

## **MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING**

**TUESDAY ~ OCTOBER 4, 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, Andre' Good, Don Hutchings, George Catsavis, Pam Weber, Kevin Settle and Phillip H. Merry, Jr. The Mayor declared a quorum present.

The Mayor, Board and Administration presented a "*Good Neighbor Award*" to Don Dixon for helping to make his neighborhood and the community a better place in which to live.

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.

Mayor Sanders recognized Ryan Smith and Josh Cormier of Boy Scout Troop 110, who were in attendance to earn their Communications Badge. The Mayor further recognized Boy Scout Merit Badge Counselor George Weihrauch, who was also in attendance.

The minutes of the September 20, 2011 regular meeting were presented for approval. Settle, seconded by Tyler, 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.

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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 granted for 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 authorizing the issuance of water and sewer refunding revenue bonds; providing for the payment of principal of and interest on the bonds; prescribing other matters relating thereto; and declaring an emergency.

Deputy Administrator Jeff Dingman briefed the Board on the item advising the proposed ordinance authorizes the sale of \$19,490,000 in water and sewer refunding revenue bonds. The purpose of such is to refinance said existing bonds at a lower interest rate, which is anticipated to result in a net savings to the City of approximately \$1.2 million over the next ten (10) years. The bonds received a favorable response at the bond sale on October 3 and 4, 2011; therefore, he presented documentation which reflects the updated bond sale information.

Merry, seconded by Hutchings, moved to suspend 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 members all voting affirmatively, the Mayor declared the motion carried; therefore, the City Clerk read the ordinance for its readings. Settle, seconded by Good, moved adoption of the ordinance. The members all voting affirmatively, the Mayor declared the motion carried. Hutchings, seconded by Settle, moved adoption of Section 48 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. 74-11.

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Items No. 2 and 3 were presented collectively. The items being as follows:

2. Ordinance amending Chapter 4, Article I of the Fort Smith Municipal Code regulating animals, establishing mandatory registration, spay and neuter regulations, and hobbyist permit for dogs and cats ~ *First reading at the March 15, 2011 regular meeting / Tabled for 6 months at the April 5, 2011 regular meeting ~ \*\* Second reading \*\**
3. Ordinance amending Chapter 4, Article I, Section 4-1 of the Fort Smith Municipal Code regulating animals ~ *First reading at the March 15, 2011 regular meeting / Tabled for 6 months at the April 5, 2011 regular meeting ~ \*\* Second reading \*\**

Police Chief Kevin Lindsey briefed the Board advising the ordinances were first presented for consideration and approved on March 15, 2011; however, neither ordinance received the required five (5) affirmative votes for passage on their first reading. The second readings were scheduled for April 5, 2011 whereby such were tabled for six (6) months. Item No. 2 establishes mandatory registration, spay and neuter regulations, hobbyist permits for dogs and cats. Item No. 3 merely amends the existing definitions to accomplish regulations adopted in Item No. 2. An Animal Services Task Force was established and is expected to complete their work within ninety (90) days. The Board maintains the following options with regard to the proposed ordinances:

- ▶ Merely allow the second reading.
- ▶ Table the ordinances for a designated period of time to retain them for future consideration.
- ▶ Table the ordinances indefinitely to withdraw consideration.
- ▶ Vote on the ordinances again in an attempt to obtain the required five (5) affirmative votes for passage on their second readings.

Settle, seconded by Catsavis, moved to table the second reading of Item No. 2 for

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ninety (90) days to allow the Animal Services Task Force to complete their work. Prior to the vote, Tyler offered a substitute motion to table the matter indefinitely. Hutchings seconded the motion. Prior to the vote on the substitute motion, there was brief discussion whereby Administrator Gosack requested the city attorney provide clarification regarding tabling a matter 'indefinitely'.

City Attorney Jerry Canfield advised that such is a proper motion and to "table indefinitely" is merely a formal way to kill a matter before the Board. He clarified, however, that the Board maintains statutory authority to bring the matter back for consideration at any time.

Due to the explanation, Director Tyler withdrew the substitute motion.

The original motion remaining on the floor and the members all voting affirmatively, the Mayor declared the motion carried.

