

MINUTES OF BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ FEBRUARY 15, 2011 ~ 6:00 P.M.

FORT SMITH PUBLIC SCHOOLS SERVICE CENTER

The meeting was called to order by Mayor Sandy Sanders, presiding. Invocation was given by Pastor Bill Leslie of Grace Community United Methodist Church, followed by the Pledge of Allegiance. On roll call the following members of the Board were present: Directors Steve Tyler, Andre' Good, Don Hutchings, George Catsavis, Pam Weber, Kevin Settle and Philip Merry. The Mayor declared a quorum present.

Mayor Sanders and Vice-Mayor Settle presented a plaque and "*Eagle Scout Appreciation Certificate*" to Boy Scout James Crotty in recognition of his recent advancement to Eagle Scout. On behalf of the City of Fort Smith, the Mayor extended much gratitude to James for his hard work and outstanding achievement.

The 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 February 3, 2011 regular meeting were presented for approval. Mayor Sanders advised that page 7 was revised to correct the motion for adoption of the consent agenda, as well as other minor grammatical changes.

Hutchings, seconded by Settle, moved approval of the minutes as revised. The members all voting aye, the Mayor declared the motion carried.

Items No. 1 and 2 are relative to the proposed Middleton Farms development; therefore, the below items were presented collectively:

- 1A. Resolution approving a pre-annexation agreement with Richard Griffin, Bradley Kidder, Bennie Westphal and Patsy Bateman

February 15, 2011 Regular Meeting

for the Middleton Farms Subdivision ~ *Tabled at February 3, 2011 regular meeting ~*

- 1B. Ordinance Accepting certain territory into the city of Fort Smith, Arkansas (327 acres) ~ *Tabled at February 3, 2011 regular meeting ~*
- 1C. Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (Master Land Use Plan - Extra Territorial Jurisdiction Low Density Residential to Residential Detached, Residential Attached and Commercial Neighborhood; rezoning - Extra Territorial Jurisdiction Open-1 (ETJ O-1) to RS-3 by extension; RS-4, RS-5, RM-3, RSD-3 and Commercial-2 by classification / 12905 Rye Hill Road, Middleton Farms) ~ *Tabled at February 3, 2011 regular meeting ~*
2. Ordinance amending the Master Street Plan of the City of Fort Smith, Arkansas ~ *Tabled at February 3, 2011 regular meeting ~*

Director of Development Services Wally Bailey briefed the Board advising the above noted items relate to the proposed development of approximately 327.2 acres along Howard Hill Road.

Item No. 1A authorizes execution of a pre-annexation agreement between the City of Fort Smith and the developer. The agreement essentially identifies specific issues with regard to who will be responsible for certain required infrastructure improvements to accommodate the proposed development. The agreement also includes the dedication of 13 acres to the City of Fort Smith for park purposes, which includes a lake approximately 3 acres in size. The agreement identifies certain conditions that must be accomplished with regard to improvements to the lake prior to acceptance of the tract by the City, i.e. shoreline stabilization, dam improvements, spillway modifications, etc.

February 15, 2011 Regular Meeting

Item No. 1B formally accepts the subject property into the city of Fort Smith as authorized per the Order for Annexation dated April 5, 2010.

Item No. 1C establishes the Master Land Use and zoning designations for the proposed subdivision to be known as Middleton Farms and is per the request of Bobby Aldridge/Mickle Wagner Coleman, Inc., agent for the property owners. The subdivision will be divided into approximately 820 lots and will be constructed in four (4) phases, which the developer anticipates 10 to 20 years for completion. The development plan includes 276.39 acres for single family homes, 3.59 acres for duplexes, 44.58 acres for multi-family structures and 2.63 acres for commercial use. Neighborhood meetings were held at the Rye Hill Baptist Church on July 22, 2010 with eight (8) property owners in attendance, and December 16, 2010 with five (5) property owners attending. The Planning Commission held a public hearing on January 11, 2011 with approximately 20 individuals in attendance to oppose the requests whereby Mr. James Wright, Mr. Mike Ledford and Mr. Tony Crockett spoke in opposition to the proposed commercial and duplex zoning classifications citing devaluation of property, increased traffic and crime, and safety issues. With regard to the Master Land Use Plan request, the Planning Commission approved such by a vote of six (6) in favor and one (1) opposed (Parks) as amended to make approval subject to approval of the annexation by the City of Fort Smith Board of Directors. Regarding the rezoning request, the Planning Commission unanimously approved an amendment to make approval subject to the following:

- ▶ City of Fort Smith Board of Directors approval of the annexation petition.

