Mayor – Sandy Sanders

City Administrator – Ray Gosack

City Clerk – Sherri Gard

Board of Directors

Ward 1 – Keith D. Lau
Ward 2 – Andre' Good
Ward 3 – Mike Lorenz
Ward 4 – George Catsavis
At Large Position 5 – Pam Weber
At Large Position 6 – Kevin Settle
At Large Position 7 – Philip H. Merry Jr.

AGENDA

Fort Smith Board of Directors
Study Session
May 28, 2013 ~ 12:00 Noon
Fort Smith Public Library Community Room
3201 Rogers Avenue

1. Discuss use of portable buildings on public school campuses

2. Review preliminary agenda for the June 4, 2013 regular meeting

Memo

To: Ray Gosack, City Administrator

From: Wally Bailey, Director of Development Services

Date: 5/24/2013

Re: Portable Buildings at Fort Smith Public Schools

Through the years, the Fort Smith Public Schools (FSPS) system has placed temporary buildings on school property primarily for temporary classrooms to avoid busing students from one school to another until a permanent structure or addition could be built. Additional portable or temporary buildings are used for support space such as offices and storage. Based on of the Fort Smith Public School records, the school system has a twenty nine (29) existing portable buildings on school properties. Enclosed is a spreadsheet provided by FSPS showing the locations and ages of portable buildings on the various school properties.

Historically, the City of Fort Smith has for many decades recognized the need for the Fort Smith Public Schools to utilize temporary classroom facilities and by virtue of a long standing administrative policy has not required the FSPS to obtain approvals from the Planning Commission for its temporary buildings.

The City of Fort Smith ordinances (*specifically section 27-327-1 of the Unified Development Ordinance)* allows the planning department to issue temporary use permits for certain temporary uses for non-retail uses, such as temporary classrooms (public and private), temporary medical offices, temporary recreational facilities, and similar uses that do not involve retail or food or beverage sales activities. A temporary use permit can be administratively issued for up to a 120 day period. Any period exceeding 120 days must be approved by the planning commission.

This is not a new section of the code. This section has existing in the zoning code for many years.

Recently, the planning department received a complaint from a citizen regarding a portable building placed at the Fort Smith Public School's Parker Center at 811 North T Street. The portable building was placed on the school's property adjacent to North 8th Street

on June 26, 2012, to be used as a temporary office. The citizen's property is adjacent to the Parker Center and the citizen objected to the temporary structure, stating that the building had a significant negative impact on the value of his property.

Please see the enclosed letter from attorney David Rush on behalf of the citizen, as well as photographs of the portable building on North 8th Street and photographs of the two other existing portable buildings at the Parker Center.

There are no regulations that exempt the FSPS from complying with the City of Fort Smith zoning laws and ordinances.

This complaint has caused us to realize that if we are to continue the past decades of practice, we need to consider exemptions for FSPS and include the exemption in our codes and ordinances.

After meeting with Dr. Benny Gooden on this matter, we believe the best course of action is to meet with the Board during a study session and discuss options to address the use of temporary portable buildings by the FSPS. I have enclosed a letter from Dr. Benny Gooden on this matter.

Some possible options to consider would include:

1) Continue with past practices of exempting the FSPS from compliance with Section 27-327-1 concerning temporary buildings. Public schools are a public entity with a Board that is accountable to the public. To accomplish the exemption, it will require an ordinance amendment be approved by the City Board of Directors.
2) Extend the current administrative time period for approval of temporary buildings from 120 days to a more extended time such as 2 - 3 years. Longer periods of time would require approval by the planning commission. When the FSPS needs to use a portable building, it is typically for at least one academic year or until a building program can be funded and constructed. A 120-day approval isn't useful for school facilities.
3) In lieu of a specific time in the ordinance ask that all schools utilizing temporary portable buildings specify a specific time frame that the temporary building would be on the school property. Administrative approval could be granted for a period of time not to exceed 5-years. If the school needed an extension of time from the stated time then approval from the Planning Commission would be required.
4) Make no changes and apply the current ordinance.

If you have any questions regarding this matter, please contact me.

Enc.

c: Dr. Benny Gooden
David Rush, attorney
David Railey

Today... and ...
Fort Smith Public Schools
in the Future

Office of the Superintendent

3205 Jenny Lind • P.O. Box 1948
Fort Smith, Arkansas 72902-1948
479-785-2501
Fax: 479-785-1722

May 22, 2013

Mr. Ray Gosack, City Administrator
City of Fort Smith
623 Garrison Avenue
P.O. Box 1908
Fort Smith, AR 72902

Re: Portable Buildings on Public School Campuses

Dear Mr. Gosack:

I appreciated the opportunity to meet with you and Wally Bailey, Director of Development Services, a few days ago to discuss the status of a portable building located on the campus of the Parker Center at 811 North T Street. This meeting was in response to previous communication between your staff and Dr. Gordon Floyd and other Fort Smith Public School employees. I understand that you have received complaints from Mr. David Railey, whose residence is located across the street from this campus.

