

MINUTES OF BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ OCTOBER 5, 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 Marshal Sharpe, 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. The Vice-Mayor declared a quorum present.

Vice-Mayor Campbell recognized participants of the current Citizens Academy who were in attendance.

The Vice-Mayor 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 September 21, 2010 regular meeting were presented for approval. Hutchings, 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 to close, vacate and abandon a portion of street right-of-way located in Mead's Addition (*5' x 75' portion of South May Avenue*). Notice of the public hearing had been

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duly published as required by law. Following the public hearing, consideration of an ordinance authorizing same would be given (Item No. 1)

Director of Development Services Wally Bailey briefed the Board on the item advising such is per the request of Dwayne and Elizabeth Bell, residents at 1108 Adelaide Avenue. The purpose of the closure is to allow the construction of a new garage. The Board of Zoning Adjustment approved a variance application submitted by the Bell's for a rear-yard setback from 10 feet to zero feet. All franchise utilities and property owners within 300 feet of the proposed abandonment have been notified with no objections received. Pertinent city departments were also notified and although the subject right-of-way does not currently contain water or sewer lines, the Utility Department does not support the requested closure. The nearby water lines are undersized and do not provide the capacity necessary to adequately support fire protection standards. Upon approval of the proposed closure, such will result in increased construction costs for future water system improvements. The Street Department has also indicated that the existing street right-of-way is currently insufficient according to the Master Street Plan. The applicants have executed a memorandum of understanding which stipulates that the applicant or its assigns will not make any claim for compensation in the event the City exercises the power of eminent domain to reclaim the abandoned right-of-way.

There being no persons present to address the Board, Vice-Mayor Campbell closed the public hearing.

Director Tyler expressed appreciation to Administrator Kelly and Mr. Bailey for their review of the request to accommodate the property owners.

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Maddox, seconded by Hutchings, 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. Maddox, seconded by Tyler, 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. 45-10.

Item No. 2 was an ordinance to rezone property from Extra Territorial Jurisdiction Open-1 (ETJ O-1) to Extra Territorial Jurisdiction Industrial-Light-1 (ETJ I-1) by Classification located at 10818 Old Highway 71 South.

Mr. Bailey briefed the Board on the item advising such is per the request of Eddie Ray. The purpose of the rezoning is to allow for commercial and light industrial development of the property for future leasing to qualifying occupants. The Planning Commission approved a companion conditional use request to allow a portion of the building to be used as a commercial day care operation. The proposed rezoning is in compliance with the ETJ Master Land Use Plan. The Planning Commission held a public hearing on September 14, 2010 with no individual present to speak in opposition. The Planning Commission approved the rezoning request by a vote of eight (8) in favor and zero (0) opposed.

Due to the subject property being locating within the Extra-Territorial Jurisdiction area, Mr. Bailey advised that staff inquired if Mr. Ray is interested in annexing the property into the corporate limits of the city. Mr. Ray conveyed no objection to annexation; however,

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he advised such is financially unfeasible at the current time and relayed his desire to expedite the rezoning to allow the prospective tenant to move into the building.

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 Vice-Mayor declared the motion carried and the ordinance was adopted and given No. 46-10.

Item No. 3 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 proposed amendments were reviewed by the Planning Commission at their September 8, 2010 study session and September 14, 2010 regular meeting, whereby such were approved and recommended for approval by the Board of Directors. As required by law, three (3) copies of the proposed amendments have been available for public viewing in the City Clerk's Office. The most significant amendments include the following:

- Establishing a definition for restaurants with outside dining. Currently, these are classified as beer gardens; however, the proposed provides a more descriptive definition of the land use.
- The addition of a fitness studio to the definition and land use chart. These land uses were in the previous zoning code and need to be added to the UDO.
- A rewrite of the purpose paragraph for Transitional zones. The current purpose statement does not accurately reflect the use of Transitional zones, which was brought to the City's attention during the Peachtree Hospice rezoning.

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- The amendments within the design guidelines chapter help to clarify requirements for modification to existing buildings and clarify the specific requirements for multi-family, commercial and industrial projects.

Director Hutchings questioned the purpose of removing “temporary” from the Mobile Food Service section of the UDO.

Mr. Bailey noted that the amendment is in the definition only. Such will allow restaurants with a permanent location and valid licensing to provide mobile food service.

Good, 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 Vice-Mayor declared the motion carried. Hutchings, seconded by Settle, moved adoption of Section 3 the emergency clause. The members present all voting affirmatively, the Vice-Mayor declared the motion carried and the ordinance and emergency clause were adopted and given No. 47-10.

Item No. 4 was a resolution approving and authorizing implementation of the Five Year (2011-2015) Sales Tax Program for streets, bridges and related drainage improvements and implementation of the 2011 Sidewalk Program.