February 15, 2011 Regular Meeting

- ▶ Development plan for the proposed Commercial-2 & RSD-3 site be submitted to the Planning Commission for review and approval prior to issuance of a building permit.
- ▶ In addition to the Fort Smith design standards in effect at the time of development, the proposed Commercial-2 site will also be developed in accordance with the developer's proposed development standards.

The Planning Commission approved the amended rezoning request by a vote of (5) in favor and two (2) opposed (Parks and Sharpe).

Item No. 2 proposes the reclassification of Howard Hill Road east of Highway 71 in the Master Street Plan from Minor Arterial to Major Collector. Due to the subject area anticipated to primarily serve residential development and no interchange is expected to connect Howard Hill Road to Interstate 49, he recommended approval of the ordinance. Mr. Steve Hofener of Traffic Engineering Consultants, who was instrumental in the development of the Master Street Plan in 2005, also agrees with the proposed reclassification.

The following individuals were present to address the Board:

- Pat Mickle, agent
Mickle Wagner Coleman, Inc.
3434 Country Club

Re: Reviewed several aspects of the proposed development. With regard to conveyed concern relative to the inclusion of duplexes, he clarified existing zoning currently allows duplexes. Regarding the proposed commercial property, such was included due to its location citing the existence of a convenience store, which provides gasoline sales, will be a benefit to the future residents of the proposed development.

February 15, 2011 Regular Meeting

- Carolyn Plank, President
Fort Smith Neighborhood Coalition
1014 North 12th Street

Re: Simply urged the Board of Directors to consider the concerns of the surrounding residents.

The following individuals also addressed the Board and conveyed much opposition to the proposed zoning which would allow the convenience store and duplexes. The concerns expressed were relative to devaluation of property, increased traffic and crime, and safety issues.

- Chuck Cramer
11814 Rye Hill Road South

Re: Conveyed no objection to the proposed residential development; however, he spoke in opposition to the inclusion of the commercial zoning citing 100% of the surrounding residents are opposed to such as well.

- James Wright
8331 Howard Hill Road

Re: Noted opposition to the inclusion of the proposed commercial zoning alleging such is a violation of the City of Fort Smith Unified Development Ordinance. He further conveyed opposition to the proposed duplex zoning citing devaluation of property, increased traffic and crime. He further alleged the developer is unwilling to compromise and was a major campaign contributor to several members of the Board of Directors.

- Matthew Garner
12100 Sapling Drive

Re: Expressed concern with the fire certification process and the effect the large development will have on insurance rates.

- Eric Arthur
815 North "B" Street

February 15, 2011 Regular Meeting

- Re:
1. Urged those directors who received campaign contributions from the developer abstain from voting on the measures.
 2. Expressed concern that the City is financially unable to extend the necessary services such as police and fire protections, street repairs, etc.

Director Good commented that sidewalks may not be possible due to existing property conditions; therefore, he questioned who determines the feasibility for sidewalk placement.

Director of Engineering Stan Snodgrass advised staff will determine and such will be addressed during the review process of the development design. Typically, sidewalks will be included on both sides of collector streets; however, due to the terrain, such may not be feasible.

Director Tyler requested confirmation that commercial development requires Planning Commission approval and that duplexes are currently allowable with the existing zoning whereby Mr. Bailey confirmed both inquiries.

Director Merry requested confirmation that individuals interested in future ownership within the proposed development may inquire of anticipated future development. He also questioned the estimated completion time for the commercial development.

