

## **MINUTES OF BOARD OF DIRECTORS REGULAR MEETING**

**TUESDAY ~ FEBRUARY 2, 2010 ~ 6:00 P.M.**

### **FORT SMITH PUBLIC SCHOOLS SERVICE CENTER**

The meeting was called to order by Mayor Ray Baker, presiding. Invocation was given by Police Chief Kevin Lindsey, followed by the Pledge of Allegiance. On roll call the following members of the Board were present: Directors Steve Tyler, Andre' Good, Don Hutchings, Bill Maddox, Gary Campbell and Kevin Settle; absent - Director Cole Goodman. A quorum was declared present.

Mayor Baker presented the "*Mayor's Congratulations Award*", along with a rose, to the following members of the Western Arkansas Tennis Association for being named the *2009 Tennis Organization of the Year* by the Arkansas Tennis Association and the *2009 Member Organization of the Year* by the United States Tennis Association Southern Section:

- ▶ Marge Griesse, Executive Director
- ▶ Barbara Daniel, President & Tennis Coach
- ▶ Stephen Smith, Immediate Past President
- ▶ Leslie Jackson, Immediate Past Executive Director

Mayor Baker acknowledged the 100<sup>th</sup> anniversary of the Boy Scouts of America and extended a "Happy Birthday" to the organization.

The Mayor further conveyed much appreciation to Director of Operations Bob Wright and the entire street department for their timely efforts to clear and treat the streets during the recent snow event.

The minutes of the January 19, 2010 regular meeting and January 26, 2010 special meeting were presented for approval. Settle, seconded by Campbell, moved approval of the minutes as written. The members present all voting aye, the Mayor declared the motion carried.

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With regard to the time limit policy for persons wishing to address the Board, Mayor Baker communicated that five (5) minutes per side would be extended on controversial items with three (3) minutes for rebuttal per side. Two (2) minutes will be allotted for consent agenda items and for those participating in the Citizens Forum.

Mayor Baker opened the Citizens Forum with the following individual present to address the Board:

- Eric Arthur  
815 North "B" Street

- Re:
1. Encouraged the City to actively recruit business to come to Fort Smith.
  2. Since the deadline is fast approaching to obtain alternate funding for the convention center, he expressed disbelief that no definite resolution has been determined.

The Mayor recognized Alex Williams from Boy Scout Troop 4 who was in attendance to earn his citizenship badge.

Item No. 1 consisted of items regarding rezoning of 6201 Rogers Avenue

- A. Resolution amending the Bill of Assurance for the Widmer Place Subdivision
- B. Ordinance rezoning identified property and amending the zoning map from Commercial-2 and Transitional to Commercial-5 by extension (6201 Rogers Avenue - Suite J)

Director of Development Services Wally Bailey briefed the Board on the items advising Item No. 1A amends the existing Bill of Assurances executed in 1990 by then owner and developer, Robert B. Westphal. Such document addressed many issues regarding the design and development of the property. The owner is now, Widmer Place,

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LLC and managed by Mr. Bennie Westphal. Greg Hale, agent for Mr. Westphal, has recently applied for a rezoning (Item No. 1B) of the northern section of the Widmer Place subdivision, more commonly known as the Best Buy portion of the development. The purpose of the rezoning is to allow the facility to be used as a sports complex and the Fort Smith Juniors Volleyball Association wish to utilize the building for practices and occasional tournament events. Upon approval of the rezoning, such would allow an expanded use of the property; therefore, the proposed amendment to the Bill of Assurances will restrict certain uses currently allowed in the proposed Commercial-5 zoning. A neighborhood meeting was held on January 5, 2010 whereby surrounding residents expressed concern regarding the disrepair of existing fencing, the buffer between the commercial and residential zoning, traffic, noise and litter control. Mr. Westphal addressed the concerns and the Planning Commission held a public hearing on January 12, 2010 with no individual present to speak in opposition. The Planning Commission unanimously amended the rezoning request to make approval subject to the following:

- ▶ The fence and landscaping that are listed in the Bill of Assurances must be repaired and maintained.
- ▶ Land use restrictions shall be finalized in the Bill of Assurances prior to being submitted to the Board of Directors for approval.