Historical Perspective

For more than forty (40) years the Fort Smith Public Schools have utilized portable classroom buildings to address growth and shifts in student population or to provide necessary space for support services. At times there have been as many as thirty (30) portables located on various campuses. Recent additions on most school campuses have reduced the number of portable buildings, but they are still required as campus needs change.

For all these years, the City of Fort Smith has considered portable buildings as part of the regular campus structures with regard to codes. Permits have been secured each time a building was moved from one campus to another prior to moving on the city streets. FSPS has always conformed with applicable electrical or plumbing codes as portable structures have been connected to existing utilities. However, no additional approval has been required during this entire period.

Parker Center Issues

The Parker Center, located at 811 North T Street, houses a number of support functions associated with early childhood programs, federal programs, student assessment, and various other instructional support activities. Also located on this campus is the clothing center operated by the Children's Service League to assist disadvantaged children. The proximity of these programs to schools requiring most frequent contact makes the Parker Center a suitable location.

For many years, there have been portable buildings located on the Parker Center campus to supplement available building space. These buildings have functioned with little notice and have apparently been of no concern to individuals in the Parker neighborhood—or to City officials.

In June of 2012, when Bruce Grindstaff of our Building and Grounds staff contacted City staff to secure a moving permit to locate an additional portable building on the Parker Center campus, he was provided a "Temporary Use Permit" with a 120 day term and was advised to present information to the Fort Smith Planning Commission to request an extension. Since this was inconsistent with procedures for the past four decades, we continued with the installation and were subsequently advised verbally that the procedure did not apply.

Subsequent to the installation of the portable building in question, both FSPS and the City of Fort Smith have received several items of correspondence from Mr. David Railey who resides across the street from the Parker Center campus. In every instance, Mr. Railey has complained that the latest portable building harms his property values. It is worthy of note that no objection had apparently been raised concerning existing portables adjacent to the latest placement.

Following the original complaint, FSPS immediately initiated renovation projects on the portable buildings on the campus. These activities significantly improved the appearance of the buildings at some considerable expense to the District. Unfortunately, these actions did not satisfy Mr. Railey and I understand that he has continued to press his complaints to the City of Fort Smith. Accordingly, your staff has advised us that we should make application to the Fort Smith Planning Commission in order to continue to locate the building on the campus.

Issues to Consider

As we review these issues, several questions appear to merit consideration:

1. Have ordinances governing school property—including the use of portable classrooms—been revised recently to change the practice of more than four decades?

2. When did City of Fort Smith staff determine to grant "temporary use permits" for the use of portable classrooms and who made this apparent decision to change past practice?

3. Will the proposed review of the use of the portable classroom which is the subject of a citizen complaint establish a pattern applicable for all future placements?

4. Is the proposed review applicable to other portable classrooms currently in use?

5. In the event that City staff or the Fort Smith Planning Commission refuses to grant long-term approval for portable classrooms, does the city propose solutions to address student population growth and/or shifts in population when the capacity of permanent buildings is inadequate?

Possible Solutions

City staff and the Fort Smith Board of Directors might want to consider continuing past practice using one of these options:

1. Create a zoning class for public school property which affords the school district flexibility allowing the use of portable buildings when use is consistent with the permanent buildings located on school campuses. These buildings would be required to comply with various codes, but this classification would allow flexibility in responding to changing space requirements while acknowledging that the buildings would not be different in purpose from the campus as a whole.

2. Continue the practice of the past forty years with regard to the use of portable buildings on public school property.

Ray, the Fort Smith Public Schools appreciate the excellent cooperation which the City of Fort Smith gives to the District in many areas. We hope that the City acknowledges FSPS cooperation including right-of-way acquisition, facility utilization for City functions, public safety and other important areas.

As you know, we have made many improvements to school campuses in order to make them more useful for educational purposes while enhancing the appearance these public properties present to those who come to our City. We are continuing to improve school facilities as needs change and resources are available. Unfortunately, there will always be a need for the flexibility which portable buildings provide.

I look forward to discussing these issues with you, members of the City staff, and members of the City Board of Directors at your convenience.