Upon approval of Item No. 1C, Mr. Bailey noted such will update the existing zoning map, which is a public document and is available to all residents. With regard to completion, the developer anticipates full development of the area will be approximately 15 to 20 years; however, traffic counts are such that the commercial development may not be initiated for quite some time.

February 15, 2011 Regular Meeting

Mr. Mickle, agent, clarified that residential development must first be constructed before the commercial property is developed and estimated such would not occur for "at least ten (10) years." The purpose of requesting the commercial zone, literally years in advance of its development, is to allow such to be on public record to allow individuals interested in residing in the subdivision to be aware of the property's intended future use.

Director Weber advised of her intent to abstain from voting on Item No. 1C. Such is due to her membership on the Planning Commission during the Planning Commission's review of the item.

Settle, seconded by Merry, moved adoption of Item No. 1A. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-27-11.

Good, seconded by Merry, moved adoption of Item No. 1B. 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. 10-11.

Merry, seconded by Settle, moved adoption of Item No. 1C. 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 voted as follows: ayes - Tyler, Hutchings, Settle and Merry; nays - Good and Catsavis; abstention - Weber. The Mayor advised the motion did not receive

February 15, 2011 Regular Meeting

the five (5) affirmative votes required for passage on its first reading; therefore, the City Clerk initiated reading the ordinance in its entirety.

Due the ordinance being twelve (12) pages and containing lengthy legal descriptions, Settle, seconded by Catsavis, moved to suspend the remainder of the first reading until immediately after reconvening from executive session. The members all voting affirmatively, the Mayor declared the motion carried.

Settle, seconded by Hutchings, moved adoption of Item No. 2. 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. Hutchings, seconded by Tyler, moved adoption of Section 2 the emergency clause. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and given No. 11-11.

Mayor Sanders announced this was the time and place set for a public hearing to close, vacate and abandon a portion of alley right-of-way located in Block "Z" of Fitzgerald Addition (between South 17th & 18th Street and South "C" Street & Rogers Avenue). Notice of the public hearing had been duly published as required by law. Following the public hearing, consideration of an ordinance authorizing same would be given (Item No. 3).

Mr. Bailey briefed the Board on the item advising such is per the petition of John Canterbury. The purpose of the closure is to facilitate a future commercial development that includes retail and offices, which will assist with the redevelopment of a depressed property on Rogers Avenue. All franchise utilities and pertinent City departments, as well as property

February 15, 2011 Regular Meeting

owners within 300 feet, have been contacted with no objections conveyed regarding the proposed closure. OG&E, AOG and AT&T maintain facilities located within the abandonment area; however, they have agreed to remove them to facilitate the development. A public sanitary sewer line is also located in the subject area; however, Mr. Canterbury has agreed to relocate the sewer. Typically, a memorandum of understanding is required, which states the applicant or its assigns will not make any claims for compensation for the value of the abandoned alley in the event the City exercises the power of eminent domain; however, Mr. Canterbury has requested a waiver of such. Due to future development being constructed over the alleyway, staff maintains no objection to the waiver; however, upon approval, staff recommends the Mayor's signature be withheld pending completion of the sewer relocation.

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

Director Good inquired if any property owners will be affected by the sewer line relocation whereby Mr. Bailey stated, "no".

Hutchings, seconded by Catsavis, moved adoption of the ordinance with suspension of 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 motion also included a provision that the Mayor's signature be withheld pending completion of the sewer relocation. The City Clerk read the ordinance for its readings and the members all voting affirmatively, the Mayor declared the motion carried. Settle, seconded by Catsavis, moved adoption of Section 3, the emergency clause. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and given No. 12-11.

February 15, 2011 Regular Meeting

Item No. 4 was an ordinance amending Section 13-123 of the Fort Smith Code of Ordinances to provide for the appointment of the members of the Fort Smith Advertising and Promotion Commission.

Administrator Gosack briefed the Board on the item as discussed at the February 8, 2011 study session. The proposed ordinance merely brings the Fort Smith Code of Ordinances into compliance with state law.

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 all voting affirmatively, the Mayor declared the motion carried.