The Planning Commission approved the amended request by a vote of seven (7) in favor, zero (0) opposed and one (1) abstention ~ Stephens.

The following individuals were present to address the Board:

- Greg Hale, Vice-President for Club Development  
Fort Smith Juniors Volleyball Association  
3303 Fincastle Circle

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Re: Upon approval, the facility will be utilized for practices and will provide another location for the annual "*Battle of the Fort*" girls volleyball tournament, which brings in multiple volleyball teams from several surrounding states to Fort Smith. The organization wants to be a good neighbor and feels all concerns from surrounding residents have been addressed. Many surrounding merchants have conveyed their support of the proposed use of the property and the University of Arkansas Fort Smith has provided a letter of support; therefore, he recommended approval.

- Lee Dewey, Tournament Director  
Fort Smith Juniors Volleyball Association  
12722 Moonlight Drive

Re: Due to the number of teams participating in the "*Battle of the Fort*" tournament, multiple locations were required with the Association renting facilities in both Fort Smith and Van Buren. Approval of the proposed rezoning will allow another location within Fort Smith and alleged such will result in an estimated \$1.9 million economic impact on Fort Smith.

- Holly Jennings  
2508 Greenridge Drive

Re: Conveyed much appreciation to the Fort Smith Juniors Volleyball Association citing they are a "*wonderful organization*", of which her daughters have participated. She alleged commerce has drifted southward; therefore, she feels the proposed use will assist in sustaining commerce on Rogers Avenue.

Hutchings, seconded by Settle, moved adoption of Item No. 1A. Prior to the vote, Administrator Kelly noted that the existing Bill of Assurances has an expiration date of August 1, 2010 with a provision for a ten (10) year extension. Due to such, he questioned if the expiration date will remain the same and requested confirmation that only one extension is to be granted unless both parties agree, otherwise the restrictions expire.

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The Bill of Assurance is similar to a restrictive covenant thereby maintaining deed restrictions; therefore, if the property is sold, he questioned if the new owner must abide by the existing agreement and all land use restrictions.

City Attorney Jerry Canfield advised the proposed Bill of Assurance maintains the same expiration date and provision for a ten (10) year extension. After said extension, the Bill of Assurance will expire unless both parties formally agree to an additional extension. The proposed document is similar to a restrictive covenant; however, residents are responsible for the enforcement of violations via court action. The Bill of Assurances essentially grants authority to the City of Fort Smith to enforce violations. If the property is sold, the new must abide by all restrictions noted within the Bill of Assurance until its expiration.

The motion remaining on the floor and the members present all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-23-10.

Settle, seconded by Campbell, moved adoption of Item No. 1B. 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 for its readings and the members present all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given No. 4-10.

Item No. 2 was an ordinance amending the Master Land Use Plan map from Residential Detached and Commercial Neighborhood to Residential Attached and rezoning

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identified property and amending the zoning map from Residential-2-Single-Family-Duplex to Residential-Multi-Family-High-Density (RM-4) by classification (900 South Waldron Road)

Mr. Bailey briefed the Board on the item advising such is per the petition of Mark Rouse, agent for Marty Stouffer. The purpose of the rezoning and Master Land Use Plan amendment is to allow the subject location to be developed with a 56-unit apartment complex. The proposed development is the first multi-family construction under the recently adopted Unified Development Ordinance (UDO). The design contains a significant landscape buffer to the south and west property lines with fencing and specific landscaping with rod-iron fencing along the frontages to Waldron and Free Ferry Roads. Apartment entrances and parking will be located only within the inner portion of the complex. The applicant held a neighborhood meeting at the site on January 5, 2010 with two (2) adjacent property owners in attendance, who conveyed no objection to the proposed amendments. The Planning Commission held a public hearing on January 12, 2010 with Mr. Rouse speaking on behalf of the item, and Mr. Greg Shipley and Mr. Travis Brisendine of Morrison-Shipley Engineers presenting preliminary traffic and drainage information. Mr. John Alford, Mr. Les Evetts and Mr. Anthony Altman were also present to speak in opposition citing concerns relative to traffic, drainage and change in quality of life in the area. The Planning Commission approved the Master Land Use Plan amendment by a vote of seven (7) in favor, zero (0) opposed and one (1) abstention. The rezoning request was unanimously amended to make approval subject to the following:

- ▶ Approval of the Master Land Use Plan amendment from Residential Detached and Commercial Neighborhood to Residential Attached.

