MINUTES OF BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ MARCH 16, 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 Director Don Hutchings, followed by the Pledge of Allegiance. On roll call the following members of the Board were present: Directors Steve Tyler, Andre' Good, Don Hutchings, and Kevin Settle; absent - Directors Bill Maddox, Gary Campbell and Cole Goodman. A quorum was declared present. (Director Goodman arrived during discussion of Item No. 2A & 2B.)

Mayor Baker conveyed the following comments:

- Expressed much appreciation to District Engineer Joe Shipman with the Arkansas Highway and Transportation Department for cleaning the areas noted below:

  1. Overpass located at I-540 and Rogers Avenue
     Appreciation also given to Director of Operation Bob Wright.
  2. Underpass at the I-540 bridge over Free Ferry Road
  3. Highway 64/Garrison Avenue bridge
  4. I-540 bridge in the South Boston area

- Extended much gratitude to citizens who responded to his comments conveyed at the March 2, 2010 regular meeting, as well as to Police Chief Kevin Lindsey and the Police Department for their efforts to address the drug problem in the City.

- Read an excerpt from a recent letter from the United States Immigration Service which again declines the request of the Fort Smith Police Department to participate in the I.C.E. 287(g) Program, which provides training and authority to enforce immigration issues.

- Due to recent allegations that the Board of Directors has increased taxes in Fort Smith, he proclaimed that such allegations are false and clarified that each City tax has been approved by the voters of Fort Smith. He also read a memo from Director of Finance Kara Bushkuhl confirming such.

The minutes of the March 2, 2010 regular meeting were presented for approval. Good, seconded by Settle, moved approval of the minutes as written. The members present all voting aye, the Mayor declared the motion carried.

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 individuals present to address the Board:

- Eric Arthur
  815 North "B" Street

  Re: Expressed discontent with the comments of Mayor Baker at the March 2, 2010 regular meeting.

- Louis Vincent
  2001 G.M.C.

  Re: Reiterated previous recommendations that companies who hire undocumented workers should be held accountable.

- Tim Willhite
  Van Buren, AR

  Re: Expressed discontent with employers hiring illegal immigrants and alleged such are doing so to avoid paying employment taxes.

Police Chief Kevin Lindsey advised the City of Fort Smith Police Department does not maintain the authority to arbitrarily verify individuals immigration status. At the request of Immigration and Customs Enforcement (ICE), the enforcement process is initiated only if an individual is arrested and cannot provide adequate documentation.

- Tammy Trouillon
  8000 Holly Avenue

  Re: Reiterated her previous request for an ordinance establishing a fence height requirement of six (6) feet for owners of dangerous/vicious dogs. She further alleged Animal Control is not enforcing existing regulations.

- Wilbur Whitmore
  17348 Coles Cove, Spiro, OK

  Re: Advised he owns property at 3015 North "I" Street and alleged individuals are dumping illegally in the alleyway behind his property. He presented pictures of the alleged dumping and spoke in opposition to the City requiring him to clean the area.

- Paul Speer
  27910 Highway 22
  Charleston, AR

  Re: Spoke in opposition to additional taxes in Fort Smith and demanded the City cease wasteful spending.

- John Hamel
  3301 Old Greenwood Road

  Re: Alleged Mayor Baker expends $3,000 per week and inquired who monitors how the budgeted funds are utilized. He urged the Mayor and Board to attract new business to Fort Smith and reduce existing taxes.

- Jerry Hamel
  4618 Wheeler Avenue

Re: Claimed taxes have been increased in Fort Smith in the past ten (10) years and urged the Mayor to resign.

- Jesse Fenwick
  8900 Bryn Mawr

  Re: Played a guitar and serenaded the Board with a song regarding taxes.

