

MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ JANUARY 20, 2015 ~ 6:00 P.M.

FORT SMITH PUBLIC SCHOOLS SERVICE CENTER

The meeting was called to order by Mayor Sandy Sanders, presiding. Invocation was given by Pastor Andrew Robertson of House of Prayer and Praise, followed by the Pledge of Allegiance.

On roll call the following members of the Board were present: Directors Keith Lau, Andre' Good, Mike Lorenz, George Catsavis, Kevin Settle and Don Hutchings. Director Tracy Pennartz arrived immediately following roll call. The Mayor declared a quorum present.

Mayor Sanders inquired if any Board member had any item of business to present that was not already on the agenda. There was none presented.

The minutes of the January 6, 2015 regular meeting were presented for approval. Settle, seconded by Lorenz, moved approval of the minutes as written. The members all voting aye, the Mayor declared the motion carried.

Item No. 1 consisted of the following items pertaining to a special election:

- A. Ordinance calling for a special election regarding the continued effectiveness of Fort Smith Ordinance No. 72-85, which provides for the local one percent sales tax for city streets, bridges and associated drainage, and, in the event of continuation of said sales tax, seeking voter approval for the use of 5% of the sales tax funds for trails and bikeways; designating a ballot title for use at such election; and, for other purposes ~ *Lorenz/Pennartz placed on agenda at the January 13, 2015 study session* ~
- B. Resolution endorsing continuation of the one percent sales tax for streets, bridges and associated drainage; and endorsing allocation of 5% of the proceeds from said sales and use tax for construction and enhancement of trails and bikeways

January 20, 2015 Regular Meeting

City Administrator Ray Gosack briefed the Board on the item as discussed at the January 13, 2015 study session. Item No. 1A calls for a special election on Tuesday, May 12, 2015 to renew a fourth ten (10) year term of the one-percent (1%) sales tax for streets, bridges and associated drainage. In addition to the currently authorized uses, the proposed ballot will also ask voters if five-percent (5%) of the revenue may be used for trails and bikeways, which uses support several Comprehensive Plan policies. Upon approval, the ordinance will be forwarded to the Sebastian County Board of Election Commissioners. A citizens committee has been organized to spearhead voter education.

Item No. 1B merely indicates the Board's endorsement of continuation of the one-percent (1%) sales and use tax for streets, bridges and associated drainage, as well as expanding the authorized use of the aforementioned five-percent (5%) of the proceeds to be used for construction and enhancement of trails and bikeways.

The following individuals were present to address the Board:

- Bill Hanna
Fort Smith, Arkansas

Re: Spoke in favor of both items citing the option to include five-percent (5%) of the proceeds to be used for trails and bikeways will boost economic development.

- Drew Linder, Chair Trails and Greenways Committee
Fort Smith, Arkansas

Re: Also spoke in favor of the proposed items, as well as providing the opportunity for voters to decide if they desire a portion of the tax revenue to be used for trails and bikeways.

- Casey Millspaugh
Fort Smith, Arkansas

January 20, 2015 Regular Meeting

Re: Spoke in favor of the items citing many of his friends have moved away alleging “*there’s nothing to do*” in Fort Smith. “*Trails are for the current generation*” and if voters authorize using five-percent (5%) for trails and bikeways, he conveyed much assurance that the trails “*will be used.*”

- Doris Dorrrough
Fort Smith, Arkansas

Re: She spoke very highly of the trail system in Tulsa, Oklahoma citing such is a reason she moved there many years ago. When she moved to Fort Smith, she was admittedly disappointed with the lack of such; therefore, she too spoke in favor of the option to include use of proceeds for trails and bikeways, which she alleged will increase the city’s quality of life.

- Jerry Fleming
Fort Smith, Arkansas

Re: He read a prepared statement, which promoted continuation of the existing one-percent (1%) street sales tax, but conveyed opposition to utilizing a portion of said proceeds for the construction and enhancement of trails and bikeways. Due to such, he urged the Board to consider allowing the renewal to be used solely for streets, bridges and associated drainage.

- Don Dickey
Fort Smith, Arkansas

Re: Also read a prepared statement, which reiterated the above comments offered by Mr. Fleming.

There was brief discussion with Directors Good and Lorenz conveying opposition to using a portion of the tax proceeds for trails and bikeways; however, they, along with Directors Lau and Settle, concurred that the option should be included on the ballot to allow voters to decide.