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- ▶ All construction must be built in accordance with the development plan, except as amended by the removal of the hot tub as required by Section 27-331 of the Unified Development Ordinance.
- ▶ Any changes to the development plan must be approved by the Planning Commission.
- ▶ Any development of this site will require a development plan approved by the Planning Commission.
- ▶ Drainage and traffic impact issues must meet the Fort Smith Design Standards.

The Planning Commission approved the amended request by a vote of seven (7) in favor, zero (0) opposed and one (1) abstention.

Since the public hearing, the City Engineering Department staff has reviewed issues relative to traffic and drainage. The City's traffic consultant, Traffic Engineering Consultants (TEC), has provided an analysis which indicates that upon approval, traffic at the intersection of Waldron and Free Ferry Roads will be impacted by only one-tenth of a second. Currently, runoff from the site drains to the west. Upon review of the drainage design, such will be rerouted directly to the Waldron Road storm sewer system to the east; therefore, no additional drainage will be experienced by the residents to the west.

The following individuals were present to address the Board:

- ▶ Bill Hanson, developer  
8508 Rosewood Drive
- ▶ Terry Burris, architect  
Little Rock, AR
- ▶ Greg Shipley, engineer  
Morrison-Shipley Engineers

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Re: Each reviewed multiple details of the proposed development advising such will contain five (5) separate buildings containing 56 apartments. The design includes fencing and all apartment entrances, parking and sanitation services will be located within the inner portion of the complex. All lighting will also be directed inward as not to affect the adjacent residents. Such is not government-assisted housing, but will be an up-scale development and marketed to professionals. Much confidence was conveyed that the concerns of the surrounding residents have been addressed and it is their desire to maintain the aesthetic integrity of the existing residential structures on Free Ferry Road. The development will not be sold upon completion; however, the developers will manage, operate and maintain the complex. With regard to drainage, no additional runoff will go west than already occurs as drainage will be routed to the east to the Waldron Road storm sewer system.

- ▶ Randall Viguet  
3603 Free Ferry Road

Re: Spoke in opposition to the rezoning citing the proposed density of the proposed development. She further conveyed her preference of a commercial development on the subject property.

- ▶ Robert Viguet  
3603 Free Ferry Road

Re: Also spoke in opposition to the proposed development alleging the developers intent is merely for financial gain and the project is not consistent with the surrounding land use.

- ▶ Rocky Walker, developer  
6808 Hunter Crossing

Re: Conveyed much confidence that the proposed development is the "*highest and best use*" of the subject property and communicated much assurance that the complex will be properly maintained. He further

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commented the intent of the development is not for financial gain as alleged, but to provide a very nice, high-quality development for the community.

Director Tyler expressed concern with additional drainage to going to the west and questioned if the drainage proposed within the development is adequate to prevent additional runoff.

Director of Engineering Stan Snodgrass advised that the site currently drains to the west and is then routed back to the east, under Waldron Road, to the storm sewer system. The proposed development includes a drainage design so the runoff will now go directly east to the Waldron Road storm sewer system.

Administrator Kelly advised the Sanitation Department has indicated the development will require at least two (2), eight (8) cubic yard dumpsters; however, dumpster size was not noted within the plan. Due to such, he questioned the number of parking spaces and if adequate parking will be available if some parking must be sacrificed to accommodate larger dumpsters.

Mr. Burris, architect, advised the development maintains the required 100 parking spaces and if larger dumpsters are required, such can be accommodated.