Director of Engineering Stan Snodgrass briefed the Board on the item as discussed at the September 28, 2010 study session. Such authorizes implementation of the proposed projects within the Sales Tax Program and 2011 Sidewalk Program.

Director Maddox questioned the percentage of the street projects which were

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included at citizen request. He further conveyed opposition to the inclusion of levy repairs within the CIP projects citing sales tax dollars should not be utilized for such.

Mr. Snodgrass advised approximately one-fourth to one-third of the projects within the program are due to citizen requests.

The following individual was present to address the Board:

- David Harris
2025 South "V" Street

Re: Commented that "drainage goes down hill and flooding goes up hill"; therefore, since the CIP is for "associated drainage", he too conveyed opposition to utilizing sales tax monies to repair the levy.

Mr. Snodgrass advised that two (2) legal opinions have been received whereby each indicate that such is an "appropriate use" of sales tax dollars.

City Attorney Jerry Canfield conveyed assurance that the courts will give deference to the City if litigation is initiated, provided the City can demonstrate the repair is to address drainage issues in the event the levy fails.

Director Good expressed much appreciation to Mr. Snodgrass and engineering staff for the preparation of the five year CIP. He requested a brief explanation of the Sidewalk Program funding resources and the current status of existing sidewalk requests.

Mr. Snodgrass noted that most of the funding comes from building permit fees; however, some sidewalks are constructed with sales tax monies, but only when the sidewalk is associated with a street improvement project. Community Development Block Grant stimulus funding have also been utilized in the past for qualifying projects.

Regarding current citizen requests for sidewalks, the City is "behind" due to funding

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availability. Currently, 229 total miles of sidewalk have been requested; however, staff has identified 34 miles in need of sidewalk repair at an estimated cost of \$8 million and 46 miles for new construction at an estimated cost of \$10 million. The Sidewalk Program receives approximately \$200,000 per year; therefore, at the current rate of funding, it will take an estimated 38 years to complete the current need.

Director Hutchings commented that many have inquired about the process to include sidewalks along Towson Avenue; therefore, he requested a brief explanation.

Mr. Snodgrass simply advised the request can be evaluated in upcoming sidewalk programs; however, the main focus for sidewalk projects are locations frequently utilized by children, i.e., schools, libraries, etc.

Hutchings, seconded by Tyler, moved adoption of the resolution. The members present all voting affirmatively, the Vice-Mayor declared the motion carried and the resolution was adopted and given No. R-181-10.

Item No. 5 consisted of the following ordinances levying the City's millage rates for the year 2010 (to be collected in 2011):

- A. Ordinance fixing the rate of and levying five (5.0) mills upon all taxable real and personal property in the city of Fort Smith, Arkansas for the year 2010 for general purposes
- B. Ordinance to levy one (1) mill tax upon each dollar of assessed value of taxable real and personal property to be used for maintenance of a public-city library pursuant to the provisions of Amendment No. 30 of the Constitution of the State of Arkansas of 1874 adopted November 5, 1940, and for other related purposes
- C. Ordinance to levy one (1) mill tax upon each dollar of assessed value of taxable real and personal property for Police

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Retirement and Pension Fund, pursuant to the provisions of Amendment No. 31 of the Constitution of the State of Arkansas of 1874 adopted November 5, 1940, and for other related purposes

- D. Ordinance to levy one (1) mill tax upon each dollar of assessed value of taxable real and personal property for Fire Retirement and Pension Fund, pursuant to the provisions of Amendment No. 31 of the Constitution of the State of Arkansas of 1874 adopted November 5, 1940, and for other related purposes

City Clerk Cindy Remler advised the items contain no change to the existing millage rates. Upon approval, the ordinances will be certified to the Sebastian County Clerk for presenting to the Quorum Court when considering the millage for all cities in Sebastian County at their November meeting.

Tyler, seconded by Hutchings, moved adoption of the ordinances. The motion included suspending the rule to allow the three (3) full readings of the ordinances to be by caption and for the readings to occur on the same date. The City Clerk read the ordinances for their readings and the members present all voting affirmatively, the Vice-Mayor declared the motion carried and the ordinances were adopted and numbered 48-10 to 51-10 respectively.

