

July 26, 2004

REGULAR MEETING 1

The City Council of the City of Sherwood met for a regular meeting on July 26, 2004, at 7:00 p.m. in the Council Chambers. Those present were Aldermen Henry, Vassar, Butler, Fender, Sulcer, Davis and Stedman, Mayor Bill Harmon, City Attorney Steve Cobb, and City Clerk Virginia Hillman. Alderman Rankin absent.

Alderman Sulcer led in prayer and the Pledge of Allegiance was given to the flag.

A motion was made by Alderman Vassar to approve the minutes of the regular meeting on June 28, 2004, as transcribed. Alderman Henry seconded the motion and the roll call vote was 7 ayes to approve the minutes. Alderman Rankin absent.

Alderman Sulcer, Chairman of the Advertising and Promotion Commission, stated that the commission's main focus at the last meeting was the 4th of July celebration.

Sonny Janssen, Director of Parks and Recreation reported to the Council that the Eleven and under Super Series National Tournament was represented this year by seven different states, they are Texas, Oklahoma, Arkansas, Louisiana, Tennessee, Mississippi and Indiana. At the time of the council meeting the tournament was sixty-eight games into the tournament and will be finishing up on Friday afternoon. The banquet held at Sherwood Forest was a great success. There were eleven hundred and fifty kids, coaches, and parents fed in less than an hour, thanks to Pig N Chik. The City has had approximately thirteen to fifteen thousand visitors at the sports complex, which is a great impact on the community. Seven hundred and forty one teams have been to the complex in a month.

Alderman Vassar, Chairman of the Personnel Commission, stated the commission will not meet in August, but will have a regular scheduled meeting in September.

Ordinance No. 1637, entitled, "AN ORDINANCE AMENDING ORDINANCE NO. 729 SCHEDULE OF USES TO ALLOW A LIBRARY, ART GALLERY, MUSEUM OR SIMILAR DISPLAY USE IN AN O-2 OFFICE ZONE AS A PERMITTED USE; AND FOR OTHER PURPOSES" was read for the first time. A motion was made by Alderman Vassar, seconded by Alderman Sulcer to suspend the rules and place the ordinance on the second reading. The roll call vote was 7 ayes, Alderman Rankin absent. The ordinance was read for the second time. A motion was made by Alderman Sulcer, seconded by Alderman Butler to suspend the rules and place the ordinance on the third and final reading. The roll call vote was 7 ayes, Alderman Rankin absent. The ordinance was read for the third time. A motion was made by Alderman Davis, seconded by Alderman Sulcer to adopt the ordinance. The roll call vote was 7 ayes, Alderman Rankin absent, to adopt the ordinance.

Alderman Fender, Chairman of the Street Commission, stated that striping has been completed on Oakbrooke. Mayor Harmon announced the City has been approved for a left turn signal on Club Road.

Resolution No. 17-2004, entitled, "A RESOLUTION FINDING THE STRUCTURE AT LOT 19, BLK 0, KIEHL SUBDIVISION, COMMONLY KNOWN AS 8912 N. CLAREMONT AVENUE, TO CONSTITUTE A PUBLIC NUISANCE" was read. A motion was made by Alderman Vassar, seconded by Alderman Henry to adopt the resolution. The roll call vote was 7 ayes, Alderman Rankin absent, to adopt the resolution. Alderman Vassar asked if the structure was presently occupied, in which Michael Clayton, City Engineer, stated no. Alderman Sulcer stated that the owner of the property is in the process of rehabilitating the property. Michael Clayton stated that the only thing left was some testing for the residual from the methamphetamine lab that was in the home saying that it is safe to occupy the structure. Alderman Vassar asked when the date of rehabilitation would be. Michael Clayton stated that the test results would need to come back negative before the property can be occupied.