Good, seconded by Maddox, 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 for its readings and the members present all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given No. 5-10.

The Consent Agenda (Item No. 3) was introduced for consideration, the items being as follows:

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- A. Resolution giving recognition that the Old Railroad Trail be designated in memory of Dan Reikes
- B. Resolution authorizing Change Order Number One with The Burgess Company, Inc. for construction of the Sanitary Sewer Rehabilitation Sub-Basins 22-2 and 22-4 (\$23,599.20)
- C. Resolution authorizing final payment to The Burgess Company, Inc. for construction of the Sanitary Sewer Rehabilitation Sub-Basins 22-2 and 22-4 (\$127,610.45)
- D. Resolution authorizing change order with Branco Enterprises, Inc. for the Sunnymede Wet Weather Flow Management Project (\$52,761.00)
- E. Resolution authorizing additional work with Bauman Instrument Corporation for the Wastewater SCADA System Replacement (\$56,201.00)
- F. Resolution authorizing the Mayor to execute an agreement with Atkins Engineering, Inc. for the design of the Hurricane Creek Water Line Relocation (\$35,020.00)
- G. Resolution accepting the bid of and authorizing the Mayor to execute a contract with T-N-T, Inc. for the Hurricane Creek Water Line Relocation (\$378,021.00)

Regarding Item No. 3B, Director Good expressed concern with the amount of fill required within the change order. He further noted that no pictures were included within the item information; therefore, he questioned if such were available.

Director of Utilities Steve Parke distributed pictures to the Mayor and Board, and noted that a specific type of fill was required around the manhole covers which was unforeseen, but required.

With regard to Item No. 3D, Director Settle requested a brief explanation of the item.

Mr. Parke advised the project was bid prior to OG&E completing the design of their facilities; therefore, the elevation of their pad mounted transformers had to be raised to an

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elevation above the 100 year flood plain to assure uninterrupted electrical service as required by the ADEQ.

Hutchings, seconded by Maddox, moved adoption of all consent agenda items. The members present all voted affirmatively, with the exception of Director Settle who voted "no" on Item No. 3D. The Mayor declared the motion carried and the resolutions were adopted and numbered R-24-10 through R-30-10 respectively.

Mayor Baker opened the Directors Forum with the following wishing to comment:

▶ Director Tyler

Re: Regarding an upcoming meeting with the Advertising and Promotions Commission and the Convention Center Commission, he recommended the "Quality of Place" project list include Fort Smith park projects.

Mayor Baker noted that a date for the aforementioned meeting has not been determined.

▶ Director Settle

Re: 1. Regarding the aquatic facility at Ben Geren Park which was presented by Sebastian County at the January 26, 2010 study session, he recommended the City Administrator work with the Sebastian County Judge to determine what would be required by the City to proceed with the project.

2. Advised the Ben Geren Master Plan is currently being developed; therefore, upon its completion, he requested a joint study session with the Sebastian County Quorum Court be scheduled to review said plan.

The Mayor offered the floor to Administrator Kelly for the City Administrator's Report whereby he advised the trip to Washington, D.C. to lobby for "Quality of Place" funding is

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scheduled for February 23rd through 25th. Since multiple directors will be traveling to Washington, D.C., the study session scheduled for February 23rd has been cancelled.

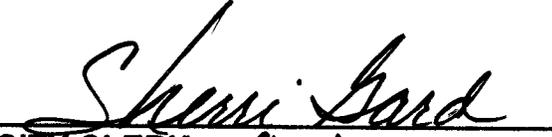
There being no further business to come before the Board, Maddox moved that the meeting adjourn. The motion was seconded by Good, and the members present all voting aye, the Mayor declared the motion carried, and the meeting stood adjourned.

APPROVED:

A handwritten signature in cursive script that reads "Ray Baker". The signature is written in black ink and is positioned above a horizontal line.

MAYOR

ATTEST:

A handwritten signature in cursive script that reads "Sherril Good". The signature is written in black ink and is positioned above a horizontal line.

CITY CLERK *Acting*