Hutchings, seconded by Lorenz, moved adoption of Item No. 1A. The motion

January 20, 2015 Regular Meeting

included suspending the rule to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance for its readings and the member all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 7-15.

Settle, seconded by Lorenz, moved adoption of the resolution. The members all voting affirmatively, the Mayor declared the motion carried and the resolution as adopted and given Resolution No. R-6-15.

Item No. 2 was an ordinance amending Chapter 3 of the Fort Smith Municipal Code to establish fees for dispensary permits for alcoholic beverages and for permits for serving mixed drinks and other alcoholic beverages and for other purposes ~ *Discussed at the November 25, 2014 budget hearing* ~

Administrator Gosack briefed the Board on the item citing such was requested as an additional revenue source during the 2015 budget hearings. The proposed ordinance establishes permit fees for the sale of alcoholic beverages.

The following individuals were present to address the Board:

- Eric Pendergrass
Fort Smith, Arkansas

Re: Spoke in opposition to the proposed ordinance citing such is a "*misapplication in design*" of the intended purpose of said fees allowed by State law.

- Kerri Taake
Fort Smith, Arkansas

Re: Read a prepared statement conveying opposition to the proposed fees citing many funds from her business goes to charity; therefore, if additional fees are required, said charitable donations must cease. Concern was

January 20, 2015 Regular Meeting

expressed that many businesses currently selling alcoholic beverages in the city are not properly permitted by the City of Fort Smith. Due to such, she requested the City ensure all businesses pay the required fees both to the City and the State of Arkansas.

- Melissa Woodall
Fort Smith, Arkansas

Re: Spoke in opposition to the proposed ordinance citing all fees required by the City of Fort Smith should *“be fair”* and alleged the City is simply targeting only one type of business to increase its revenue.

- Jack Swink
Fort Smith, Arkansas

Re: Conveyed opposition to the item citing such is an *“inadequate solution to a deeper problem.”* He alleged the City of Fort Smith maintains the highest water and sewer rates than other cities and urged the City to *“work within its budget.”*

- James Clegg
Fort Smith, Arkansas

Re: Advised his a bartender in Fort Smith citing his employer *“pays over fifty-percent (50%) of revenue in fees”*; therefore, he too spoke in opposition to the proposed increases.

- Crissie Clegg
Fort Smith, Arkansas

Re: She noted many business establishments who sell alcoholic beverages already have to pay more in fees than any other type of business; therefore, she spoke in opposition to the proposed item. She further urged the Board to consider how the increases will effect establishments such as the VFW and The Eagles, and that any increase will mostly likely be passed on to their patrons.

January 20, 2015 Regular Meeting

Director Lau noted the Board should consider the budget citing the proposed fee increases will *“help slow the deficit”*; therefore, he conveyed support of the item.

Director Pennartz requested a brief explanation of the allegation that some business establishments selling alcoholic beverages in Fort Smith are not paying the current fees as required by the Fort Smith Municipal Code. Concern was expressed that the State of Arkansas maximum amount is being proposed stating such *“seems excessive”*; therefore, she questioned the rationale of imposing the maximum amount allowed by the State, and further conveyed her intent to vote against the item.

Deputy Director of Finance Jennifer Walker advised a list of all businesses currently licensed with the State of Arkansas Alcoholic Beverage Control (ABC) has been requested. As soon as such is received, a comparison will be performed to ensure all businesses licensed by the ABC are also properly permitted with the City of Fort Smith. With regard to the amounts proposed, the Finance Department opted to include the maximum amount allowable by the State of Arkansas because the item is intended to increase revenues.

Director Lorenz urged the importance of determining if and how many businesses currently selling alcoholic beverages are not properly permitted with the City thereby not paying the required fees. He further expressed concern the proposed fees will hurt small businesses.

Director Good concurred with the comments of Director Lorenz citing he is not in favor of imposing additional or increased fees; however, many hours of discussion occurred during consideration of the 2015 Budget. Due to such, he fears denial of the proposed item will *“leave staff with their hands up”* regarding the budget.

January 20, 2015 Regular Meeting

Director Settle alleged the proposed item is not the right decision to pay for raises for City employees citing the matter should have been considered prior to adoption of the 2015 Budget.

