

MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ MAY 3, 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 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, George Catsavis, Pam Weber, Kevin Settle and Phillip H. Merry, Jr. Director Andre' Good arrived immediately following the roll call. The Mayor declared a quorum present.

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

The minutes of the April 19, 2011 regular meeting were presented for approval. Settle, seconded by Weber, moved approval of the minutes as written. The members all voting aye, the Mayor declared the motion carried.

Mayor Sanders urged all those who wish to address the Board of Directors during the meeting to promptly complete a speakers card and submit to the City Clerk. He further advised those who address the Board need only provide their name and city of residence.

With regard to the time limit policy for persons wishing to address the Board, the Mayor communicated that five (5) minutes per side would be extended on controversial items with three (3) minutes for rebuttal per side. Two (2) minutes will be allotted for consent agenda items and for those participating in the citizens forum.

Item No. 1 was an ordinance rezoning identified property and amending the zoning map (*from Commercial Light (C-2) to Commercial Heavy (C-5) by extension located at 4613, 4615 and 4617 Jenny Lind Road*)

Senior Planner Brenda Andrews briefed the Board on the item advising such is per the request of Larry Boggs. The purpose of the rezoning is to allow the applicant to have more opportunities when leasing the existing buildings. A neighborhood meeting was held on April 4, 2011 with several neighbors in attendance; however, all concerns were addressed. The Planning Commission held a public hearing on April 12, 2011 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.

Director Settle questioned if the City has been made aware of the intended commercial use for the property whereby Ms. Andrews simply stated, "not at this time."

Good, seconded by Catsavis, moved adoption of 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. 29-11.

Item No. 2 was an ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*from Residential Detached to Neighborhood Commercial and rezoning from Residential Multi-Family Medium Density (RM-3) to Commercial Light (C-2) by classification located at 6300 Cliff Drive*)

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Ms. Andrews briefed the Board on the item advising such is per the application of Mickle Wagner Coleman, agent. The purpose of the request is to facilitate the development of a 1.4 acre site for a proposed 35 space parking lot to serve an existing office building across the street on Cliff Drive. The subject tract contains street frontage on both Cliff Drive and Country Club Avenue and is currently zoned residential; however, the location and topography is not compatible for residential development. Due to the area maintaining street frontage on both east and west sides of the property, rezoning is requested for only 40% of the total tract along Cliff Drive. The residential zoning will remain for the portion along Country Club Avenue. The Planning Commission held a public hearing on April 12, 2011 with no individual present to speak in opposition to the requests. The Planning Commission voted unanimously to approve the Master Land Use Plan amendment and to amend the rezoning request subject to the following:

- Approval of the Master Land Use Plan amendment, approval of variance applications and submission of the final development plan.
- Prohibiting ingress or egress off Country Club Avenue except for maintenance purposes.

The Planning Commission approved the amended rezoning request by a vote of eight (8) in favor and zero (0) opposed.

Director Good commented that information indicates the subject area contains adequate vegetation to prevent drainage issues for property on Country Club Drive;

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therefore, he requested confirmation that existing vegetation is sufficient to address any potential drainage issue.

Mr. Pat Mickle, agent, advised water from the hillside naturally flows to an existing ditch along Country Club, which diverts water toward Interstate 540; therefore, he conveyed much assurance that drainage will not be an issue.

Director Settle inquired if the proposed parking lot will be designed to ensure runoff is directed toward the interstate. Due to the parking lot being for the business across the street, he also questioned if a crosswalk and appropriate signage will be installed.

With regard to drainage, Mr. Mickle confirmed that the parking lot will be parallel with the roadway and "sloped" to ensure runoff is directed toward the interstate.

Regarding the crosswalk and signage, Ms. Andrews advised the matter will be addressed and the Street Department contacted to ensure appropriate signage is in place.

Settle, seconded by Good, moved adoption of 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. 30-11.

Item No. 3 was an ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map *(from Open Space, Office*

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Research, Light Industrial and Residential Detached to General Commercial and rezoning from Industrial Light (I-1) to Commercial Heavy (C-5) by extension located at 8201 and 8225 South Zero Street)

Ms. Andrews briefed the Board on the item advising such is per the application of Mickle Wagner Coleman, agent. The purpose of the requests are to allow for commercial and retail development compatible to the surrounding areas. The neighborhood meeting was held on March 24, 2011 with none present to speak in opposition. The Planning Commission held a public hearing on April 12, 2011 with no individual present to speak in opposition to the requests. The Planning Commission approved both the Master Land Use Plan amendment and rezoning by a vote of eight (8) in favor and zero (0) opposed.

