

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

**TUESDAY ~ APRIL 6, 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, Bill Maddox, Gary Campbell and Kevin Settle; absent - Director Cole Goodman.

Mayor Baker, the Board, and City Administration presented the "Good Neighbor Awards" along with a red rose and certificate to the following citizens of Fort Smith for helping to make their neighborhoods and the community a better place in which to live:

- Floyd Zornes
- Henry and Ozella Bell
- Richard Dickinson
- Richard and Frances Hobbs
- Volena Cichinski
- P. J. Wessell (*unable to attend*)

Mayor Baker announced that the citizens forum is no longer listed on the agenda and that such is due to the recent discovery that the Code of Ordinances does not provide for citizen comments on items not listed on the agenda, unless the issue is first submitted to the City Administrator. The existing meeting procedures are currently being reviewed for necessary amendments and urged the citizens forum be included. The Mayor noted the City of Fort Smith operates under the City Administrator Form of Government and further reviewed several aspects of such.

The minutes of the March 16, 2010 regular meeting were presented for approval. Settle, seconded by Maddox, 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.

Mayor Baker announced this was the time and place set for a public hearing regarding the Community Development Block Grant Budget, the HOME Investment Partnership Act Program Budget, submission of the Program Year 2010 Action Plan and for other purposes. Notice of the public hearing had been duly published as required by law. Following the public hearing, consideration of a resolution authorizing same would be given (Item No.1).

Director of Community Development Matt Jennings briefed the Board on the item as discussed at the March 23, 2010 study session. The proposed resolution authorizes funding to various organizations as reviewed and recommended by the Community Development Advisory Committee (CDAC).

There being no individuals present to speak, the Mayor closed the public hearing.

Hutchings, seconded by Campbell, moved adoption of the resolution. The members present all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-55-10.

Item No. 2 consisted of the following items relative to an appeal regarding Planning Commission approval of a conditional use request located at 5401 Kinkead Avenue (*appeal filed by Don A. Smith, agent for Collier & Nancy Wenderoth*)

- A. Resolution affirming the action of the Planning Commission approving Conditional Use #6-3-10 located at 5401 Kinkead Avenue

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- B. Resolution denying Conditional Use #6-3-10 for the construction of a parking lot, athletic field and nature park area for the University of Arkansas at Fort Smith located at 5401 Kinkead Avenue

Director of Development Services Wally Bailey briefed the Board on the item advising such per the conditional use request by Travis Brisendine, agent for the University of Arkansas Fort Smith (UAFS). The purpose of the request is for the development of a parking lot, athletic field and nature park area for University of Arkansas at Fort Smith students. Although UAFS does not maintain a soccer team, the athletic field will be built to NCAA soccer field standards. The Planning Commission reviewed the request on March 9, 2010 with two (2) individuals present to speak in opposition citing concerns relative to traffic, noise, lighting, spillover parking and drainage. The Planning Commission approved the conditional use request by a vote of eight (8) in favor and zero (0) opposed subject to the following:

- ▶ Construction of a fence along the north and east sides of the property.
- ▶ Landscaping and design approved as per the plan submitted on February 26, 2010.
- ▶ Add perimeter landscaping in accordance with Section 27-602-3 of the Unified Development Ordinance along North 56<sup>th</sup> Street.
- ▶ Installation of the lighting system as submitted.
- ▶ If the field is ever to be used as a NCAA soccer field, the request would have to come back to the Planning Commission for review.
- ▶ Review and approval of the storm water plans by the City Engineering Department.

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- ▶ The construction of a future permanent restroom located west of the intramural field and adjacent to the accessible parking spaces as approved as part of the Master Plan.

Mr. Don Smith, attorney for adjacent property owners Collier and Nancy Wenderoth, filed an appeal of the approval with the City Clerk's Office on March 19, 2010. Item No. 2A will sustain the decision of the Planning Commission and allow the development to proceed. Item No. 2B will overturn the Planning Commission approval and deny the conditional use request.

The following individuals were present to address the Board:

- Travis Brisendine, agent  
Morrison Shipley Engineers  
P.O. Box 10064  
Fort Smith, AR

Re: Spoke in favor of the conditional use request advising the proposed development will consist of a 375 space parking lot, an intramural field and nature area. He reviewed several aspects of the project and recommended approval.