Director Pennartz moved adoption of the ordinance. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. No second to the motion was offered; therefore, the Mayor declared the motion defeated due to lack of a second.

Item No. 3 was an ordinance ordering the owners of certain dilapidated and substandard structures to demolish same, authorizing the City Administrator to cause the demolition of such structures to occur, and for other purposes (*723 North 5th Street / Griffith & Nix Addition*).

Administrator Gosack briefed the Board on item advising the structure has been determined to be unsafe and detrimental to the public welfare. The subject property is located within the Historic District; therefore, on November 6, 2014, the Fort Smith Historic District Commission approved a Certificate of Appropriateness to demolish the structure. Upon approval of the proposed ordinance, the property owners will have thirty (30) calendar days to either demolish the structure or bring the structure into compliance with the Fort Smith Municipal Code. If such does not occur, City staff will ensure the structure is demolished as authorized.

Hutchings, seconded by Lorenz, moved adoption of the ordinance. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance

January 20, 2015 Regular Meeting

for its readings and the members all voting affirmatively, the Mayor declared the motion carried. Settle, seconded by Catsavis, moved adoption of Section 5 the emergency clause. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted with the ordinance given Ordinance No. 8-15.

Item No. 4 was an ordinance authorizing the appropriation of funds from the General Fund (Steel Horse Rally scheduled for May 1 & 2, 2015) ~ *Settle/Catsavis placed on agenda at the January 13, 2015 study session ~*

Administrator Gosack briefed the Board on the item as discussed at the January 13, 2015 study session. The proposed authorizes \$84,000 from the General Fund balance for the Steel Horse Rally scheduled for May 1 & 2, 2015. Upon approval, a services agreement with the Steel Horse Rally, Inc. will be required. Such is currently being prepared and should be ready for Board consideration at the February 3, 2015 regular meeting.

The following individuals were present to address the Board:

- Dennis Snow, representing Steel Horse Rally, Inc.
Fort Smith, Arkansas

Re: Spoke in favor of the item advising said funds will not be used to finance the event, but merely to adequately advertise the event surrounding states. He conveyed much assurance the event will bring in much-needed tax dollars and assist in bring back civic pride.

- John McIntosh
Fort Smith, Arkansas

Re: Conveyed support of the item and provided multiple statistics regarding attendance and revenues generated

January 20, 2015 Regular Meeting

from the Bikes, Blues and Barbeque event held annually in Fayetteville.

Mayor Sanders requested the statistics provided be forwarded to the Board of Directors.

- David Harris
Fort Smith, Arkansas

Re: Noted the Board of Directors spend three (3) evenings discussing the 2015 Budget and noted the difficulty in finding funds for budgetary items. Upon approval, he questioned what fund said monies will be expended whereby Mayor Sanders advised such would come from the General Fund.

- Melissa Woodall
Fort Smith, Arkansas

Re: Spoke in favor of the event and the City assisting the vendors with permitting and in-kind services; however, she spoke in opposition to utilizing taxpayer dollars fund or advertise the event stating, *"that's what banks are for, not the government."*

- Joel Culberson
Fort Smith, Arkansas

Re: Spoke in opposition to the item citing the Advertising and Promotion Commission should be facilitating the event, not the City.

- James Clegg
Fort Smith, Arkansas

Re: Conveyed support of the event, but conveyed much opposition with utilizing taxpayer dollars for such.

- Crissie Clegg
Fort Smith, Arkansas

Re: Reiterated the above comments of Mr. Clegg citing the City should help in other ways, just not financially. Due to the budget woes, she further questioned if this is the best time to even start an annual rally.

January 20, 2015 Regular Meeting

Director Pennartz inquired of the City Attorney if utilizing taxpayers dollars to fund the event or provide funding to a private entity is constitutional.

City Attorney Jerry Canfield advised there is no definitive legal basis regarding the matter and conceded such has been questioned many times over the years. Such was originally authorized in the 1970's when federal funding was made available and many cities have merely continued the practice. Obviously, Fort Smith has continued said practice as well citing the annual funding to outside agencies. If challenged, he conveyed uncertainty of a legal outcome; however, he conveyed much assurance that the matter would be received in a "*better light*" in court if the City continues funding to non-profit organizations. There has been a recent challenge filed in Pulaski County; therefore, a determination could be rendered by the court very soon.