Hutchings, seconded by Merry, moved adoption of 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. 31-11.

Item No. 4 was an ordinance adopting amendments to the Transitional and Commercial Building Design Standards of the Unified Development Code

City Administrator Ray Gosack briefed the Board on the item advising two (2) sections of the Unified Development Code (UDO) prohibits chain link fencing in any location and on any developments located in commercial and transitional zones. Many

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businesses and developments need chain link fencing for security reasons, etc.; therefore, approval of the proposed ordinance will reinstate the allowance for chain link fencing when such does not conflict with other sections of the code. The Planning Commission reviewed the proposed amendments on April 12, 2011 and recommend approval.

Hutchings, seconded by Settle, moved adoption of 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. Catsavis, seconded by Weber, moved adoption of Section 4 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. 32-11.

Item No. 5 was an ordinance establishing charges for water and sanitary sewer connections, industrial user permit and vacuum truck discharge permit to the utility systems of the City of Fort Smith, repealing ordinances in conflict herewith, establishing a permit procedure for certain connections to the utility systems of the City, prohibiting and establishing penalties for unauthorized use of the utility easement and rights-of-way of the City of Fort Smith and for other purposes.

Mayor Sanders advised the item had been withdrawn from the agenda and rescheduled for consideration at the May 17, 2011 regular meeting.

Item No. 6 was an ordinance providing for procedures related to the enforcement

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and collection of gross receipts taxes; to declare an emergency and prescribing other matters pertaining thereto.

Claude Legris, Executive Director of the Advertising and Promotion Commission (Commission), briefed the Board on the item advising the proposed ordinance formalizes the basic procedures for the enforcement and collection of the 1% gross receipt taxes on prepared foods, which was adopted by the Board of Directors via Ordinance No. 14-11 on February 24, 2011. Such will also authorize the Commission to develop specific rules, regulations and forms for said enforcement and collection. The comprehensive document was thoroughly reviewed by the Commissioners, Commission staff, City Finance Department staff and attorneys for both organizations.

If the 1% prepared food tax is collected, a lawsuit filed and the courts repeal the tax, Director Catsavis inquired about disposition of tax revenues already collected.

City Attorney Jerry Canfield advised that if a lawsuit is filed, the matter could be addressed by the courts by issuance of an injunction; however, such may not be requested. Although he forewarned that additional legal review may be required, he preliminarily advised the disbursement of such tax collected would be at the discretion of the Advertising and Promotion Commission.

Director Settle noted the 1% prepared food tax has already been approved and clarified the proposed ordinance is merely to establish governance of the tax.

Director Hutchings requested a brief explanation of upcoming training and information sessions.

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Mr. Legris advised an intensive series of training and education sessions will be scheduled over the next couple of weeks for all sellers of prepared food and beverages required to collect the tax. Each will be contacted of the forthcoming sessions, which will be held at different times of day to accommodate their schedules. The scheduled sessions are to ensure as smooth a transition as possible for collection of the tax, which will become effective as of June 1, 2011.

Director Good commented on the language, "...Commission or its designated agent shall collect..."; therefore, he questioned if the "designated agent" has been determined.

Mr. Legris advised the City of Fort Smith Finance Department currently serves as the designated agent for collection of the existing hotel/motel tax; therefore, he conveyed much assurance the City will be retained to collect the 1% prepared food tax as well.

Merry, 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 voted as follows: ayes - Tyler, Good, Hutchings, Weber, Settle and Merry; nays - Catsavis. The Mayor declared the motion carried. Weber, seconded by Merry, moved adoption of Section IV the emergency clause. The members voted as follows: ayes - Tyler, Good, Hutchings, Weber, Settle and Merry; nays - Catsavis. The Mayor declared the motion carried and the ordinance

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and emergency clause were adopted and given No. 33-11.

Item No. 7 was an ordinance changing the local name of Clayton Expressway to Riverfront Drive to further the economic development and marketing to investors of the riverfront in downtown Fort Smith.

Downtown Development Coordinator Jayne Hughes briefed the Board on the item advising the purpose of the proposed street name change is to assist in marketing the riverfront to possible investors. The Central Business Improvement District (CBID) reviewed the matter whereby concern was conveyed that Clayton Expressway was named after the Clayton family, owners of historic Clayton House. Actually, Clayton Expressway was named after the Arkansas Highway and Transportation Department (AHTD) district engineer at the time the roadway was constructed. The CBID recommend approval of the proposed ordinance.