Mayor Baker announced that Item No. 2 would be the first item for consideration, which consisted of the following resolutions relative to a contract for the Lake Shepherd Springs Project:

A. Resolution making determinations regarding the contract with Southern Building Services, Inc. with reference to Lake Shepherd Springs Project No. 99-01-C15A, assessing liquidated damages under the provisions of the contract and authorizing the City Administrator and City Attorney to take all actions necessary to conclude the contract

B. Resolution authorizing the City Administrator and City Attorney to extend settlement offer

Administrator Dennis Kelly announced that the City received notification of an impending lawsuit regarding the project; therefore, he requested City Attorney Jerry Canfield brief the Board on the items.

Mr. Canfield advised that Item No. 2A authorizes the conclusion of the contract and assesses liquidated damages for the project. The City of Fort Smith has extended settlement offers to Southern Building Services (SBS) regarding contract time and amount; however, such offers have been rejected by SBS. No counteroffer has been received; therefore, the City should now proceed to close out the project according to the terms of the contract.

Item No. 2B extends the last compromised settlement offer for SBS's consideration

through March 31, 2010. If SBS again rejects the offer, resolution of the matter will be accomplished via litigation.

Upon approval of Item No. 2A, Director Good questioned the financial obligation of the City.

Mr. Canfield advised that upon approval, the City would have no financial obligation to the contractor. The resolution assesses liquidated damages under the provisions of the contract thereby creating a balance due to the City by the contractor. The resolution also authorizes the City Administrator and City Attorney to take any and all necessary action to collect said sums owed to the City. Such authority was included within the resolution in anticipation of litigation if the matter cannot be resolved. As previously stated by Mr. Kelly, notice of litigation has now been received; therefore, he recommended approval.

Director Settle questioned if any legal ramification would ensue if the Board adopted only Item No. 2B and postponed consideration of Item No. 2A until after the March 31 deadline for acceptance of the compromise settlement.

Mr. Canfield advised of no legal ramification; however, he again recommended approval of Item No. 2A to clearly state the City's official position on the matter.

At this point, Director Goodman arrived at the meeting.

Good, seconded by Tyler, moved adoption of Item No. 2B. Prior to the vote, Administrator Kelly reiterated that litigation has been initiated; therefore, he urged the Board to carefully consider the recommendations of the City Attorney.

Upon approval of Item No. 2A, Director Good questioned the total amount due to the City by the contractor.

Mr. Canfield noted that if the Board adopts only Item No. 2A, the contract amount would be adjusted by $107,148.78 and SBS would owe the City of Fort Smith said amount.

Director Hutchings simply conveyed his intent to vote in favor of Item No. 2A.

The motion remaining on the floor for adoption of Item No. 2B, the members voted as follows: ayes - Tyler, Good, Settle and Goodman; nays - Hutchings. The Mayor declared the motion carried and the resolution was adopted and given No. R-45-10.

There was brief discussion regarding the necessity of adopting Item No. 2A whereby Mr. Canfield again recommended approval.

Hutchings, seconded by Tyler, moved adoption of Item No. 2A. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-44-10.

Mayor Baker announced that Item No. 1 would now be considered, the item being an ordinance adopting amendments to the Fort Smith Flood Damage Prevention Ordinance

Director of Engineering Stan Snodgrass briefed the Board on the item advising the Federal Emergency Management Agency (FEMA) recently updated the Flood Insurance Rate Maps and Study for the City to a digital format. The maps were updated by county with Sebastian County's map, encompassing the city of Fort Smith, was finalized in January 2010 and maintains an effective date of May 20, 2010. In order to comply with the National Flood Insurance Program regulations, the City must amend the existing Flood Damage Prevention Ordinance to coincide with the updated maps and study. Failure to

adopt the proposed ordinance by May 20, 2010 would result in suspension of the City from the National Flood Insurance Program and no flood insurance would be available to property owners within the City. Also, property located in the FEMA 100 year floodplain would be ineligible for most mortgage loans and the City would be ineligible for certain disaster assistance and mitigation funds.

Director Good extended much appreciation to Mr. Snodgrass for including a provision requiring an elevation of one foot or more above the base flood level.

Settle, seconded by Good, 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. Hutchings, seconded by Settle, moved adoption of Section 6 the emergency clause. The members present all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and given No. 8-10.