At the request of Director Hutchings, Administrator Gosack clarified the City of Fort Smith maintains a very detailed process for outside agency funding and such is considered by the Board of Directors each year at a study session.

Lau, seconded by Pennartz, called the question to end debate on the matter. The members all voting affirmatively, the Mayor declared the motion carried and opened the floor for a motion on the item.

Settle, seconded by Lorenz, moved adoption of the ordinance. The members voted as follows: ayes - Lorenz, Catsavis, Settle and Hutchings; nays - Lau, Good and Pennartz. The Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 9-15.

The Consent Agenda (Item No. 5) was introduced for consideration, the items being as follows:

January 20, 2015 Regular Meeting

- A. Ordinance authorizing the Mayor to execute agreements for certain services for inhabitants of the city of Fort Smith
- B. Resolution authorizing the acquisition of real property interests for the Town Branch Drainage Improvements, Phase III, Project No. 11-06-B (\$30,699.00 / Engineering Department / Budgeted - Sales Tax Program)
- C. Resolution to accept the bid and authorize a contract for the 2013 Drainage Improvements, Phase A Project No. 13-06-A (\$1,943,072.00 / Engineering Department / Budgeted - Sales Tax Program)
- D. Resolution authorizing execution space use agreement with Young Actors Guild for space on the main level of the Convention Center Annex
- E. Resolution accepting bid for the purchase of a two ton dump truck with snow plow (\$129,379.00 / Street Department / Budgeted - Street Maintenance Sinking Fund)
- F. Resolution accepting bid for the purchase of a backhoe loader (\$77,357.00 / Utilities Department / Budgeted - 2014 Water and Sewer Operating Fund)
- G. Ordinance authorizing the execution of a contract for service between the City of Fort Smith, Arkansas, and Bair Analytics, by which Bair Analytics will provide crime analysts, technical personnel, analytical software and services for crime analyses for the Fort Smith Police Department (\$82,490.00 / Police Department / Budgeted - 2014 personnel/payroll Crime Analyst position)
- H. Resolution authorizing partial payment to BRB Contractors, Inc. for the construction of the Mill Creek Pump Station and Equalization Tank (\$864,456.60 / Utility Department / Budgeted - 2014 Sales and Use Tax Bonds)
- I. Resolution authorizing the City Administrator to accept offer made by property owners for the acquisition of real property interests for the Lee Creek Reservoir Water Supply Project (\$195,000.00 / Utility Department / Budgeted - 6505 Capital Improvement Fund)

January 20, 2015 Regular Meeting

- J. Resolution authorizing Change Order No. 2 with Goodwin & Goodwin, Inc. for the construction of the Massard Interceptor Access Improvements (*time only*)
- K. Resolution accepting the project as complete and authorizing final payment to Goodwin & Goodwin, Inc. for the Massard Interceptor Access Improvements (*\$12,549.63 / Utility Department / Budgeted - 2012 Sales and Use Tax Bonds*)
- L. Resolution authorizing Amendment No. 1 to Authorization No. 2 with Hawkins-Weir Engineers, Inc. for engineering services for the Mill Creek Interceptor Improvements - Phase II (*\$68,000.00 / Utility Department / Budgeted - 2012 Sales and Use Tax Bonds*)
- M. Resolution authorizing the Mayor to execute an agreement with Hawkins Weir Engineers, Inc. for providing preliminary engineering services associated with the "P" Street Basin Interceptor Sewer Capacity Improvements (*\$396,500.00 / Utility Department / Budgeted - 2012/2014 Sales and Use Tax Bonds*)

Regarding Item No. 5A, Directors Lau and Pennartz questioned the appropriateness of funding outside agencies with taxpayer dollars reiterating and alleging, as noted in discussion of Item No. 4, that such is unconstitutional.

Directors Good and Lorenz spoke in favor of the item citing funding to outside agencies benefits the community. Since there is no definitive legal determination regarding such, both conveyed no opposition to moving forward with funding at least until the State of Arkansas deems such as unconstitutional.

Upon approval of the item and if said funding is determined to be unconstitutional, Director Catsavis questioned if the City could suffer legal ramification.

Mr. Canfield advised that if the court determines said funding to be unconstitutional in the future, there would be no legal ramification regarding the proposed or past funding by the City.