Hutchings, seconded by Catsavis, moved adoption of Section 2 the emergency clause. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and given No. 13-11.

Item No. 5 consisted of the following items regarding operation fo the convention center:

- A. Resolution approving a lease agreement for the Fort Smith Convention Center
- B. Ordinance referring to a special election of the elector sin the City of Fort Smith, Arkansas a proposed ordinance for the levy of a one percent (1%) tax on the gross receipts or gross proceeds received by restaurants, cafes, catering, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, and grocery store restaurants from the sale of prepared food and beverages for on-premises or off-premises consumption; providing for the special election; and declaring an emergency.

February 15, 2011 Regular Meeting

Administrator Gosack briefed the Board on the items as discussed at the February 8, 2011 study session. Item No. 5A authorizes execution of a lease agreement with the Advertising and Promotion Commission to operate the convention center; however, such is contingent upon enactment of a 1% prepared food tax for operation of the convention center. The Advertising and Promotion Commission has previously approved the proposed agreement.

Regarding Item No. 5A, the following individuals were present to address the Board:

- David Harris
2027 South "V" Street

Re: Expressed concern with multiple items within the agreement.

- Eric Arthur
815 South "B" Street

Re: Questioned if convention center staffing is adequate, if a business plan was submitted by the Advertising and Promotion Commission, and revenue statistics from the existing 3% hotel/motel tax.

Hutchings, seconded by Good, moved adoption of Item No. 5A. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-28-11.

Director Good spoke in favor of levying a 1% prepared food tax by ordinance as presented at the February 8, 2011 study session, captioned as follows:

- ▶ Ordinance providing for the levy of a tax on the gross receipts or gross proceeds received by restaurants, cafes, catering cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, and grocery store-restaurants from the sale of prepared food and

February 15, 2011 Regular Meeting

beverages for on-premises or off-premises consumption; to declare an emergency and prescribing other matters pertaining thereto

Tyler, seconded by Weber, offered an amendment to the proposed ordinance to allow for the inclusion of a 'sunset clause' whereby the tax shall be reviewed no later than five (5) years after enactment to determine if the tax shall be continued, reduced or otherwise modified. Prior to the vote, Director Hutchings commented that multiple individuals have spoke in favor of the prepared food tax; however, the residents wish to maintain the right to vote on the measure.

Directors Tyler and Merry spoke in favor of levying the tax by ordinance, and with the proposed amendment, the Board maintains the right to review in five (5) years.

The motion remaining on the floor, the members voted as follows: ayes - Tyler, Good, Weber and Merry; nays - Hutchings, Catsavis and Settle. The Mayor declared the motion carried.

Good, seconded by Merry, moved adoption of the ordinance to levy a 1% prepared food tax, as amended. The motion included an effective date of June 1, 2011 and suspension of 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 voted as follows: ayes - Tyler, Good, Weber and Merry; nays - Hutchings, Catsavis and Settle. Mayor Sanders announced the motion did not receive the five (5) affirmative votes required for passage on its first reading; therefore, the City Clerk read the ordinance in its entirety for its first reading.

Due to the ordinance containing an emergency clause, which requires a separate

February 15, 2011 Regular Meeting

vote, City Attorney Jerry Canfield recommended such be voted on after completion of the third reading.

In order to accommodate the second and third & final readings of the ordinance, Directors Tyler, Good, Weber and Merry called the following special meetings:

Second Reading

12:00 Noon, Tuesday, February 22, 2011, Fort Smith Public Library Community Room *(to immediately precede the regularly scheduled study session)*

Third and Final Reading

6:00 p.m., Thursday, February 24, 2011, location to be determined and announced at a later date.