- Dr. Charles Beran, Chancellor  
University of Arkansas Fort Smith

Re: Addressed concerns noted within the appeal document citing each have been addressed. All necessary approvals have been obtained; therefore, he recommended approval. The school anticipates approximately 8,000 students for the fall semester; therefore, the proposed development will provide much needed additional parking and recreational area, especially for the estimated 900 students residing on campus.

Director Hutchings inquired if the school would entertain a curfew for use of the athletic field.

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Dr. Beran advised the matter has not been addressed to date; however, such could be considered and if so, input from the surrounding property owners would be requested to determine the most suitable time.

- Don A. Smith, attorney  
P.O. Box 10205  
Fort Smith, AR

Re: Clarified that the appeal is not in opposition to the proposed development, but merely concern with the affect such will have on his clients adjoining property. He expressed concern that only a draft traffic study was presented to the Planning Commission at the time of their approval, and that no final design for water, sewer or drainage facilities have been presented. He recommended approval of Item No. 2B which would deny the conditional use request. If the Board chooses to consider Item No. 2A, he recommended the matter be referred back to the Planning Commission for a more thorough review with the inclusion of the final traffic analysis and water, sewer and drainage design.

Director Good requested confirmation that only draft forms of the traffic study and infrastructure plans were reviewed by the Planning Commission prior to approval.

Mr. Bailey confirmed that the traffic study was presented to the Planning Commission in draft form prior to the public hearing; however, the final traffic analysis that contained only minimal changes was presented to the Planning Commission the day of the meeting. Final water, sewer and drainage plans are seldom presented during consideration by the Planning Commission. Such are typically submitted and reviewed during the development plan review process and must be approved by all respective departments before development may proceed and a permit is issued.

Director Campbell questioned if additional drainage from the proposed development

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will cross the appellant's property and the affect of the athletic field lighting on the surrounding residences.

Regarding the lighting issue, Mr. Jeff Evans of Planning Design Group advised the selected lighting for the athletic field is designed to reduce lighting spillover onto adjacent properties. Although lighting can be seen in the distance, no affect will be experienced at 150 feet from the light location.

With regard to drainage, Mr. Brisendine noted the nature park area contains water features, which will also be utilized as retention areas. Such will reduce the flow of storm water and will not allow any additional water to flow onto the adjoining the property.

Hutchings, seconded by Tyler, moved adoption of Item No. 2A to uphold the Planning Commission's approval of the conditional use permit. The members present all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-56-10.

Item No. 3 was an ordinance rezoning identified property and amending the zoning map from Extraterritorial Jurisdiction Open-1 to Extraterritorial Jurisdiction Light Industrial by classification *(6620 Old Harrison Lane)*

Mr. Bailey briefed the Board on the item advising such is per the request of Candice Settle, agent for the property owner. The purpose of the rezoning request is to increase interest in the property by potential purchasers. The property is located in the Extraterritorial Jurisdiction (ETJ) area, contains approximately one (1) acre and is located on Highway 271 South. Such is in an existing industrial park that is classified as Industrial Light on the ETJ Master Land Use Plan; however, the requested zone change is in

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conformity with the current land use. As required by the Unified Development Ordinance, a neighborhood meeting was held on February 25, 2010. The Planning Commission held a public hearing on March 9, 2010 with no individual present to speak in opposition at either meeting. The Planning Commission approved the rezoning by a vote of eight (8) in favor and zero (0) opposed.

Due to the property being located within the ETJ area and not technically within the city limits, Director Maddox recommended staff strongly encourage property owners requesting a zone change in the ETJ area to request annexation of their property instead.

Mr. Bailey confirmed that staff currently inquires about possible annexation when warranted; however, the subject property does not qualify for annexation as such is not contiguous to the existing boundaries of the city.

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 and the ordinance was adopted and given No. 9-10.

Item No. 4 was an ordinance rezoning identified property and amending the zoning map from Unzoned to Residential Single Family High Density by classification (7501 Wells Lake Road)

Mr. Bailey briefed the Board on the item advising such is per the request of Kim Hesse, agent for Lend A Hand, Inc. The purpose of the rezoning is to allow the construction of a 184 lot mixed-income, single family residential development entitled

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Fishers Way and is located in Chaffee Crossing. The requested zoning is compatible with the existing land use classification and the Fort Chaffee Redevelopment Authority (FCRA) has submitted a letter of endorsement for the proposed development. As required by the Unified Development Ordinance, a neighborhood meeting was held on March 2, 2010. The Planning Commission held a public hearing on March 9, 2010 with no individual present to speak in opposition. The Planning Commission approved the rezoning by a vote of eight (8) in favor and zero (0) opposed.