January 20, 2015 Regular Meeting

Director Pennartz expressed concern that her opposition was construed as not being non-supportive of the non-profit organizations; however, she clarified that her opposition is based solely on using taxpayer dollars to fund said organizations and events.

With regard to Item No. 5B & 5C, Director Settle noted the Engineering Department is doing a “*good job*” in addressing ongoing drainage issues.

Regarding Item 5D, Director Pennartz spoke in favor of the item; however, she questioned why and recommended a fee be assessed, even if such is a nominal fee of \$1.00.

Director of Information Technology Services Russell Gibson advised no fee was assessed simply because the Young Actors Guild indicated they simply couldn’t afford a fee; however, he felt confident the \$1.00 would be acceptable.

The Board conveyed no opposition to assessing a \$1.00 fee to the proposed agreement.

With regard to Item No. 5G, Director Lau expressed concern with item alleging such is a not a prudent use of City funds.

Police Chief Kevin Lindsey addressed the Board advising such will implement a crime analyst position, utilizing funds from a currently unfilled secretarial position. In the past several years, the City has expended numerous dollars to train existing personnel to conduct analysis; however, it was determined that creating the position and contracting with Bair Analytics will save the City money in the long run.

Hutchings, seconded by Good, moved adoption of all consent agenda items with the inclusion of the aforementioned revision (\$1.00 fee) to the agreement authorized by Item

January 20, 2015 Regular Meeting

No. 5D. The members all voted affirmatively with the exception of Directors Lau and Pennartz voting “no” on Item No. 5A and Director Lau voting “no” on Item No. 5G. The Mayor declared the motion carried and the ordinances and resolutions were adopted with the ordinances given Ordinance No. 10-15 and 11-15, respectively, and the resolutions given Resolution No. R-7-15 through R-17-15 respectively.

Mayor Sanders opened the Officials Forum with the following comments offered:

▶ Mayor Sanders

- Re:
1. Extended much appreciation to the Martin Luther King Jr. Committee, who created a well-planned event on said holiday.
 2. Conveyed much appreciation to the Fort Smith Fire Department for sponsoring the St. Patrick’s Day Parade, which is set for 3:00 p.m., March 14th, downtown Fort Smith. He encouraged groups and organizations to participate and directed those interested to the Fort Smith Fire Department Facebook page for details.

▶ Director Settle

- Re:
1. Announced the University of Arkansas Fort Smith (UAFS) mens and women’s basketball teams will begin conference play Thursday through Saturday, January 22nd through 24th, and encouraged all to attend.
 2. Announced UAFS will honor United States Army Ranger Kyle Emmons during Wounded Warrior Honor Day on January 31st. Said recognition is set during the halftime ceremony of the mens basketball game on Saturday, January 31st in the Stubblefield Center. He encouraged all to attend.

▶ Administrator Gosack

January 20, 2015 Regular Meeting

Re: Reminded all of the upcoming Ward 1 neighborhood meeting set for 6:00 p.m., Monday, January 26th, Fort Smith Public Schools Rogers Center, 2901 Kinkead Avenue.

The Board entered into executive session at approximately 7:42 p.m. and after reconvening, the Mayor announced the following appointment nominations:

ANIMAL SERVICES ADVISORY BOARD

Tonya Rogers (reappointment)
Term expires January 21, 2018

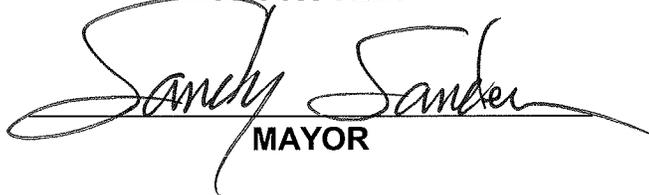
**SEBASTIAN COUNTY REGIONAL SOLID WASTE DISTRICT
MANAGEMENT BOARD**

Andrew Galbach (reappointment)
Term expires January 21, 2018

Hutchings, seconded by Lorenz, moved acceptance of the above named nominations. The members all voting aye, the Mayor declared the motion carried.

There being no further business to come before the Board, Settle moved that the meeting adjourn. The motion was seconded by Lau, and the members all voting aye, the Mayor declared the motion carried and the meeting stood adjourned at 7:49 p.m.

APPROVED:


MAYOR

ATTEST:


CITY CLERK