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

- A. Resolution accepting an amendment to the proposal for the purchase, stabilization and renovation of the former Mallalieu Church building ~ 90 day extension request at the February 8, 2011 study session ~
- B. Resolution urging the Arkansas General Assembly to keep Fort Smith and Sebastian County in the Third Congressional District
- C. Resolution of support for House Bill 1118 during the State of Arkansas 88th General Assembly Regular Session, 2011; for an act to establish an investment tax credit for the rehabilitation and development of central business improvement districts; to establish an emergency; and for other purposes
- D. Resolution accepting completion of and authorizing final payment for the construction of Street Overlays/Reconstruction, Project No. 10-03-D (\$10,240.59)
- E. Resolution authorizing the office of City Administrator to issue notice to Wilson Brothers Construction Company, Inc. regarding the construction of 2010 Capital Improvements Program, Street Overlays/Reconstruction, Project No. 10-03-C and authorizing

February 15, 2011 Regular Meeting

the office of City Administrator to implement necessary action to secure the completion of the subject project

- F. Resolution authorizing the purchase of eight mobile data terminal laptops and vehicle mounting brackets from Dell for use by the Fort Smith Police Department (\$49,043.75)
- G. Resolution authorizing execution of a memorandum of understanding of the City of Fort Smith, Arkansas with the Federal Bureau of Investigation, Arkansas State Police Bomb Squad, Little Rock Fire Department Bomb Squad, Conway Fire Department Bomb Squad, El Dorado Police Department Bomb Squad, and the Bentonville Police Department Bomb Squad regarding a multi-jurisdictional response to improvised explosive devices
- H. Resolution authorizing partial payment to Crossland Heavy Contractors, Inc. for construction of the Lake Fort Smith Water Treatment Plan - Contract 3 (\$1,196,883.56)
- I. Resolution authorizing partial payment to Branco Enterprises, Inc. for construction of the Phase II, "P" Street Wastewater Treatment Plan Wet Weather Improvements - Schedule 2 (\$785,495.81)
- J. Resolution authorizing the City Administrator to accept an offer made by a property owner for the acquisition of real property interests for the Zero Street Outfall Phase II Sewer Improvements (\$3,200.00)
- K. Resolution authorizing the Mayor to execute an easement to Oklahoma Gas & Electric Company
- L. Resolution authorizing the office of City Administrator to issue notice of termination of services with Wilson Brothers Construction Company, Inc. For the construction of Rye Hill Sewer Outfall Phase IV, City of Fort Smith Project No. 08-08-C4 and authorizing the office of City Administrator to investigate necessary action to secure the completion of the subject project

Regarding Item No. 6A, Director Catsavis noted that if adequate monies are not raised for the renovation and the City determined to demolition the structure, he questioned

February 15, 2011 Regular Meeting

if Mr. Wilson would be willing to donate monies raised for the renovation to assist with the cost of demolition.

Mr. Monte Wilson spoke in opposition to the proposal. The existing monies raised would be utilized to provide for community redevelopment for student activities, etc.

Director Merry extended appreciation to Mr. Wilson for his efforts to raise funds to renovate the structure.

Hutchings, seconded by Settle, moved approval of all consent agenda items. The members all voted affirmatively, the Mayor declared the motion carried and the resolutions were adopted and numbered R-29-11 through R-40-11 respectively.

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

CONVENTION CENTER COMMISSION

Scott McLain

(to fill the unexpired term of Salvatore Salamone who resigned)

Term expires August 31, 2015

Hutchings, seconded by Weber, moved acceptance of the appointment nomination. The members all voting aye, the Mayor declared the motion carried.

Regarding Item No. 1C, City Clerk Sherri Gard (assisted by Assistant City Clerk Heather James) completed the first reading of the ordinance in its entirety. Mayor Sanders announced that the ordinance will be placed on the agenda for the March 1, 2011 regular meeting for its second reading.

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

February 15, 2011 Regular Meeting

► Mayor Sanders

- Re: 1. Noted the date and time of a reception honoring Fort Smith native Brett Goode, who plays for the Green Bay Packers, will soon be announced.
2. Extended condolences to Mr. Claude Legris, Director of the Advertising and Promotion Commission, upon the recent passing of his mother

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

Mayor Sanders opened the Citizens Forum with the following individuals present to address the Board:

- David Harris
2025 South "V" Street

Re: Regarding Item No. 5C, he alleged the legal description is incorrect in the lease agreement.

There being no further business to come before the Board, Settle 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