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Minutes for the City Council meeting on March 16, 1998

APPEAL HEARING - 5:50 P.M. - An appeal hearing was held regarding denial by the Metropolitan Area Planning Commission to grant approval of site plans to add three apartment units to a lot with four existing units, located at 325 Leslie Ann Drive. Mr. Mike Watson requested the appeal hearing and was represented by his attorney, C. M. Mooney, Sr. Mr. Mooney explained that Mr. Watson owns Lots 1 through 4, of Block H in Meadow Lark Acres Extended (a residential area, zoned R-2) and is requesting to build onto the existing apartment units located on Lot 4. He stated there was a Bill of Assurance on the property allowing for apartment units, with the stipulation that permission be granted by the original developers of the property. Mr. Mooney explained Mr. Watson has a letter granting permission by the original developers of the property, and has met all requirements of the City Code. Mr. Mooney stated Mr. Watson had previously been granted a building permit to build on Lot 2, but was restrained from building because of a lawsuit filed against him by local residents. Mr. Mooney explained there was an attempt, by the home owners, to change the Bill of Assurance to do away with provisions for apartment units. However, he explained Mr. Watson won the lawsuit and the appeal and that this is the same case just a different Lot. Mr. Mooney stated the reason the Metropolitan Area Planning Commission (MAPC) denied the request (on Lot 4) was because there would be two buildings on one lot. However, Mr. Mooney contended this is allowed for large scale developments, and provided Council with pictures of various apartment units with more than one building on the same lot. He explained that the property had already been zoned Residential 2 when Mr. Watson purchased it, and when most of the residents purchased their homes. It was explained Mr. Watson has improved the drainage in the area that he maintains the property well, and there is a need for the apartments in this location. Mr. Mooney stated Mr. Watson deserves due process of law, and requested Council to overturn the MAPC decision and approve the issuance of a permit to build three apartments on Lot 4. Councilman Young asked what the MAPC vote was on the issue. Mr. Mooney stated it was a split decision with five (5) voting not to approve a site plan and issue a permit, and three (3) voting to approve a site plan and issue a permit. Councilman Young asked why the MAPC denied Mr. Watson's request. Mr. Mooney again stated because of two buildings being put on one lot. Mr. Mooney read from the Jonesboro Code, Section 15.12.05 which allows for two or more buildings on the same lot for large scale developments.

Attorney, Don Mixon represented residents of Meadow Lark Acres who were in opposition to the building permit and site plan. Mr. Mixon stated when Mr. Watson came into the area in 1993 and began building

apartments the residents realized the Bill of Assurance was about to expire, and began the process of trying to amend the Bill of Assurance but did not get it completed until after its expiration date. Mr. Mixon explained the appeal to the Supreme Court dealt with the amendment to the Bill of Assurance, and did not address the issue of constructing two buildings on one lot. Mr. Mixon stated the concern now is the requirements of the zoning laws. Mr. Mixon also read from the Jonesboro Code, Section 14.08.03, Requirements for R-2 zoning, which states only one principal building shall be built on any one lot. Mr. Mixon contended that there was never a request before the MAPC for a large scale development. Mr. Mixon also stated no one is arguing that you cannot have apartments on Lots 1 through 4, but rather the residents are asking the Council to abide by the zoning laws. Mr. Mixon stated the same requirement is listed for Residential 1, one building per lot. He referred to the example of Mr. Mark Osborne, who requested approval of a site plan for a warehouse in R-1 zoning. The MAPC approved the site plan but stipulated he could not install plumbing because people would be able to live in the warehouse. Mr. Mixon said that was the right decision then, and should apply to Mr. Watson's case now, even though it is R-2 zoning. Mr. Mixon contended the language is exactly the same for Residential 1 zoning as it is for Residential 2 zoning. In closing Mr. Mixon stressed the issue was not about traffic, drainage problems, or lowering of property values, but rather whether or not Council was going to up hold their own ordinances.

