

MINUTES OF BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ SEPTEMBER 7, 2010 ~ 6:00 P.M.

FORT SMITH PUBLIC SCHOOLS SERVICE CENTER

The meeting was called to order by Vice-Mayor Gary Campbell, presiding in the absence of Mayor Ray Baker. 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, Don Hutchings, Bill Maddox, Gary Campbell, Kevin Settle and Cole Goodman. Director Andre' Good arrived during discussion of Item No. 1. The Vice-Mayor declared a quorum present.

Vice-Mayor Campbell 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 August 17, 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.

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.

Vice-Mayor Campbell announced this was the time and place set for a public hearing regarding the issuance of industrial development revenue bonds to finance certain industrial facilities; authorizing the leasing of such facilities to Kraft Foods Global, Inc. (Planters); authorizing a trust indenture securing the bonds; authorizing the sale of the bonds; authorizing and prescribing other matters pertaining thereto. Following the public

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hearing, consideration of an ordinance authorizing same would be given (Item No. 1)

Deputy Administrator Ray Gosack briefed the Board on the item advising Planters is planning the addition of a new processing operation to its Fort Smith plant. Such is an estimated \$18 to \$20 million investment. Although the expansion will not result in any new jobs, the company feels the investment will bring future investments to the Fort Smith plant which could result in additional employment.

There being no individual present to speak, Vice-Mayor Campbell closed the public hearing.

Hutchings, seconded by Maddox, moved to suspend the rules 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 members all voting affirmatively, the Vice-Mayor declared the motion carried and the City Clerk read the ordinance for its readings. Settle, seconded by Hutchings, moved adoption of the ordinance. The members all voting affirmatively, the Vice-Mayor declared the motion carried. Hutchings, seconded by Maddox, moved adoption of Section 12 the emergency clause. The members all voting affirmatively, the Vice-Mayor declared the motion carried and the ordinance and emergency clause were adopted and given No. 42-10.

Item No. 2 was a resolution supporting amendments to the Constitution of the State of Arkansas: (1) to eliminate constitutional limits on interest rates for government bonds and loan, revise interest rate limits on other loans, and authorize the financing of energy savings projects (Issue #2 at November 2010 General Election); and (2) to modify and improve the financing alternatives available to the state in support of major economic

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development projects in Arkansas (Issue #3 at November 2010 General Election)

Mr. Gosack briefed the Board on the item advising the Arkansas Municipal League has requested its member cities adopt a resolution of support for two (2) proposed amendments to the state constitution, which Arkansas voters will consider in the November General Election. The first of the amendments, Issue 2, addresses interest rate limits and bond financing limitations, which the three major provisions are as follows:

- Repeal an interest rate cap of 2% above the federal discount rate on bonds issued by governmental units including cities.
- Allow governmental entities to issue bonds to finance energy-efficiency projects and use savings from the projects to repay the loans.
- Remove an interest rate cap of 5% above the federal discount rate on consumer loans.

The second of the amendments, Issue 3, affects “superfund” economic development projects. Amendment 82 of the Arkansas Constitution restricts the issuance of economic development bonds to major projects with at least a \$500 million investment and at least 500 new jobs. The aforementioned requirements has resulted in no use of these bonds in Arkansas; therefore, the amendment authorizes the legislature to set new financial criteria for the bond issues.

Regarding Issue 2, Director Maddox questioned if energy savings would be of a sufficient amount to repay the loans; therefore, he inquired if the City could utilize other sources to repay the loans.

Mr. Gosack noted that state legislation previously allowed governmental entities to utilize “tax” revenue savings from the energy efficiency project to repay the loans; however,

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the existing language raised some question about its constitutionality. The proposed amendment clears up the legislation thereby allowing the energy efficiency savings to be utilized, even if the savings comes from the tax revenues.

Director Settle questioned the feasibility of refinancing some of the City's existing debt to take advantage of the current low interest rates.

Mr. Gosack noted that several factors exist in order to determine the feasibility, such as current market conditions, limitations of the Internal Revenue Service, or some may require voter approval. Although a lower interest rate may seem cost effective, often times the cost to reissue the bonds supercedes the cost savings from the lower interest rate, thereby resulting in little or no savings at all.

Settle, seconded by Tyler, moved adoption of the resolution. The members all voting affirmatively, the Vice-Mayor declared the motion carried and the resolution was adopted and given No. R-158-10.

Item No. 3 was an ordinance rezoning identified property and amending the zoning map (*Commercial Light (C-2) to Commercial Heavy (C-5) by extension located at 7601 Rogers Avenue*) ~ *Tabled at the August 3, 2010 regular meeting* ~

Director of Development Services Wally Bailey briefed the Board on the item advising Mr. Alan Lewis, agent for DHC Properties of Fort Smith (DHC), requested the item be tabled at the August 3, 2010 regular meeting in order to resolve issues relative to restrictive covenants that limit or restrict land uses for each of the sites. One of the restrictions limits the right of the property owner to serve food or show movies, which is the intended use and purpose of the rezoning. Dollar Tree has a sub-lease on the building

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next door to the site and their corporate real estate department refuses to sign a consent permitting DHC to amend the covenants; therefore, the proposed development may not proceed thereby removing the necessity of the rezoning request. Per the UDO, the withdrawal request must be formally accepted by the Board.