Sincerely,

Benny L. Gooden, Ed.D.
Superintendent of Schools

pc: Dr. Gordon Floyd
Alan Love
Board of Education

PORTABLE BUILDINGS

Location	Bldg No	Type of Building	FSPS No	Use of Building	Year Installed at Site
Bonneville	19	Sgl-Armco	80020	Counseling, GATE	1982
Bonneville	13	Sgl-Armco	80014	Special Education Resource, Speech Therapy	1992
Ft. Chaffee	11	Sgl-Armco	80012	Chaffee Warehouse	2011
Ft. Chaffee	14	Sgl-Armco	80015	Chaffee Warehouse	2011
Ft. Chaffee	15	Sgl-Armco	80025	Chaffee Warehouse	2011
Ft. Chaffee	16	Sgl-Armco	80017	Chaffee Warehouse	2012
Ft. Chaffee	8	Sgl-Armco	80008	Chaffee Warehouse	2012
Howard	24	Sgl-Armco	80056	Special Education Classroom	2004
Kimmons	9	Dbl-Armco	80009	Learning Skills, GATE, Social Studies, Career Orientation	1977
Morrison	6	Dbl-Armco	80006	Music, Counselor	2006
Morrison	1	Dbl-Armco	26860	Art, GATE, Speech Pathology	2012
Northside	27	Sgl-Williams	81608	Social Studies	2010
Parker Center	2	Sgl-Armco	80002	Children's Service League Storage	1972
Parker Center	17	Sgl-Armco	80018	Parents as Teachers	2005
Parker Center	7	Sgl-Armco	80007	Art, GATE	2005
Parker Center	20	Sgl-Armco	80021	Nurses' Office	2012
Ramsey	10	Williams	81607	Health	2010
Southside	25	Dbl-Armco	26858	History	1985
Southside	26	Sgl-Armco	26859	History	2012
Spradling	29	Sgl-Williams	81632	Music Lab	2010
Sunnymede	3	Dbl-Armco	80003	GATE, ELA, Interventionist	2002
Tilles	22	Sgl-Armco	80023	ELA	2000
Tilles	4	Sgl-Armco	80004	Book Room	2002
Trusty	5	Sgl-Armco	80005	ELA, GATE, Special Education, Mental Health Counseling	2001
Trusty	12	Sgl-Armco	80013	Social Worker, Speech Pathology	2006
Trusty	28	Sgl-Williams	81633	Music Lab	2010
Wheeler	23	Sgl-Armco	80024	Wheeler Property	2012
Wheeler	18	Sgl-Armco	80019	Wheeler Property	2012
Wheeler	21	Sgl-Armco	80022	Wheeler Property	2012

Revised 5/24/2013

RUSH & RUSH
Attorneys at Law

FORT SMITH OFFICE
1713 South "D" Street
Fort Smith, Arkansas 72901
Telephone: (479) 785-4466

☐ Reply to

Coy J. Rush, Jr., P.C.
David L. Rush, P.A.
Mark J. Johnson
Patrick Flake

PARIS OFFICE
208 East Walnut
P.O. Drawer 607
Paris, Arkansas 72855
Telephone: (479) 963-3002

☑ Reply to

April 18, 2013

Brenda Andrews
P.O. Box 1908
Fort Smith, AR 72902

Re: David Railey
Building Permit #BC-12-01188

Dear Ms. Andrews:

Please be advised that I represent Mr. David Railey, in relation to an issue of a temporary building permit to the Fort Smith School District for a temporary structure located at Parker Center 811 North T street. Mr. Railey has attempted, without success, to have the planning commission enforce its own rules and regulations and zoning laws regarding the placement of the temporary structure. He was subsequently notified by you that the Fort Smith School District is not required to request approval from the planning commission to allow the building to remain in place. I find it somewhat remarkable that a school district would not have to comply with the zoning regulations from the City of Fort Smith like the rest of us mere citizens would. In any event, if you would please educate me of any documentation of any exemption or statutory provision or city ordnance which exempts a school district from complying with the same laws the rest of the citizens have to, please provide me a copy of same and I will notify Mr. Railey and we will be able to decide what to do at that time.

Alternatively if there is no such regulations that exempts the City of Fort Smith, we are requesting that the planing commission require the school district to remove the temporary structure as the temporary structure was permitted in July, and more than six months has transpired since the temporary permit has been issued. Based upon my examination of the rules and regulations of the planning commission, I would think that Mr. Railey would be successful in a lawsuit against the planning commission to require the commission to follow their own rules and regulation, and could be successful in a lawsuit against the Fort Smith School District to have them remove their temporary structures from the above referenced location.

In conclusion, if there is any legal basis that shows the school district does not have to comply with the zoning regulations, I look forward to receiving same from you. Please let me know something within ten days (10) so I can properly advise Mr. Railey of his options. By copy of this letter, I am notifying the school district of my interest in this matter and my representation of Mr. Railey. Your kind cooperation in this matter is certainly appreciated.

Yours Very Truly,

David L. Rush
Attorney at Law

DLR:ag
cc: Mr. Railey
Fort Smith School District

05/22/2013

05/17/2013

27-327-1 Special temporary use permits (nonretail). The director may grant a special temporary use permit (nonretail) for religious revivals, temporary recreational facilities, temporary medical facilities, temporary classroom facilities (for public or private institutions) and similar uses that do not involve retail or food or beverage sales activities. This is provided that the uses shall comply with parking, signs, sanitation requirements, etc. for the area and shall not constitute a nuisance for adjacent neighboring or nearby properties. Temporary use permits shall be granted for a period not to exceed sixty (60) days, and are renewable for sixty (60) day periods thereafter. Permits for periods in excess of one hundred twenty (120) days, (one (1) initial period plus one (1) renewal permit), must be reviewed and approved by the planning commission.