Director Settle expressed concern that the residential development is located in close proximity to large industrial area; therefore, he questioned if the proposed zoning is in compliance with the Unified Development Ordinance.

Mr. Bailey noted that the City of Fort Smith Master Land Use Plan identifies the area for residential development and the proposed zoning is in compliance with such. The FCRA has also reviewed the proposed development, which is compatible with their intended use of the area as well.

Director Campbell also expressed concern with the close proximity to industrial facilities. While Mars Petcare was considering their current location, they specifically questioned how close residential development would be located to their site. Due to such, he questioned the distance between the Mars Petcare facility and proposed development.

Mr. Randy Coleman, Vice President for Mickle Wagner Coleman Engineers and engineer for the FCRA, advised that officials of Mars Petcare and Graphic Packaging are aware of the proposed development and anticipated land use of the area. He further noted that the proposed development is located approximately one-half of a mile from the

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Mars Petcare facility.

Director Maddox questioned the number of accesses into the development from Wells Lake Road.

Mr. Bailey advised there will be three (3) accesses into the development from Wells Lake Road and also clarified that no driveways will be located on said street.

At the request of Director Settle, the following individual was present to address the Board:

- Reverend Ulysses Washington  
Lend A Hand, Inc.

Re: Simply noted the development has been anticipated for quite some time.

Good, seconded by Tyler, 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. 10-10.

Item No. 5 was an ordinance amending the 2009 Unified Development Ordinance of the City of Fort Smith

Mr. Bailey briefed the Board on the item advising the Unified Development Ordinance was originally adopted in April 2009; however, it was noted after its adoption that amendments were to be expected as the new code was administered and implemented. The proposed amendments correct errors, inadvertent omissions and items that require immediate correction. The Planning Commission reviewed and voted to

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recommend the proposed amendments to the Board of Directors for consideration.

Campbell, seconded by Settle, 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. Settle, seconded by Hutchings, moved adoption of Section 3 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. 11-10.

Item No. 6 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 *(823 North 21<sup>st</sup> Street - rear garage only and 619 North 36<sup>th</sup> Street and rear building)*

Mr. Bailey briefed the Board on the item advising the structures have been determined to be unsafe and detrimental to be public welfare; therefore, he recommended approval.

Upon demolition of any structure by the City, Director Maddox questioned if a lien is placed on the property.

Mr. Bailey confirmed such and noted that the City also forwards a statement to the property owner for reimbursement of the demolition expense. If the property owner allows the account to become delinquent, such is included within an annual appeal process and could eventually be certified to the Sebastian County Collector for collection on their

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property tax statement the following year. The lien remains in tact until the amount is paid in full.

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. Settle, seconded by Hutchings, moved adoption of Section 5 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. 12-10.

The Consent Agenda (Item No. 7) was introduced for consideration, the items being as follows:

- A. Ordinance to release a maintenance and public utility easement located in Clayton Heights, an addition to the City of Fort Smith, Sebastian County, Arkansas
- B. Resolution granting a temporary revocable license for the placement of a landscaped island and rock column in a public right-of-way and authorizing Mayor to execute agreement (*Reata Subdivision*)
- C. Resolution authorizing execution of lease agreement with Webster University for space on the lower level of the convention center annex
- D. Resolution authorizing filing of annexation petition with Sebastian County Court (*Landfill property and FCRA property*)
- E. Resolution establishing a Special Ad Hoc Committee to examine the feasibility of a restaurant tax and to make recommendations related to operation of the Fort Smith Convention Center ~ *Requested by Director Goodman at the March 23, 2010 study session* ~