Director Goodman conveyed much discontent with the refusal by Dollar Tree and questioned what could be located in the currently vacant sections of the building. He also requested confirmation that Dollar Tree's refusal will be the development will not proceed.

Mr. Lewis advised that the former lease holder was Office Max; therefore, office products or general products may be sold on the site. With regard to the confirmation, he simply stated Director Goodman's comment is a "fairly accurate synopsis".

Maddox, seconded by Hutchings, moved to accept the requested withdrawal of item. The members all voting affirmatively, the Vice-Mayor declared the motion carried.

Item No. 4 was an ordinance rezoning identified property and amending the zoning map (*Residential Multi-Family Medium Density (RM-3) to Commercial Neighborhood Compatible (C-1) by classification at 4101 Rogers Avenue*)

Mr. Bailey briefed the Board on the item advising such is per the request of Damon Wright, agent for the property owner. The purpose of the rezoning is to allow the property to be utilized for commercial use. The applicant originally requested a zone change to Commercial-2; however, as required, a neighborhood meeting was held on July 29, 2010 with several neighbors in attendance and due to their concerns, the applicant agreed to amend the request to Commercial-Neighborhood (C-1). The Planning Commission held a public hearing on August 10, 2010 with Mr. Mike Thames and Ms. Suzie Smith present

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to convey noise and odor concerns. The Planning Commission approved the amended request by a vote of six (6) in favor and zero (0) opposed.

Director Tyler noted that the Big Brother Big Sister Foundation is considering the site for a donation drop off location; therefore, he questioned if the proposed rezoning classification would allow such

Mr. Bailey advised that such would require a conditional use permit, which requires Planning Commission approval.

Director Hutchings noted that the previous businesses at the location were allowed as legal non-confirming uses and questioned if the legal non-confirming use expires when the business vacates the property.

Mr. Bailey advised the legal non-confirming use remains in effect for one year after the business vacates; however, he feels certain such has now expired.

Maddox, seconded by Hutchings, moved adoption of the ordinance. The motion included suspending the rules 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 Vice-Mayor declared the motion carried and the ordinance was adopted and given No. 43-10.

Item No. 5 was an ordinance rezoning identified property and amending the zoning map (*Transitional (T) to Commercial Light (C-2) by classification located at 5801 Jenny Lind*)

Mr. Bailey briefed the Board on the item advising such is per the request of Angela Mayfield, agent for Westphal Investment Management Inc. The purpose of the rezoning

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request is to allow for a therapeutic massage business to occupy the existing building. The subject property has previously been used as offices for employment agencies and is already developed with a parking lot. An issue exists whereby acquisition of this property will eventually be required for the future widening of Jenny Lind Road, which is expected in the next 12 to 24 months. The agent and property owner are aware of the taking, but they wish to proceed with the rezoning request. Such would provide Ms. Mayfield said time to establish her therapeutic massage business. Due to concerns with the anticipated appraisal for future acquisition of the property, Mr. Westphal has submitted a letter indicating his acceptance of the appraisal value under the existing Transitional zoning. As required, a neighborhood meeting was held on July 23, 2010 and the Planning Commission held a public hearing on August 10, 2010 with no individual present to speak in opposition. The Planning Commission approved the rezoning by a vote of six (6) in favor and zero (0) opposed.

Hutchings, seconded by Settle, moved adoption of the ordinance. The motion included suspending the rules 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 Vice-Mayor declared the motion carried and the ordinance was adopted and given No. 44-10.

Item No. 6 was a report from Bennie Westphal regarding Riverfront Development Study (*Cushman-Wakefield*)

Administrator Kelly advised that Mr. Westphal has requested the consultants also be present for the report; therefore, he requested the matter be postponed to a later date.

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Director Maddox questioned why the item was placed on a regular meeting agenda rather than a study session agenda.

Mr. Kelly advised the project has been completed and advised it was his desire for the report to be presented at the next meeting of the Board, which was the September 7 regular meeting.

The Board concurred to accept the postponement of the item to a later date.

