Alderman Daniel, the property owner stated they had room to expand their parking lot, and if they were granted their conditional use then they could increase the parking lot. He stated the reason they were requesting the C-2 was so that Mr. Clark could request conditional use.

Alderman Daniel moved to overturn the Planning Commission motion to deny the rezoning. Alderman Young seconded the motion. The motion failed by a vote of 4-1-2. The Mayor did not wish to vote, but stated the item should come back when there were more members of the council present.

Mr. Rose stated they could decide at the next agenda session if they wanted it on the agenda.

The meeting adjourned at 9:10 p.m.