Questions followed, with Mayor Brodell asking for clarification on the Supreme Court decision regarding the Bill of Assurance. Mr. Mixon explained the language in the Bill of Assurance stated, at its expiration (20 to 25 years), the Bill of Assurance would automatically extend for 10 more years, unless amended. Mr. Mixon further explained it was amended, but not completed until after the expiration date, so the Supreme Court ruled the amendment was ineffective. He also explained in the previous request Mr. Watson was wanting to add on to an existing building, not put two buildings on one lot. Councilman Kelton questioned the percentage needed to amend the Bill of Assurance. Mr. Mixon stated it required a majority of the property owners, and had received more than the majority. Councilman Kelton questioned does the Bill of Assurance have to be on the public record to be enforceable, and if so, was it on public record. Mr. Mixon stated yes to both questions. Councilman Kelton questioned if the Bill of Assurance comes up when doing a title search. Mr. Mixon responded not every time, but it should. Councilman Kelton questioned Mr. Brian Wadley, of the Inspection Department, by asking when there is a Bill of Assurance allowing for multi-family use, would that not be considered large scale development. Mr. Wadley answered by saying a Bill of Assurance is a private contract between lot owners in a subdivision and not enforceable by the City of Jonesboro. Mr. Wadley stated the Inspection Department would never openly go against a Bill of Assurance, but on the other hand the Department is not bound by one either. Councilman Rorex questioned Mr. Wadley regarding subdividing Lot 4. Mr. Wadley stated he did not think there was enough lot width to meet the code requirements, but if there was enough frontage it would be an option. Mr. Mooney questioned if a decision would be made tonight since it was not on the agenda. City Clerk, Donna Jackson stated there was no ordinance or resolution to put on the agenda, and simply takes a vote of the Council. Councilman Tate recommended the decision be made under new business. Councilman Kelton recommended since City Attorney, Phillip Crego was absent, that the matter be decided at the next council meeting. Councilman Kelton stated since the matter was not on the agenda he assumed it would not be decided on tonight. Mr. Mixon stated they were willing to wait until New Business, or come back at the next meeting. Mayor Brodell dismissed the appeal hearing.

PUBLIC HEARING - 6:15 P.M. - No opposition or questions were voiced.

CITY COUNCIL MINUTES - March 16, 1998

The Jonesboro City Council met Monday, March 16, 1998, at 6:30 p.m. A full quorum was in attendance. Present were: Mayor Brodell, City Clerk, Donna K. Jackson, and 12 council members. Those members were: Kelton, Rorex, Province, Davis, Tate, Crockett, Rega, Pratt, Young, Fletcher, Bowers, and Roddy. City Attorney, Phillip Crego was unable to attend.

The minutes for March 2, 1998, were approved as delivered, by Councilman Roddy seconded by Councilman Tate. A voice vote was taken resulting in all council members voting aye. Those members voting aye were: Kelton, Rorex, Province, Davis, Tate, Crockett, Rega, Pratt, Young, Fletcher Bowers, and Roddy.

Council made the decision to address the Mike Watson appeal as the first order of business. Councilman Pratt moved that the matter be tabled for two weeks since the City Attorney was absent. The motion failed for lack of a second. Councilman Tate moved, seconded by Councilman Rorex to over ride the MAPC ruling and grant Mr. Watson the right to add a second building. A roll call vote was taken resulting in a seven (7) to four (4) vote against the motion with one (1) abstention. Those members voting nay were: Rorex, Province, Rega, Young, Fletcher, Bowers, and Roddy. Those members voting aye were: Kelton, Davis, Tate, and Crockett. Councilman Pratt abstained from voting since the City Attorney was absent and unable to give legal advice. The MAPC ruling was upheld.

Councilman Bowers offered the following ordinance for the first reading:

AN ORDINANCE TO ABANDON AN ALLEY LOCATED AT THE INTERSECTION OF OLIVER AND FRED STREETS IN DUDLEY'S SUBDIVISION. (Robert E. Marsh)

Councilman Bowers moved, seconded by Councilman Fletcher to suspend the rules and place on second reading. A voice vote was taken resulting in all members voting aye. Those members voting aye were: Kelton, Rorex, Province, Davis, Tate, Crockett, Rega, Pratt, Young, Fletcher, Bowers, and Roddy. Councilman Young moved, seconded by Councilman Rorex to further suspend the rules and place on third and final reading. A voice vote was taken resulting in all members voting aye. Those members voting aye were: Kelton, Rorex, Province, Davis, Tate, Crockett, Rega, Pratt, Young, Fletcher, Bowers, and Roddy. Councilman Young moved, seconded by Councilman Fletcher for the adoption of the ordinance. A voice vote was taken resulting in all members voting aye. Those members voting aye were: Kelton, Rorex, Province, Davis, Tate, Crockett, Rega, Pratt, Young, Fletcher, Bowers, and Roddy. The ordinance was assigned number 3039.

Councilman Davis offered the following ordinance for the first reading:

AN ORDINANCE AMENDING ORDINANCE NO. 2067, REMOVING THE POLICE DEPARTMENT FROM THE PROVISIONS OF THE CIVIL SERVICE SYSTEM AND THE BOARD OF CIVIL SERVICE COMMISSIONERS, PROVIDING FOR A POLICE OFFICERS BILL OF RIGHTS AND FOR OTHER PURPOSES.