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

- A. Resolution to accept the bids and authorize contract for the construction of Sunnymede Tributary Drainage Improvements, Project No. 09-06-A (\$730,538.00)
- B. Resolution accepting a donation of property for the Sunnymede Tributary Drainage Improvements, Project No. 09-06-A
- C. Resolution to accept the bids and authorize contract for the construction of Traffic Signal Improvements, Project No. 10-09-A (\$197,212.30)
- D. Resolution allowing the sale of surplus vehicles and equipment at public auction
- E. Resolution accepting bids for the reroofing of Fire Station No. 3 (\$67,669.00)
- F. Resolution authorizing the execution of Memorandum of Understanding between the City of Fort Smith, Arkansas and Sebastian County, Arkansas regarding the 2010 Edward Byrne Memorial Justice Assistance Grant (JAG) Program
- G. Resolution accepting the project as complete and authorizing final payment to KAJACS Contractors, Inc. For construction of the Neighborhood Water Systems Improvements (\$64,484.60)

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- H. Resolution accepting the project as complete and authorizing final payment to Wilson Brothers Construction Company, Inc. for the Sub-Basin 10-2 West Sanitary Sewer Rehabilitation (\$158,637.32)
- I. Resolution authorizing Change Order Number One with Utility Service Company for Fianna Hills elevated storage tank painting (\$41,500.00)
- J. Resolution authorizing partial payment to Crossland Heavy Contractors, Inc. for construction of the Lake Fort Smith Water Treatment Plant - Contract 3 (\$1,090,461.58)
- K. Resolution authorizing the Mayor to execute an agreement with FSM Redevelopment Partners, LLC for the relocation of sanitary sewer lines

Regarding Item No. 7D, Vice-Mayor Campbell advised of a correction whereby the listed 1997 model Oshkosh Snorkel 65 foot fire & rescue truck should actually be a 1977 model.

Administrator Kelly clarified that the blue van on the auction list is not technically owned by the City; however, such is owned by the Fort Smith Public Library (FSPL). The FSPL has tried to sale the van in the past, but has been unsuccessful; therefore, they have provided the necessary authorizations to the City to include such in the public auction.

With regard to Item No. 7I, Director Settle simply requested the Board be forwarded pictures of the damaged pipe.

Director of Utilities Steve Parke advised that such are on video and he will transfer to a still-picture format and forward as requested.

Regarding Item No. 7K, Director Good requested a brief explanation of the item.

Mr. Parke noted that during the original construction of the buildings within the

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Phoenix Village Mall development, some structures were constructed over and within easement areas held by the City for existing sanitary sewer lines. The City has maintained dominant easement rights related to the sewer lines. The property has historically been owned by one owner; however, the new owner desires to subdivide the property into nine (9) individual lots. The subdivision now requires the City to take additional action to clarify its position related to the easement rights and necessary actions for the sewer line relocations. The proposed agreement has been negotiated and such puts in place the mutually agreed to terms for the resolution of the sanitary sewer line and building conflicts.

Good, seconded by Maddox, moved approval of all consent agenda items. The members all voting affirmatively, the Vice-Mayor declared the motion carried and the resolutions were adopted and numbered R-159-10 through R-169-10 respectively.

Vice-Mayor Campbell opened the Officials Forum with the following comments offered:

▶ Director Good

Re: Regarding the Housing Assistance Board, he recognized the "*great job*" they do for the city. He advised they review numerous applications for CDBG funding to rehabilitate residential structures and even with limited funding, he commented, "*it's amazing what a small group can do.*"

▶ Administrator Kelly

Re: 1. Reminded all of the City's Public Auction scheduled for 10:00 a.m., Thursday, September 9 at the Fort Smith Public Transit facility, 6821 Jenny Lind Road.

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2. Encouraged all to attend the 9-11 Ceremony scheduled for 10:00 a.m., Friday, September 10 at the bell tower on the University of Arkansas Fort Smith campus. Weather permitting, he further noted of the possibility of a fly-over by the 188th Fighter Wing.

With regard to the time limit policy for persons wishing to address the Board in Citizens Forum, Vice-Mayor Campbell communicated that two (2) minutes will be allotted to each person wishing to speak.

Vice-Mayor Campbell opened the Citizens Forum with the following individuals present to address the Board:

- John Hamel
3301 Old Greenwood Road

Re: 1. Recommended the ward directors hold more meetings with the constituents of their specific wards.

2. Regarding industrial development revenue bonds, he alleged the tax discount associated with such is not good for the city. He feels the companies should pay the full amount of taxes for the land they utilize.

- Jerry Hamel
4618 Wheeler Avenue

Re: Alleged the City gives away millions of tax dollars; therefore, he questioned the rational of the impending election for a prepared food tax.

- Paul Speer
Charleston, Arkansas

Re: Commented that Garrison Avenue once maintained a variety of shopping opportunities; however, he alleged such now only consists of bars, banks or abandoned

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buildings. He noted that drainage is an issue for downtown and encouraged such be addressed citing drainage improvements would bring additional businesses to the area.

- J. R. Vincent
(No address provided)

Re: Noted that U.S. Senator Blanche Lincoln previously came to Fort Smith to celebrate a new line at Whirlpool; however, he stated that Whirlpool has now laid off multiple people. Due to such, he questioned if the City has contacted Ms. Lincoln to advise her of such.

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

APPROVED:



VICE MAYOR

ATTEST:



CITY CLERK