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- F. Resolution accepting bids and authorizing the Mayor to enter into contracts for the construction of Phase 5 at the City of Fort Smith Landfill (\$1,996,861.15)
- G. Resolution authorizing the Mayor to execute an agreement with Terracon Consultants, Inc. for groundwater monitoring services at the City of Fort Smith Landfill (\$185,630.00)
- H. Resolution authorizing Change Order Number Two with Turn Key Construction Management, Inc. for the construction of the Fort Smith Public Transit transfer station located at 200 Wheeler Avenue (*time extension only*)
- I. Resolution accepting the project as complete and authorizing final pay to Turn Key Construction Management, Inc. for the transfer station located at 200 Wheeler Avenue (\$62,285.30)
- J. Ordinance authorizing the use of Federal Asset Forfeiture Funds to increase the total authorized sworn officer positions to one hundred and sixty eight (168) for the Fort Smith Police Department (\$58,782.49)
- K. Ordinance authorizing the purchase of a video surveillance and security access system from AOS for use by the Fort Smith Police Department (\$91,846.75)
- L. Ordinance authorizing the purchase of an evidence storage system from Southwest Solutions Group for use by the Fort Smith Police Department (\$41,504.54)
- M. Resolution authorizing the Mayor to execute a location and access agreement and addendum with Base Productions, Inc.
- N. Resolution authorizing Change Order Number Two with The Havens Construction Company, Inc. for the Sunnymede Relief Sanitary Sewer Line Improvements (\$15,522.95)
- O. Resolution accepting the project as complete and authorizing final payment to The Havens Construction Company, Inc. for the Sunnymede Relief Sanitary Sewer Line Improvements (\$202,098.54)
- P. Resolution authorizing partial payment to Branco Enterprises, Inc. for construction of the Phase II "P" Street Wastewater

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Treatment Plant Wet Weather Improvements - Schedule 2  
(\$956,954.34)

- Q. Resolution authorizing the Mayor to execute an agreement with RJN Group, Inc. for providing engineering services associated with wastewater collection system flow monitoring service (\$77,859.00)
- R. Resolution authorizing partial payment to Crossland Heavy Contractors, Inc. for construction of the Lake Fort Smith Water Treatment Plant - Contract 3 (\$1,860,217.70)

Regarding Item No. 7K, Director Settle inquired if the old security system could be utilized by another department. If so, he recommended such be initiated.

Police Chief Kevin Lindsey advised the old system includes twelve (12) cameras that could be relocated; however, a new control board would be required. The Police Department is currently renting a control board for \$600 per month.

With regard to Item No. 7M, Director Settle questioned if the city attorney has reviewed the contract.

Chief Lindsey confirmed that the city attorney was "intimately" involved in the construction of the contract.

Campbell, seconded by Settle, moved adoption of all consent agenda items. The members present all voting affirmatively, the Mayor declared the motion carried and the ordinances and resolutions were adopted and with the ordinances numbered 13-10 through 16-10 and the resolutions numbered R-57-10 through R-70-10 respectively.

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

- ▶ Director Hutchings

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**Re:** Regarding the Mitsubishi celebration event held earlier at the convention center, he noted the attendance of the governor and various legislative representatives. He further expressed much appreciation to all those who coordinated the event.

▶ **Director Good**

**Re:** 1. Due to the citizens forum no longer being included on the regular meeting agendas, he clarified that citizens may still contact any member of the Board of Directors if they so desire.

2. Extended a “welcome back” to Director of Parks and Recreation Mike Alsup, who recently had surgery and was out of the office for several weeks.

3. Noted that Ben and Barbara Hardcastle were not in attendance; therefore, he simply conveyed a “get well soon” to Mr. Hardcastle.

▶ **Director Settle**

**Re:** Simply reminded all residents of Fort Smith and the river valley to complete their census forms.

▶ **Director Tyler**

**Re:** Requested a study session be scheduled to discuss the employment of a grant writer.

The Mayor offered the floor to Administrator Kelly for the City Administrator’s Report whereby Mr. Kelly conveyed much appreciation to the Board of Directors and city staff who attended the Mitsubishi celebration.

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

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**SPECIAL AD HOC COMMITTEE**

George McGill  
Tom Calderera  
George Mochner  
Steve Williams  
Lavon Morton  
Kevin Moran  
Craig Rivaldo  
Ben Shipley

Campbell, seconded by Maddox, 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, Maddox moved that the meeting adjourn. The motion was seconded by Settle and the members present all voting aye, the Mayor declared the motion carried, and the meeting stood adjourned.

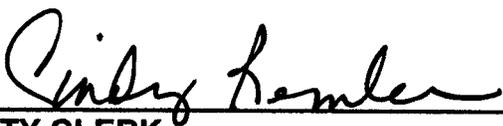
**APPROVED:**

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**MAYOR**

**ATTEST:**

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**CITY CLERK**