Ordinance No. 1638, entitled, "AN ORDINANCE PROHIBITING RETAIL LIQUOR BUSINESSES FROM BEING LOCATED WITHIN 1,200 FEET OF ANY CHURCH, SCHOOL, OR DAYCARE; DECLARING AN EMERGENCY AND FOR OTHER PURPOSES" was read for the first time. Alderman Davis made a motion to amend the ordinance with the following changes: it redefines retail liquor sales as an on premises liquor consumption, the food has to be prepared, the percentages of sales and how it is applicable to these types of businesses. Mayor Harmon asked that the entire ordinance be read. Alderman Henry seconded the motion to amend the ordinance. The roll call vote was 7 ayes, Alderman Rankin absent. The ordinance was read in its entirety for the first time as amended. The council asked for any comments for or against the ordinance. Jerry Sanders and Chris McMunn, prospective owners, addressed the council. Mr. Sanders read a statement from the City of Sherwood website stating that Sherwood is the excellent place to grow your business and family. He claimed this was a joke and advised that he and Chris had talked to Sherwood about this business adventure over a month ago. First contact was made with Andy Wilson, Code Enforcement Officer, asking about the laws and ordinances of the City pertaining to what they were doing because they didn't want to offend any Church or anyone in the City. They were advised the rules of Sherwood were the same as the State of Arkansas. Mr. Sanders and Mr. McMunn met with Mr. Ashley and Mr. Moore, owners of the Indianhead Shopping Center, and they approved a lease on the building. A meeting was set up with Mayor Harmon on July 12, 2004, at which time a floor plan was given to the Mayor to discuss the business. They were advised to keep it clean. On July 19, Mr. Ashley phoned Mr. Sanders and/or Mr. McMunn advising that the Mayor wanted them to cease what they were doing. Mr. Sanders stated that their business would not have anything different than what some of the businesses around Sherwood have. Smokey's Pub has a dance floor and All Stars has pool tables. Their plans are to be open from eleven to two for lunch only, deli style. The daycare center in the area is open Monday through Friday six to six, and the dance floor will be open when the daycare is closed. The only alcohol they intend to serve is beer and wine. On Wednesday night they intend to be closed, and to not serve alcohol on Sunday. They stated they will follow the Arkansas State Laws and they will follow any laws set forth by Sherwood. Mr. McMunn stated they wanted to get the blessing from the Mayor and Council before they did anything. He stated they didn't apply for their alcohol permit until the Mayor approved it. Mayor Harmon then stated he never said he approved or disapproved. He told them at that time he believed according to the law there was nothing the City could do. Mayor Harmon stated his opinion of a sports bar was having a television where people sit down and have a sandwich, a beer and watch ballgames. Mayor Harmon stated that when he looked over the floor plan is when he became opposed to it. Also Mr. Bob Moore, owner of the Indianhead Shopping Center, today contacted the Mayor asking him to do everything he could to stop the business. Alderman Sulcer asked if either Mr. Sanders or Mr. McMunn lived in Sherwood, in which they both stated no. Thurman Booth, a resident of Sherwood, addressed the council stating he disagrees with the gentlemen wanting the business and would like to commend the Mayor and Council for taking a strong position against a honky-tonk in our community. This is the only way Sherwood will maintain the present conditions that we have. Mr. Booth asked that the City keep fighting against people who want to come in and tear it down. He appreciates Alderman Davis for bringing this up and hopes that the council will vote to stop this and not let it happen. Les Bronson, resident of Indianhead Lake, addressed the council, stating that the Indianhead Shopping Center is the focal point for their community because they have to travel by the area most of the time. They recommend that the City not have any establishment of that nature in the area. He surveyed the surrounding area and found there are four service stations that sell beer, three full bars, Moose Bar, Casa Mexicana, All Star Sports Bar, Harvest Foods and Shotgun Dan's sell beer, and three liquor stores surrounding the area. The area has more fuel around them than the City needs. Gerald Paulson, a resident of Sherwood, Indianhead Lakes, stated in his observation from having lived in Southwest Little Rock, this type of business is what causes neighborhoods to deteriorate. Over the past year or two his observation of Jacksonville's club that had been advertised as a dance club, now this same facility is advertising topless girls. Darryl Bassett, a resident of Sherwood, addressed the council stating that it was forty-one years ago that his father brought their family to Sherwood, and all the while reminding them why he brought them here,