Councilman Bowers moved, seconded by Councilman Fletcher to suspend the rules and place on second reading. A voice vote was taken resulting in all members voting aye. Those members voting aye were: Kelton, Rorex, Province, Davis, Tate, Crockett, Rega, Pratt, Young, Fletcher, Bowers, and Roddy. Councilman Roddy moved to hold the ordinance on second reading. Later Councilman Roddy withdrew his motion. Councilman Young moved, seconded by Councilman Tate to suspend the rules and place on third and final reading. Discussion followed with Dr. Richard Wang stating he was not going to speak for or against the issue but rather concern regarding the emergency in collapsing three readings into one on such a substantive issue. Dr. Wang stated he felt to do so was unconstitutional, and showed some arrogance on the part of the Council. Dr. Wang reminded Council this was a major step they were taking by overturning a system that was established by a vote of the people, without input from the citizens of Jonesboro. It was also explained the people of Jonesboro need to hear the reasons behind Council's decision to do away with Civil Service. Mayor Brodell questioned Dr. Wang on what he regarded as unconstitutional. Dr. Wang stated an ordinance should be read three times at three subsequent meetings unless there is an emergency. Dr. Wang asked what the emergency was. Councilman

Young responded by saying the ordinance had been through committee and had been introduced at the last council meeting. Dr. Wang corrected Councilman Young stating the ordinance had not been introduced for first reading until this meeting, and he did not see the urgency. Dr. Wang also stated this matter is historic, and needs to be read three times to allow input from the public and to receive leadership from the Council. Councilman Kelton responded by reporting on two separated burglaries, one at his home, and the other at some real estate property his wife was showing. Councilman Kelton stated there is a crime wave in Jonesboro, and this ordinance would expedite the Council's ability to hire 18 additional police officers which are desperately needed. Councilman Rorex stated the Police Department asked the public to vote on this matter fourteen (14) years ago, but the Civil Service Commission has served its purpose. Councilman Rorex also stated this ordinance comes as a request from the Police Department for an improvement to the system, with no opposition being voiced by police officers who are affected directly, not the public. Dr. Wang stated it does affect the public in that we are a municipal government operating under our constitution. He stated regardless of the issue, the procedure must be respected, and to collapse this ordinance into three readings is disrespectful to the democratic process. Councilman Young asked Dr. Wang what his particular concerns were regarding this ordinance. Dr. Wang stated on the surface it seems like a step back, leaning toward crownism, balorism, or patronage system. He stated because Jonesboro is a growing community it needs professional government, and if there is a problem with Civil Service it should be discussed. Officer Rhonny McDaniel stated he was the one who instigated the petition to have Civil Service placed on the ballot, and believes it raised the Police Departments standards. However, he stated Civil Service has out lived its usefulness and does not respond to the needs of the Police Department. Officer McDaniel stated he believed this ordinance would raise the standard of the Police Department above what they presently are. He explained Civil Service Commissioners are appointed, and they do not have the time necessary to do the job. Officer McDaniel stated under this ordinance the police department could regulate the hiring and promoting of police officers in a fair and un-bias way without lowering its standards. In closing, Officer McDaniel urged Council to place the ordinance on the third and final reading. Councilman Kelton questioned Mayor Brodell regarding the procedure to reinstate Civil Service should there be any problems. Councilman Kelton stated it was his understanding it could be reinstated by a vote of the Council. Councilman Davis stated at the last council meeting he questioned City Attorney, Phillip Crego regarding the banning of Civil Service, and was assured by Mr. Crego the Council was within its legal right to make this change. Officer McDaniel reminded Council the original civil service ordinance was amended some time ago was challenged legally, and the Court upheld the right of Council to do so. Mayor Brodell stated he had consulted with Ralph Ohm & David White, Attorneys out of Hot Springs and they assured him the only requirement is a two thirds vote of the Council. Councilman Davis continued by saying 14 years ago when Civil Service was adopted there was room for favoritism. However, Councilman Davis stated in the last 14 years there have been a lot of changes in Federal Law that affect the way employees are treated, removing some of the Civil Service concerns. Councilman Davis stated he had the same concerns as Dr. Wang, but it was his understanding that Council could move more rapidly under this new law. Dr. Wang stated he was not questioning the legality of the Council, but its propriety, and at least the issue was discussed more than if he had not addressed the matter. Dr. Wang stated in his opinion it should not be voted on tonight because more discussion was needed. Councilman Davis stated the police department expressed an immediate need for the ordinance. Mayor Brodell stated he did not want to take sides or cut anyone off. Dr. Wang responded by saying it does cut public input off if it is voted on tonight. Councilman Young disagreed with Dr. Wang and Dr. Wang responded by stating the public could not come and discuss it at the next meeting if it is voted on tonight. Councilman Crockett pointed out to Dr. Wang that he had no problem with three readings on the apartments on Aggie when it was denied. Dr. Wang stated he did not understand Councilman Crockett's comment, it was a separate matter all together. Mr. James Hinds questioned Council to see if any of them had been contacted by any police officer in opposition to the ordinance. No council member had been contacted. Councilman Bowers stated he was a member of the police committee and had not been contacted. Mr. Hinds stated that ought to be taken into consideration. Mayor Brodell stated the police department knew about the ordinance prior to Council being involved, and it had been announced to the media two weeks ago. Officer McDaniel stated the police