Director Settle questioned when the official name of the street will be changed.

Ms. Hughes advised property owners along the roadway must be notified, as well as the U.S. Postal Service; however, said notifications and new street signs will be requested immediately.

Director Good spoke in favor of the name change and conveyed much appreciation to Ms. Hughes and the CBID.

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

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ordinance for its readings and the members all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given No. 34-11.

Item No. 8 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 (2801 Royal Scots Way).

Mr. Gosack briefed the Board on the item advising the structure was damaged by fire in September 2010 and no renovations or repairs have been initiated. Due to such, the structure has been determined to be unsafe and detrimental to the public welfare; therefore, he recommended approval.

The following individual was present to address the Board:

- Mr. Martinez, son of owner Digna Martinez
Fort Smith, Arkansas

Re: Advised the structure has not been repaired due to an ongoing dispute with the insurance company, who allege the fire was due to arson. An attorney has been retained by the owner; therefore, much assurance was conveyed that the matter will be resolved in the very near future. He noted the entire structure was not damaged; therefore, he requested the demolition be postponed until resolution of the insurance dispute. Upon receipt of insurance money, the necessary repairs will be initiated as soon as possible.

Several directors expressed concern with the request for an extension as many complaints have been received regarding the condition of the structure. The main concern is the roof, which has not been covered since the fire; therefore, the structure has been open to the elements thereby resulting in additional damage to the interior.

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Building Official Jimmie Deer conveyed no opposition to the request for additional time to repair the structure stating such is "salvageable"; however, he noted that in order to ensure compliance, the necessary repairs will be extensive, as well as costly.

There was continued discussion whereby Director Catsavis questioned if the family's attorney could address the Board at the May 17 regular meeting to discuss the matter.

Mr. Martinez advised he was uncertain of the attorney's schedule and could not commit to such; however, he conveyed much assurance he would contact the attorney and request his attendance at the next regular meeting of the Board.

Good, seconded by Catsavis, moved to table consideration of the ordinance for two (2) weeks to allow the property owners attorney to address the Board. Prior to the vote, there was additional discussion with regard to the anticipated time for resolution via litigation.

At the request of Director Good, City Attorney Canfield addressed the Board and advised that since an insurance investigation has prompted litigation, he recommended the proposed demolition be temporarily delayed to allow the City to properly notify all parties of the impending demolition action. Such is to ensure all evidence has been collected from the structure and, if the Board then proceeds to condemn the structure and authorizes its demolition, he conveyed much assurance that the courts would have no objection to the City proceeding to address the public nuisance.

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Director Good withdrew the previous motion and moved to table consideration of the ordinance for one (1) month to allow the City to advise all parties of the impending demolition action. The motion was seconded by Hutchings. Prior to the vote, Director Weber inquired how long the owner has to make the necessary repairs after the Board authorizes a demolition.

Upon approval, Mr. Deer advised that property owners have approximately thirty (30) to forty-five (45) days to either demolish the structure themselves or complete the necessary repairs.

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

Item No. 9 was a resolution authorizing payment of retirement benefits to Mrs. Nancy Baker.

Mr. Gosack briefed the Board on the item advising due to former mayor Ray Baker's service as mayor for a period of longer than ten (10) years and his age upon retirement, he was entitled to receive retirement benefits as of January 2011. Mr. Baker passed away in March 2011; however, state law provides that his spouse, Mrs. Nancy Baker, is entitled to receive one-half (½) of the retirement benefit. Such requires official action by the Board of Directors; therefore, he recommended approval.

Hutchings, seconded by Settle, moved adoption of the resolution. The motion included suspending the rule to allow the three (3) full readings of the resolution to be

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by caption and for the readings to occur on the same date. The City Clerk read the resolutions for its readings and the members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-77-11.

The Consent Agenda (Item No.10) was introduced for consideration, the items being as follows:

- A. Ordinance to abandon a portion of a public utility easement located in Sparks Regional Medical Center, an addition to the City of Fort Smith, Sebastian County, Arkansas
- B. Resolution authorizing the mayor to execute an agreement with Mickle Wagner Coleman, Inc. for engineering services associated with the Fort Smith Landfill Scale Project (\$260,000.00)
- C. Resolution to accept the bids and authorize a contract for the construction of Carnall Sanitary Sewer Relocation, Project No. 11-06-C (\$284,092.00)
- D. Resolution accepting bid for the purchase of a skid steer loader (\$54,529.00) ~ *Street Department* ~
- E. Resolution authorizing the Mayor to execute an agreement with RJN Group, Inc. for providing engineering services associated with the Wastewater Collection System Flow Monitoring Services (\$87,604.00)
- F. Resolution authorizing Change order Number Two with The Burgess Company, Inc. for construction of the Lake Fort Smith Water Treatment Plant Contract 2 - Residuals Lagoons Improvements (\$30,164.70)
- G. Resolution authorizing final payment to The Burgess Company, Inc. for construction of the Lake Fort Smith Water Treatment Plant Contract 2 - Residuals Lagoons Improvements (\$116,749.64)
- H. Ordinance declaring an exceptional situation and waiving the requirements of competitive bidding and accepting the bid of and authorizing a contract with Harris Company of Fort Smith, Inc. for

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completion of Rye Hill Sewer Outfall Sewer Improvements - Phase IV (\$346,630.50)

Merry, seconded by Hutchings, moved adoption of all consent agenda items. The members all voting affirmatively, the Mayor declared the motion carried and the ordinances and resolutions were adopted with the ordinances given 35-11 and 36-11, and the resolutions numbered R-78-11 through R-83-11 respectively.

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

- **Mayor Sanders**

Re: Announced that Leadership Fort Smith has designated Director Merry to receive the "*Jack White Leadership Award*". Due to such, he offered congratulations to Director Merry and noted formal presentation of the award will occur later in the month.

- **Administrator Gosack**

Re: 1. Recognized Fire Chief Mike Richards, who addressed the Board and announced the City of Fort Smith has retained the ISO Class 2 fire rating. Such rating ensures residential and commercial insurance premiums will remain at a low rate for residents. Submission of information to determine fire ratings were previously required every ten (10) years; however, the City has been advised that such will now be required every (3) years.

Mr. Gosack further noted that the low rating "speaks volumes" about the quality fire protection provided by the Fire Department, and their ability to either prevent or keep property damage at a minimum.

Mayor Sanders expressed appreciation to the Fire, Police and Utility Department, as the information required was submitted via a united effort by each of the departments.

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2. The National League of Cities newspaper, *Nation's Cities Weekly*, recently recognized the City of Fort Smith Community Development Department for their outstanding work to oversee the City's Housing Assistance Program. Due to such, he expressed much appreciation to Director of Community Development Matt Jennings and his staff for their excellent work and for obtaining national recognition for the City of Fort Smith.
3. Regarding the recent heavy rains, the City received approximately 200 calls relative to flooding issues. The most severe problems will be addressed in the upcoming years Capital Improvements Project, and the remainder will be addressed as soon as possible. The Street and Engineering Departments will work diligently to ensure cost effective measures to address drainage issues.

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

- Eric Arthur
Fort Smith, Arkansas

Re: Provided statistical information regarding Police Department staffing and pay raises, court fines, etc., and recommended all police officers be required to have an "A.A. degree" (Associates Degree in Criminal Justice).
- Stephanie Kear and Teresa Kolb
Springdale, Arkansas

Re: Advised they had tried to attend the April 19, 2011 regular meeting to address the Board regarding the proposed ordinance to delay demolition of the structure at 2101 North 52nd Street; however, they had a wreck in route to Fort Smith and was unable to attend. Due to such, they conveyed their formal request for postponement of the demolition.

Mayor Sanders expressed appreciation for the request and advised staff would review the matter.

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Note: The Board of Directors authorized demolition of the structure per Ordinance No. 9-11, adopted February 3, 2011; however, an ordinance was presented at the April 19, 2011 regular meeting to prohibit demolition of the structure. The Board took no action at the April 19 meeting thereby affirming and allowing the previously authorized demolition to proceed.

- Joel Culberson
Fort Smith, Arkansas

Re: Read a prepared statement alleging false information was stated at the April 19, 2011 regular meeting regarding the anticipated revenue loss for delaying mandatory spay/neuter and licensing of animals.

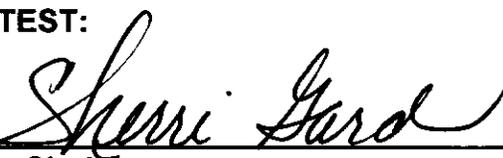
There being no further business to come before the Board, Settle moved that the meeting adjourn. The motion was seconded by Hutchings, and the members all voting affirmatively, the Mayor declared the motion carried and the meeting stood adjourned at 7:05 p.m.

APPROVED:



Mayor

ATTEST:



City Clerk