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because of the serenity that existed in Sherwood. The family oriented nature of the community. Sherwood is a City that is close to amenities of larger cities but yet removed from all the problems that exist in larger cities. Sherwood has grown a lot and is still that same Sherwood. He does not have a problem with going forward if it were something that would enhance the spiritual nature of the community, or enhance the cultural enlightenment of the citizens, but this is an entity that will take away the serenity. He is not ready to become like the larger cities having their problems. He still would like to see his kids grow up in areas where they see more churches than they see pool halls and bars. He asked that the council vote against the business and preserve what we know Sherwood to be. A motion was made by Alderman Stedman, seconded by Alderman Henry to suspend the rules and place the ordinance on the second reading. The roll call vote was 7 ayes, Alderman Rankin absent. The ordinance was read for the second time. A motion was made by Alderman Vassar, seconded by Alderman Sulcer to suspend the rules and place the ordinance on the third and final reading. The roll call vote was 7 ayes, Alderman Rankin absent. The ordinance was read for the third time. A motion was made by Alderman Davis, seconded by Alderman Henry to adopt the ordinance. The roll call vote was 7 ayes, Alderman Rankin absent to adopt the ordinance. The emergency clause passed by 7 ayes, Alderman Rankin absent.

Mayor Harmon introduced Attorney David Fuqua to inform the council on the lawsuit against the City by Sherwood Housing Associates.

Mr. Fuqua addressed the council in reference to the lawsuit brought against the City of Sherwood by Sherwood Housing Associates (ERC Properties). They have purchased a track of property off of Brockington Road and have proposed to build an apartment complex with a plan of a one hundred seventy-five unit complex. This company specializes in building affordable housing. This is a development that includes twenty to thirty percent of the units that are rented to persons who qualify based on their income for reduced rent. It's not subsidized housing; it is income-qualified housing. The benefit to the developer is that the developer gets a tax credit for a number of years if the developer meets certain guidelines as far as providing the affordable housing in their plan. ERC has developed around the country, including Jacksonville. The history is that they purchased the property on Brockington Road in 1999; it is zoned for multi-family housing. They asked the Council in 1999 to approve a request that they were going to make to the Arkansas Development Finance Authority for a bond issue. The rule is ADFA won't do one unless the community where the project is going to be located approves it. In 1999, the City declined to approve it. In 2001, the City imposed a moratorium on multi-family developments in the Brockington corridor. At that time ERC agreed or acquiesced in the moratorium; they dispute that is the case. They held off doing anything for two years, then they came back in 2003, and approached the City again and stated they would like to do the project; this was an informal request, not much correspondence. The City did not address directly whether they would or would not approve of this, but felt like the situation on Brockington had not improved, so the moratorium was extended, essentially indefinitely, as the Resolution states, until the improvement to Brockington Road is completed. Following this ERC filed a lawsuit in Federal Court against the City and incidentally named the Council members. They alleged the actions of the City violated the Federal Fair Housing Act. The FFHA says you cannot discriminate in housing on the basis of race. The theory of the lawsuit is that the City in question is motivated to discourage and disapprove of these kinds of developments because once in place the development will cause minority persons to live there and the perception among the Plaintiffs that the City considers that a bad thing. The law also provides that you don't really look at the intent of the City, you look at the effect that the decision has upon minority citizens or people who would want to become citizens of Sherwood. That is a statistical type of evidence. Recently ERC approached Mr. Fuqua and City Attorney Steve Cobb to discuss some ways to resolve this case. They want to build their facility. They are interested in doing it now because they believe they can get some ADFA financing in this year, which ends September 15, 2004; they are not certain they can get the money in the future and would like to get the money in this cycle. They have approached asking could the City do something. Mr. Fuqua and Mr. Cobb met with them and had general discussion with no specific ideas as to how to resolve this issue other

