MINUTES OF BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ JULY 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, Kevin Settle, Gary Campbell, and Cole Goodman. A quorum was declared present.

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

The minutes of the June 15, 2010 regular meeting were presented for approval. Settle, seconded by Campbell, moved approval of the minutes as written. The members 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.

Mayor Baker called upon Director of Finance Kara Bushkuhl for presentation of the 2009 Audit.

Ms. Bushkuhl extended appreciation to members of her staff, the audit advisory committee, and to Joel Haaser and Don DeSoto of the auditing firm Baird Kurtz & Dobson (BKD). She advised that the audit received a "clean opinion" from BKD. She reviewed the audit report and topics of discussion from the audit committee's June 24 meeting:

- **General Fund declining balance**
  Declined by $2.2 million between 2008 and 2009. A significant

portion of the decrease was due to the decline in county sales tax revenue (9.4%) and the decrease in franchise fees (18.7%) between years.

- **Water & Sewer Fund unrestricted net asset (deficit) and bond covenant noncompliance**
  This fund continues to report a deficit balance in unrestricted net assets. The deficit for 2009 is $9.2 million. Additionally, in 2009, the water and sewer system produced net revenues of only 104% of current year debt service. The bond covenants require that rates be sufficient to produce revenues of at least 110% of the current year's debt service on all system bonds (revenue bonds). The City has contracted with Burns & McDonnell for a water and sewer rate study that is due to be completed later this summer.

- **Police and Fire Pension Plan contribution rate increases and future funding plans**
  For the past several years, the City's contribution rates to the police and fire retirement plan have continued to rise. Benefit increases approved by the state legislature have impacted the contribution rates. The audit advisory committee is reviewing this situation and will provide a report to the Board in the near future.

- **Other post employment benefit (OPEB) liabilities**
  The application of OPEB accounting standards was made for the second year in the 2009 CAFR. The OPEB liabilities increased from $2.3 million in 2008 to $3.5 million in 2009. The audit advisory committee plans to prepare a report about future funding so the Board may respond to the needs of the plan.

Ms. Bushkuhl then called upon Ken Pyle, chairman of the audit advisory committee, for comments. Mr. Pyle also extended appreciation to BKD, and City staff involved in the audit. He spoke to the issues as outlined above by Ms. Bushkuhl, stating specifically that water and sewer rates are not sufficient to provide operations and capital improvements. He also spoke regarding staffing level in the finance department, advising that it continues to operate at the same level it did 20 years ago. The audit advisory committee also

recommends that during preparation of the 2011 budget, the Board consider the issue and ways to improve the staffing level in the finance department.

Item No. 1 as an ordinance amending the master land use plan and rezoning identified property and amending the zoning map ~ 12200 Hwy. 71 South from Not Zoned to Commercial Moderate (C-3) by Extension.

Wally Bailey, Director of Development Services, briefed the members on the item. The purpose of the requests is to facilitate the construction of a restaurant with a beer garden on the proposed Didier Commercial Park, Lot 2 property. A conditional use/development plan was also reviewed by the Planning Commission. The development plan included a review of the outdoor dining issue as well as other site related issues. An issue related to the development plan concerned the proper and safe location of driveway. The developer has agreed to relocate the driveway to the median cut.

There were no persons present to speak in opposition at the Planning Commission meeting. The Planning Commission recommended approval of both the master land use plan amendment and the rezoning request by a vote of 9 in favor and 0 opposed.

Hutchings, 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 all voting affirmatively, the Mayor declared the motion carried, and the ordinance was adopted and given No. 29-10.

Item No. 2 was an ordinance amending the master land use plan map and rezoning identified property and amending the zoning map ~ 2622 North 17th Street from Residential Detached & Mixed Use Employment to Industry ~

Wally Bailey, Director of Development Services, briefed the members on the item. The purpose of the requests is to allow the applicant to operate a vehicle storage yard to be used in conjunction with his existing auto body shop business located on North "O" Street. The applicant proposes to use the property for storage of vehicles and parts only and will not be conducting a business there. At the Planning Commission meeting, there was an issue raised about illegal parking, and staff advised that the Planning and/or Police Departments should be contacted when a problem occurs. The Planning Commission recommended approval of both the master land use plan amendment and rezoning request by a vote of 8 in favor and 1 opposed.