department needs to hire 19 new officers and under the civil service guidelines it would be a poor list to choose from. Mayor Brodell stated the fire department was polled and 79% desired to stay with Civil Service. A voice vote was taken resulting in all council members voting aye. Those members voting aye were: Kelton, Rorex, Province, Davis, Tate, Crockett, Rega, Pratt, Young, Fletcher, Bowers, and Roddy. Councilman Kelton moved, seconded by Councilman Roddy for the adoption of the ordinance. A voice vote was taken resulting in all council members voting aye. Those members voting aye were: Kelton, Rorex, Province, Davis, Tate, Crockett, Rega, Pratt, Young, Fletcher, Bowers, and Roddy. The ordinance was assigned number 3040.

Councilman Young moved, seconded by Councilman Fletcher for the adoption of a resolution to proceed with condemnation action on properties located at 101 & 103 Chestnut, owned by Charlie Keller; and properties located at 116 N. Drake & 103 E. Woodrow, owned by Phillip Cook, Jr. A voice vote was taken resulting in all council members voting aye. Those members voting aye were: Kelton, Rorex, Province, Davis, Tate, Crockett, Rega, Pratt, Young, Fletcher, Bowers, and Roddy. The resolution was assigned number 1998:12.

Councilman Kelton moved, seconded by Councilman Rorex for the adoption of a resolution to approve and endorse segments of certain routes through the Jonesboro incorporated area as official segments of the state scenic byway known as the Crowley's Ridge Parkway. A voice vote was taken resulting in all council members voting aye. Those members voting aye were: Kelton, Rorex, Province, Davis, Tate, Crockett, Rega, Pratt, Young, Fletcher, Bowers, and Roddy. The resolution was assigned number 1998:13.

Councilman Young moved, seconded by Councilman Pratt for the adoption of a resolution authorizing acceptance of qualified non-uniform employees into a supplemental 457 Plan through First Commercial Trust Company, First Bank of Arkansas. A voice vote was taken resulting in all council members voting aye. Those members voting aye were: Kelton, Rorex, Province, Davis, Tate, Crockett, Rega, Pratt, Young, Fletcher, Bowers, and Roddy. The resolution was assigned number 1998:14.

Councilman Pratt moved, seconded by Councilman Province for the adoption of a resolution authorizing both a Self-Evaluation Plan and a Transition Plan as required by the Americans With Disabilities Act (ADA) and authorizing funding for the changes in the Transition Plan. A voice vote was taken resulting in all council members voting aye. Those members voting aye were: Kelton, Rorex, Province, Davis, Tate, Crockett, Rega, Pratt, Young, Fletcher, Bowers, and Roddy. The resolution was assigned number 1998:15.

Councilman Rega moved, seconded by Councilman Young for the adoption of a resolution certifying endorsement of Matrix Telecommunications, Inc. to participate in the Arkansas Enterprise Zone Program. A voice vote was taken resulting in all council members voting aye. Those members voting aye were: Kelton, Rorex, Province, Davis, Tate, Crockett, Rega, Pratt, Young, Fletcher, Bowers, and Roddy. The resolution was assigned number 1998:16.

Councilman Tate moved, seconded by Councilman Davis for the reappointments of Bill West and David Young to the City Water & Light Board of Directors with an expiration date of 2001. A voice vote was taken resulting in all council members voting aye. Those members voting aye were: Kelton, Rorex, Province, Davis, Tate, Crockett, Rega, Pratt, Young, Fletcher, Bowers, and Roddy.

With no further business, the meeting was adjourned.