than have the City consider ways to resolve it and do so rather quickly. Mr. Fuqua stated that Brockington Road is the central issue in this lawsuit. What is going on in the Brockington corridor. The City's intent is to widen Brockington into four lanes and substantial efforts have been made towards the widening. Once the four lanes are established the Brockington corridor will have a lot of development going on. The four lanes is the proper thing to do. The argument in the lawsuit is that the City believes it is reasonable and prudent to hold off development in the Brockington Road area until the street is widened. The first problem with the Plaintiff is that the City has allowed single-family development in the area while enforcing the moratorium on multi-family. In this time frame the City has probably approved subdivision developments with at least five hundred single-family lots available for construction. The plaintiff's argument is that if the City really wants to discourage development until Brockington Road is remedied, then the City wouldn't want any development that would substantially over-burden Brockington. Another argument of the Plaintiff is that the City really didn't form a decision based on rational information because the City did not make a study of the impact of development on the area. What the City did do was a study on the impact of traffic on Brockington Road, looking at the historical traffic patterns from which you can extrapolate increases in traffic depending on how many more cars you put on the street. The City did an informal study of the sewer capacity and found that wanting as well. These things were done at about the time the moratorium was imposed. As a whole the City did not look at development as far as can be seen by Mr. Fuqua. Mr. Fuqua's assessment of the situation is the City has never said that there should not be multi-family development on Brockington, and has never said that this project should not be built or completed. All the City has stated is that it shouldn't be done until Brockington is remediated. Mr. Fuqua believes that if the City approves the project in general and understands that at some point in the future, this developer will have the opportunity to build the facility that they want to develop. The answer is that when Brockington is foreseeably complete that is when they ought to start building. What the argument is about is not if this going to happen, but when is this going to happen. The plaintiff's concern is that they be able to do it now, and if they were to prevail in their lawsuit, they would be entitled to at least two things: (1) entitled to an order from the court allowing them to build the facility because the court would declare that the moratorium was in violation of law and (2) entitled, in theory, to damages if they could prove that they have suffered damages caused by an unlawful delay imposed by the City. Alderman Fender asked who is blocking them from developing. Mr. Fuqua advised that the City is because of the moratorium on multi-family development. Mr. Fender stated the moratorium was a Resolution, and asked had ERC been turned down for a building permit. He was informed they have not applied for a permit. Alderman Vassar asked about ERC's request of the Mayor. Mr. Fuqua advised the policy of ADFA is that for all of their construction or projects like this is that the highest-ranking official of the City, which would be the Mayor, issue a letter of support. The letter states that the City of Sherwood supports this project. Alderman Vassar asked if these funds were State funds, Mr. Fuqua advised they were. Alderman Vassar stated that this was taxpayer's money, and that the Mayor would have to sign off and say the City is endorsing this project and the ERC would then go to the ADFA and get taxpayers dollars. Mr. Fuqua advised that the company incurs a debt, which is a bond issue, underwritten by the State. If they default on the debt they would be obligated to pay it back, it's not free money. Mayor Harmon stated that ERC did contact him asking him for a letter and he advised them he would not write a letter to anybody to help anybody build an apartment complex anywhere to put cars on Brockington Avenue right now. This was the only time they approached him with this issue. This was a personal approach, no letter of request has been sent. Mr. Fuqua advised that in his experience the only thing different about this case is that the developer did not get to the point of asking for a building permit. Two possible reasons being is that they had the zoning that they needed, and frequently developers have to ask for a zoning variance, which brings the issue up. The other reason being the City imposed the moratorium. Their perception was as long as that is in place they would go with it for a couple of years. There would be no point in pursuing the permit aspect of it. Generally this is where the issues start being joined is that people will come in to the Planning Commission, this is the point where opposition is determined. Alderman Stedman asked if the litigation is on the affordable housing laws.