The following individual was present to address the item:

- Eric Arthur
  815 North B Street

  He questioned if EPA had been consulted regarding soil contamination by the salvage yard as such might affect development of property for other use in the future.

  Mr. Bailey responded that EPA had not been consulted; this request has been reviewed as a land use item only. There are already several heavy industrial uses in the immediate area.

There was brief discussion, and following, 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 all voting affirmatively, the Mayor declared the motion carried, and the ordinance was adopted and given No. 30-10.

Item No. 3 was an ordinance amending Chapter 20, Article II of the Fort Smith Code of Ordinances regulating alarm systems.

Police Chief Kevin Lindsey briefed the members on the item as such was reviewed at the June 22, 2010 study session, and outlined the following revisions to the ordinance that were suggested by the Board at that time:

- Change the number of false alarms within a calendar year reaching the level of a fine from the 7th and subsequent to the 4th and subsequent; and instead of an incremental fine schedule of $25 - $100, implement a constant fine of $100 per false alarm.
- Minor wording adjustments were proposed that reflect an 'alarm user' versus 'alarm customer' throughout the ordinance.
- A section was proposed outlining the responsibilities of the alarm user. Specifically, a reasonable effort to have a person available at an alarm site within 30 minutes.
- In addition, definitions were added for 'alarm user' and 'responsible individual.'

According to police records, from 2007 to early March 2010, the police department responded to 18,404 alarm calls within the city of Fort Smith. Of that number, 17,858 (97%) were considered false alarms. In 2009, out of 142 locations where alarms occurred, 127 were commercial alarms with 15 being residential alarms. Only one (1) residence had seven (7) or more false alarms, which was the minimum number to be fined under the current ordinance. Chief Lindsey stated that the overall changes proposed in the ordinance will greatly benefit the total efficiency of both the police and fire departments, and will hold monitored alarm users more accountable for the property operation of their alarm system.

There was considerable discussion by the Board regarding Section 20-34(a) which states *it shall be unlawful for any person or entity that has installed or that provides maintenance or other services for an alarm system owned by an alarm user to refuse to*

provide a current address for any alarm system customer to the city police or fire departments upon written request. There was concern that such information becomes a matter of public record.

Chief Lindsey responded that particularly in the case of a fire, public safety personnel may not feel comfortable leaving the scene if the structure has not been secured or inspected. It is a public safety issue; such doesn't happen often, but, such is necessary to have the information as an additional tool for follow-up. He further advised that the provisions of Section 20-34 for the written request is in the current ordinance and has worked well.

The following individuals were present to address the item:

- Walton Maurras
  2801 Charlotte Lane

  He spoke in opposition to Section 20-34 noting that once a list of fire alarm owners is given to the police, it becomes subject to FOIA. The list can then be used as a "shopping list."

- Paul Speer
  Charleston, Arkansas

  Echoed comments of Mr. Maurras regarding information being subject to FOIA.

- Jerry Hamel
  4618 Wheeler Avenue

  Questioned legality of the ordinance. Suggested that the owner of the equipment, i.e., the fire alarm company, is the responsible party.

Maddox moved to table the ordinance for two (2) weeks in order for staff to review and suggest revised language in Section 20-34. The members all voting affirmatively, the Mayor declared the motion carried.

Item No. 4 was a resolution of the City of Fort Smith certifying local government endorsement of business to participate in the Tax Back Program (as authorized by Section 15-4-2706(d) of the Consolidated Incentive Act of 2003) ~ Mitsubishi Power Systems Americas, Inc. ("Mitsubishi") ~

Deputy Administrator Gosack briefed the members on the item. He advised that the state tax back program was one of the incentives which attracted Mitsubishi to locate in Fort Smith. This program allows a new industry to request refunds of sales taxes paid on manufacturing equipment and building materials. The incentive applies only to the initial capital purchases, not to ongoing purchases once the company begins operations. The resolution supports Mitsubishi's participation in the tax back program, and approval of the resolution will also support one of the Board's top goals: economic development and job creation.