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

A. Resolution accepting completion of and authorizing final payment for the construction of Grand Avenue Overlay, Phase 2, Project No. 09-00-B ($27,552.25)

B. Resolution authorizing a change order for the construction of Car-Mart Box Culvert Replacement, Project No. 09-06-B ($15,804.18)

C. Resolution accepting completion of and authorizing final payment for the construction of Car-Mart Box Culvert Replacement, Project No. 09-06-B ($69,571.10)

D. Resolution of the Board of Directors of the City of Fort Smith authorizing the purchase of computer equipment and software for the implementation of the Virtual Infrastructure Project of the Fort Smith Police Department ($116,208.08)

E. Resolution of the Board of Directors of the City of Fort smith expressing interest to participate in Google's "Fiber for Communities" Project and endorsing the response to a request for information issued by Google, Inc.

F. Resolution authorizing partial payment to Branco Enterprises, Inc. for construction of the Phase II "P' Street Wastewater Treatment Plant Wet Weather Improvements - Schedule 2 ($871,759.81)

G. Resolution authorizing partial payment to Crossland Heavy Contractors for construction of the Lake Fort Smith Water Treatment Plant - Contract 3 ($1,414,861.81)

H. Resolution authorizing additional work with Forsgren, Inc. for the Wet Weather Line Capacity Improvements, South "O" Street ($259,646.00)

I. Resolution accepting the bid of and authorizing the Mayor to execute a contract with T-N-T, Inc. for the Transmission Line Clearing and Location Project ($77,871.00)

With regard to Item No. 3G, Mayor Baker requested a brief progress report on the project. The Mountainburg School maintains an evacuation plan in the event of a break in the dam; therefore, he questioned if the City maintains a plan as well.

Director of Utilities Steve Parke provided a detailed explanation of the contracts advising the water plant is both being expanded and upgraded. With regard to student evacuation, schools must maintain a crisis plan for such an event and confirmed that the City of Fort Smith also maintains an Action Plan.

Settle, seconded by Tyler, moved adoption of all consent agenda items. The

members present all voting affirmatively, the Mayor declared the motion carried and the resolutions were adopted and numbered R-46-10 through R-54-10 respectively.

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

- Director Settle

  Re: 1. Due to the numerous utility projects ongoing and so the Board may view the progress, he requested a tour of project locations be scheduled in April or May.

  2. Regarding the recent discussion relative to the City's employee health plan, he recommended staff prepare a survey and present to employees to determine their preference.

- Director Good

  Re: Advised of his attendance, as well as Administrator Kelly and Director Settle, at a neighborhood meeting held on March 15 and extended much appreciation to Director of Information and Technology Services Russell Gibson for his impressive presentation of the City's GIS system.

The Mayor offered the floor to Administrator Kelly for the City Administrator's Report; however, Mr. Kelly had no announcements.

An executive session was held and after reconvening, the Mayor announced the following appointment nominations:

CONVENTION CENTER COMMISSION
Salvatore Salamone
(to fill the unexpired term of Larry Schwartz who resigned)
Term expires August 31, 2015

HOUSING ASSISTANCE BOARD
Hazel Brown (reappointment)
Term expires April 30, 2012

PLANNING COMMISSION
Steve Griffin (reappointment)
Jennifer Canada
S. Walton Maurras
Terms expire April 30, 2013

Jennifer Parks
(to fill the unexpired term of Nolan Storm who resigned)
Term expires April 20, 2012

SEBASTIAN COUNTY REGIONAL SOLID WASTE MANAGEMENT BOARD
Bruce D. King
(to fill the unexpired term of Randy Hall who resigned)
Term expires January 21, 2011

Hutchings, seconded by Tyler, moved acceptance of the appointment nominations. The members present 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 Hutchings and the members present all voting aye, the Mayor declared the motion carried, and the meeting stood adjourned.

APPROVED:

MAYOR

ATTEST:

CITY CLERK Acting