Mr. Fuqua stated the Fair Housing Act, has nothing to do whether it's affordable, but whether or not the City is discouraging development in Sherwood, thus creating an adverse impact on minority citizens. Alderman Stedman asked if there had to be any kind of need? Mr. Fuqua advised no. In his experience it is the developers risk. If the developer believes that the market will sustain the proposed development. Alderman Vassar stated that the average vacancy in the apartments that are already developed in the City of Sherwood is ten percent each, which means that any given day there could probably be one hundred vacant apartments in Sherwood. Where is the responsibility on the Council to say that Sherwood has enough apartments that have vacancies? Mr. Fuqua said the City doesn't know if it has enough, the City believes we have enough. Alderman Stedman asked if this was an argument in the litigation? Mr. Fuqua stated it could be. Alderman Vassar stated that if the City continues to build, it would drive the rental amount down. Mr. Fuqua stated this is a market driven decision that the developer makes. If the developer wants to risk its capital in the market it's their choice to do that. It's not the City's choice to tell them they can't just because the City thinks it's a bad investment. Alderman Fender stated that it appears to him that this is all tied into one thing and that is the ERC getting the state guaranteed money. If they want to build this they can go to the bank and borrow their own money and build this project. There is nothing the City can do to stop it if they comply with the codes enforced by the Permits and Planning Department. The real issue is whether or not this lawsuit seems to be stimulated by the fact that they want the letter from the Mayor. Alderman Vassar stated that when the Council did the moratorium two or three years ago, the City anticipated construction being completed on Brockington much sooner than it was. When construction starts it will be a huge mess on Brockington. The council thought they were helping the situation with traffic on Brockington Road by imposing the moratorium. If the moratorium is the problem, the Council can do away with the moratorium, but has a problem with giving them this letter to get the money. Mayor Harmon asked if that was a complaint that prompted the FHA to issue a violation by us not signing for the ERC to get state money. Mr. Fuqua advised that if the City lifted the moratorium that's good, but if the City lifts the moratorium but denies the letter then you really have not changed the lawsuit materially. ADFA requires the letter as a precondition of them making the bond issue. Mayor Harmon asked if he had the option to sign the letter or not, to allow this type of finance, if he is sued as a result of not signing the letter, shouldn't the State be responsible for the lawsuit? How is that obligation put on him? Mr. Fuqua stated the rule was not a good rule, but the lawsuit might change that rule. The State is really using the City as a buffer between them and the developer on the theory that you've got to be welcomed by the community in which you want to build. Mr. Fuqua doesn't see what the State would have to do other than say here's the money you qualify for it. Alderman Vassar stated the other apartment owner's could say that competition was brought in by giving the ERC special privileges by signing the letter. Mr. Fuqua stated it is not necessarily special treatment, the zoning and the Planning and Permits rules don't change, ERC still has to comply with the ordinances of the City, and laws of the State of Arkansas as far as development is concerned. Mr. Fuqua advised that they have to have the letter to get the money. The question the City will be asked at trial is to the effect of what business is it of the City where they get the money. Alderman Davis stated as the Council they are suppose to protect their money and rights. The second question would be for the City to name any other business where they have gone to them and told them don't borrow that money and build this, it's a bad idea. The City just doesn't do that. Alderman Vassar asked how much the lawsuit would cost. Mr. Fuqua advised he didn't have the answer to that yet. Alderman Stedman stated that he thought their authority as a City Government has been usurped by some federal law that says that we have to allow the development. The moratorium was imposed because the Council felt that it was the right thing to do for the City, to protect the property owners that are already here. He advised that the City stick to their guns. Mayor Harmon stated the ERC could qualify for all that is available to them. The City is not saying that they are going to keep the low-income people from having low housing, or decent housing, they are entitled to it. He doesn't feel it's the City's responsibility to sign something to help them get some financing. The moratorium is a Resolution, not an ordinance. Alderman Fender stated he didn't understand why they had brought this lawsuit because they had never been denied for a building permit. He feels this lawsuit had to be stimulated by the fact they want a

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letter from the Mayor to get this money that is going to be guaranteed from the State. Alderman Vassar asked if the Council needed to do something about the moratorium, in which Attorney Steve Cobb stated that the moratorium was a resolution, it was merely a pronouncement of an opinion, or belief by a City Council, and it's not law. Mayor Harmon said it didn't prohibit anyone from coming in and getting a permit. Alderman Vassar asked if the ERC knew that the moratorium was just a resolution, Mr. Fuqua stated he believed they understand that. The hold up is the money. Alderman Vassar stated she didn't want the Mayor to sign the letter. Aldermen Butler and Sulcer also stated they were against it. Mr. Fuqua stated they haven't asked for the letter yet, but have certainly have suggested that was the cause. Mayor Harmon stated that all the Council, with the exception of Alderman Rankin, agree that if they come in for a proper building permit that they are entitled to the building permits. Mayor Harmon asked if anyone on the Council disagreed with that as of right now. All the Council advised no. The Mayor stated Mr. Fuqua could tell them that they could come in and get a building permit. Mr. Fuqua stated it is important that the City knows that this is a case that carries risk and the evidence will develop further and the City may change their opinion about it as it goes on.