Campbell, seconded by Hutchings, moved adoption of the resolution. The members all voting affirmatively, the Mayor declared the motion carried. Settle, seconded by Campbell, moved adoption of Section 3, the emergency clause. The members all voting affirmatively, the Mayor declared the motion carried, and the resolution and emergency clause was adopted and numbered R-131-10.

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

A. Resolution granting a temporary revocable license for the placement of an automatic teller machine (ATM) in a drainage easement and authorizing Mayor to execute agreement *(Zero Mart, Inc. / 4300 South Zero Street)*

B. Resolution authorizing the execution of a memorandum of understanding concerning mobile data support between the City of Fort Smith and City of Van Buren

C. Resolution authorizing acquisition of real property interests for the Lake Fort Smith Water Supply Project ($276,600.00)

D. Resolution accepting the project as complete and authorizing final payment to Forsgren, Inc. for construction of Wet Weather Line Capacity Improvements, South "O" Street ($491,395.15)

There were brief questions regarding item C.

Director Settle questioned which funds were being utilized for the acquisitions, and if the acquisitions were necessary at this time.

Director of Utilities Steve Parke responded that funds are available from the bond issue which financed the lake expansion, and the acquisitions were identified in the bond fund for such purpose. He also advised that the acquisitions are necessary at this time for protection of the water system, now and in the future.

Good, seconded by Maddox, moved adoption of the Consent Agenda. The members all voting affirmatively, the Mayor declared the motion carried, and the resolutions were adopted and numbered R-132-10 through R-135-10 respectively.

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

- Mayor Baker welcomed in attendance representatives from Boy Scouts Troop 19

  Mayor Baker also advised that he has instructed the city finance department to hold one-half of his "219 account" (mayoral expenses) in reserve until the financial issues in the general fund are resolved, and if cuts are made to city employee salaries, then his $10,000 annual salary is to be cut as well.

- Director Goodman - commented relative to the false alarm ordinance (item No. 3) and believes the $100 fine as noted in Sec. 20-33 is more than adequate and should get everyone's attention.

- Director Tyler - noted that several cities in Arkansas have received energy efficiency grants, and inquired if Fort Smith applied for such. Administrator Kelly responded that the city received a grant in 2009.

An executive session was held regarding performance evaluation of the city administrator. After reconvening, Mayor Baker announced that another evaluation will occur in three (3) months ~ October 2010.

With regard to the time limit policy for persons wishing to address the Board, Mayor Baker communicated that two (2) minutes will be allotted 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

  City needs to consider where the money is being spent, and suggested a slow down of expenses for capital projects.

- John Hamel
  3301 Old Greenwood Avenue

  In reference to the alarm system item, believes the police are suppose to answer alarms. Public safety should come first to serve and protect" not "revenue agent."

  Extended thanks to Mayor Baker for proposing cuts to the mayor's budget

- Jerry Hamel
  4618 Wheeler Avenue

  Commented that the city has been aware for some time now of financial forecast, and questioned what percentage of the budget goes to debt service.

  Administrator Kelly responded that about 40% goes to debt service

- Louis Vincent
  (No address given)

  Spoke regarding illegal immigration and need of the city to make sure contractors are in compliance by hiring legal immigrants.

- Tammy Trouillon
  8000 Holly Avenue

  Spoke regarding dogs running at large in the city and the need for a fencing ordinance.

- Michael King
  1402 North 49th Street

  Spoke regarding city budget and annual cost of leasing space for city offices in the Stephens Building. He suggested that the former library building a/k/a/ convention center annex be considered as possible site for city offices.

  He also spoke in support of the recently adopted board meeting procedures.

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 all voting aye, the Mayor declared the motion carried, and the meeting stood adjourned.

APPROVED:

MAYOR

ATTEST:

CITY CLERK