The Consent Agenda (Item No. 6) was introduced for consideration, the items being as follows:

- A. Ordinance to abandon a portion of a public utility easement located in Hendricks Circle Addition, an addition to the City of Fort Smith, Sebastian County, Arkansas (3714 - 3716 *Hendricks Circle*)
- B. Resolution to accept the bids and authorize a contract for the Town Branch storm sewer and manhole cleaning, Project No. 10-06-C (\$208,400.00)

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- C. Resolution authorizing appraisal services agreement for right-of-way acquisitions, Jenny Lind Road and Ingersoll Avenue Widening, AHTD Job No. 040471, City Project No. 07-01-A, 2010 Sales Tax Program (\$51,800.00)
- D. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Forsgren, Inc. for Highway 45 and Zero Street Water and Sewer Relocation (\$1,017,190.50)

Regarding Item No. 6B, Director Tyler questioned why the cleaning will stop at the turn/intersection of North 10th & "C" Streets and the expected completion time for the cleaning project.

Mr. Snodgrass noted that the aforementioned location does not require cleaning as the junction box at the intersection was specifically constructed to prohibit the collection of sediment at the 90 degree turn, and video has indicated that said construction has been successful. The project is expected to take approximately thirty (30) days.

Settle, seconded by Maddox, moved approval of all consent agenda items. The members present all voting affirmatively, the Vice-Mayor declared the motion carried and the ordinance and resolutions were adopted with the ordinance given No. 51-10 and resolutions numbered R-182-10 through R-184-10 respectively.

Regarding Item No. 6C, Director Good questioned how long it takes to receive reimbursement from the State of Arkansas on shared city/state projects.

Director of Utilities Steve Parke advised the City submits invoices for reimbursement on a monthly basis and said reimbursements are received soon thereafter.

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

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▶ Director Tyler

Re: 1. Being a member of the Arkansas Municipal League (ARML) Large First Class Cities Advisory Council, he advised of the following recommended legislative amendments for possible consideration during the next Arkansas General Assembly:

A. Eliminate the necessity of runoff elections when the 1st candidate receives 40% of the vote and the 2nd runner-up receives only 20% of the vote. This is to save the cost of another election when the outcome would most likely be the same.

B. Require economic development corporations to undergo an audit and utilize competitive bidding.

2. The ARML has requested all cities and towns adopt a resolution in support of the "Let's Move!" Campaign initiated by Mrs. Michelle Obama to reduce childhood obesity. Due to such, he moved to place a resolution expressing support of the campaign and designating Fort Smith as a "Let's Move City" on the next regular meeting agenda. Placement on the agenda requires two directors; therefore, the motion was seconded by Director Maddox.

▶ Administrator Kelly

Re: Being a member of the ARML Public Safety Advisory Council, he too advised of a potential legislative amendment to assist in guarding against lawsuits opposing regional solid waste districts. A copy of the proposed legislation will be forwarded soon.

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An executive session was held and after reconvening, Vice-Mayor Campbell announced that no action was taken with regard to Transit Advisory Commission Membership.

Vice-Mayor Campbell further announced the appointment of Sherri Gard as City Clerk effective December 1, 2010 at a starting annual salary of \$64,000; therefore, he noted the Board would now consider Item No. 7 confirming such.

Hutchings, seconded by Settle, moved adoption of the resolution with the effective date and salary so noted. The members present all voting affirmatively, the Vice-Mayor declared the motion carried and the resolution was adopted and given R-185-10.

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:

- Tammy Trouillon
8000 Holly Avenue

Re: Commented that the City of Fayetteville maintains an Animal Advisory Committee and suggested the City of Fort Smith consider establishing same.

Director Maddox recommended a copy of the bylaws from the Fayetteville Animal Advisory Committee be requested. He moved to place the matter on an upcoming study session agenda for discussion, whereby Director Tyler seconded.

Administrator Kelly advised that a copy of the bylaws has already been requested.

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- Eric Arthur
815 North "B" Street

Re: While holding a copy of the City of Fort Smith 2010 Budget, he questioned if the 2011 Budget amounts noted within the document will be revised.

Deputy Administrator Ray Gosack advised the amounts are merely estimates for 2011. The Board of Directors only adopts the budget for the upcoming year; therefore, no formal revision to the 2011 Budget numbers is required. The 2011 Budget is scheduled for consideration at the December 7, 2010 regular meeting.

- Paul Speer
27910 Highway 22
Charleston, AR

Re: To increase revenues, he recommended the City develop annual festivals similar to "Bikes, Blues and BBQ" held in Fayetteville.

- Jerry Hamel
4618 Wheeler

Re: Alleged Fayetteville's "Bikes, Blues and BBQ" weekend event creates approximately \$4 to \$5 million in revenue for the City of Fayetteville; therefore, he too encouraged the City of Fort Smith to coordinate a similar event.

Vice-Mayor Campbell clarified that said event is not coordinated by the City of Fayetteville.

- J. R. Vincent
28 Courtland Street

Re: Encouraged the City to sell the convention center and use the proceeds for streets and drainage improvements.

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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