Doris Anderson addressed the Council concerning the apartment complex issue. If the apartments go in, the impact it will have on Brockington Road will be detrimental. One or two houses going up once a month does not impact Brockington Road. If this complex goes in there will be gridlock on Brockington Road. Right now at Maryland and Indianhead Bay there is gridlock every single morning. Sherwood has fourteen hundred and forty-eight apartments with twenty-seven hundred and sixty-nine total rental units in the City. Fifty-four percent are apartments, nine hundred of those the total rent cost is less than five hundred dollars a month. Another fourteen hundred of those units are less than seven hundred fifty dollars a month. She feels that is very affordable housing in Sherwood. The City needs to get what they are asking for, for the community. We need to be protected from entities that may or may not affect us in a bad way. That is why the citizens are coming to the council and bringing these issues forward. Out of eighty-seven hundred and ninety-eight units in the City of Sherwood, four hundred and seventy-four units stay unoccupied at any given time. ADFA is the one making the requirement for the letter. Mrs. Anderson stated the Mayor refused to sign the letter in 1999, 2002, 2003, and she expects him to refuse to sign the letter in 2004. She feels the City does not need to give them any benefit that is not granted to other commercial entities to come in and develop in the City. This is a Federal and State funded program and it is giving away taxpayers money for fifteen years. The property was not purchased until November 1999, and they stated they received funding in October 1999, she questioned how they got funding for property they didn't own. She feels we don't need to support something that is not going to be good for the City.

Darryl Bassett addressed the council concerning the basis of the lawsuit. From his point of view it presupposes three things, one being that blacks and Hispanics are going to be the only minorities that are going to come into that facility, that they have no place else in Sherwood to go, and that Sherwood has a predominately white community and is somehow trying to keep minorities out of the City. He knows that a lot of things permeate the minds of the leaders of Sherwood, but the City is not trying to keep minorities out of Sherwood. He urges the council to not bend to that kind of pressure and tactic designed to make you bend to the race baiting. He knows these facilities work in some places and not so well in other places. He asks that the City continue the moratorium just on the basis of why they brought the lawsuit. He agrees with ADFA's requirement that the leader of the City sign off on this project, because while these are not State dollars going directly into these projects, State dollars are guaranteeing these bonds. Every community should have a say of what kind of entity comes into the community. He urged the Council to not bend because they are predominantly white, to a threat of a lawsuit to threaten or create some kind of uncertainty in their mind about who the council really is and what they want in Sherwood. There are plenty of other places in Sherwood where people have an opportunity to live and go. There are plenty of other opportunities for people who want to build apartments in the community to go and access, if they are

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going to access State dollars, or be backed by the State, then they need to get the approval of the Council.

Gerald Paulsen addressed the council stating that he doesn't feel the moratorium was established to bring pressure against any minority groups. He feels that it was brought because the community felt it was getting over populated with apartment complexes versus single-family residents. The taxpayers who care about this community primarily are the single-family resident individuals. With that in mind, he feels this was one of the reasons that this was looked upon and the moratorium may or may not have been put in place. In his experience with investing banking business as a bond broker and being familiar with the under writings of different types of projects, the developer is going to have to have at least seventy percent occupancy to cover debt service. For the developers to make any money they are going to have to be up in the eighty-five and ninety percent range. If the City already has apartment complexes within this community that are ten percent vacant then they are going to have a problem maintaining the occupancy that they need to guarantee their debt. This could cause future havoc when they walk away from the project because of lack of support and funds causing the property to turn into something worse.

Mayor Harmon corrected that the moratorium was declared because of the situation with Brockington Road traffic, it wasn't to outlaw anyone. It has never been anything aimed at minorities. It was to solve the traffic problems on Brockington Road. Mayor Harmon is waiting to get word on the approval of the TIF, and for construction to begin on Brockington Road.

Mayor Harmon announced that National Night Out would be on August 3, 2004, from 6 p.m. to 9 p.m. at the Administration parking lot.

Alderman Vassar, seconded by Alderman Davis made a motion to adjourn.

ATTEST:

Virginia Hillman
City Clerk

Bill Harmon
Mayor