Settle, seconded by Tyler, moved to table the second reading of Item No. 3 for ninety (90) days to allow the Animal Services Task Force to complete their work. The members all voting affirmatively, the Mayor declared the motion carried.

Item No. 4 was an ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use from ETJ Light Industrial to ETJ Industrial and rezone from ETJ Open-1 to ETJ Industrial-2 by classification located at 5225 Planters Road*)

Administrator Gosack advised the proposed ordinance has been revised to merely include a shorter legal description, which will save on ordinance publication cost. Due to the revision, he advised the motion to adopt the ordinance should include "as revised."

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Director of Development Services Wally Bailey briefed the Board on the item advising such is per the application of Gerdau Special Steel of North America, d.b.a. MacSteel. The purpose of the proposed amendments is to facilitate the construction of a truck tarping station. The subject area consists of 169 acres and is located in the extra-territorial jurisdiction area. The Planning Commission held a public hearing on September 13, 2011 with Mr. Earl Reed present to convey concerns relative to a buffer zone for noise and wildlife. The Planning Commission questioned the inclusion of the entire 169 acre track when the truck station will occupy less than one-half acre. The applicant maintains no future development plans; however, they wish to rezone the entire track so future consideration by the Planning Commission will not be necessary. The Planning Commission unanimously amended both the Master Land Use Plan and rezoning request to make approval subject to the submittal of a development plan for Planning Commission review prior to any proposed development within 300 feet for the northern boundary of the property. The amended requests were approved by a vote of eight (8) in favor and zero (0) opposed.

Settle, seconded by Good, moved adoption of the ordinance as revised. The motion also included 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 all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given No. 75-11.

Item No. 5 was an ordinance rezoning identified property and amending the zoning map *(from Residential Multi-Family Medium density (RM-3) to Transitional (T) by extension located at 8411 South 28th Street)*

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Mr. Bailey briefed the Board on the item advising such per the request of Van Lee, agent for Fianna Hills Nursing and Rehab. The purpose of the zone change is to allow for a twenty-two (22) bed addition to the current facility, which is a legal non-conforming use in the existing zone classification. A neighborhood meeting was held on Thursday, September 1, 2011 with twelve (12) persons in attendance of which six (6) were surrounding property owners, who conveyed concerns regarding flooding and drainage issues. Mr. Robert Allen requested the Planning Commission delay consideration for sixty (60) days to allow his engineer to conduct an environmental impact study relative to drainage. The Planning Commission held a public hearing on September 13, 2011 with Mr. Robert Allen and Ms. Jackie Baker conveying concern with flooding and drainage issues. City of Fort Smith Director of Engineering Stan Snodgrass was also in attendance and conveyed the preliminary plans submitted for the development are in compliance with the City's drainage standards. The Planning Commission approved the request by a vote of eight (8) in favor and zero (0) opposed.

The following individual was present to address the Board:

- Van Lee, agent  
Fort Smith, Arkansas

Re: Advised when the nursing home was constructed, a storm water detention pond was also constructed to trap and reduce the flow of water to surrounding properties. He noted that since the detention pond was constructed, no structure flooding has occurred in the surrounding area.

Director Settle noted that the City of Fort Smith Engineering Department recently completed drainage improvements in the area and conveyed much assurance that

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drainage concerns have been addressed.

Director Catsavis moved to table consideration of the ordinance for sixty (60) days to allow property owners to conduct the aforementioned environmental impact study relative to drainage. The motion died for lack of a second.

Merry, 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 voted as follows: ayes - Tyler, Good, Hutchings, Weber, Settle and Merry; nays - Catsavis. The Mayor declared the motion carried and the ordinance was adopted and given No. 76-11.

Item No. 6 was an ordinance adopting an amendment to the Land Use Matrix in the Unified Development Code (outdoor dining),

Mr. Gosack briefed the Board on the item advising the Unified Development Ordinance does not currently allow outdoor dining in Industrial-1 zoning districts. A new restaurant, "The Egg and I", which is located in an industrial district, has requested outdoor dining be allowed at their location. Upon approval, the proposed ordinance will allow such as a conditional use. The Planning Commission reviewed the proposed amendment and recommend approval.

Hutchings, seconded by Merry, 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

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the motion carried. Good, seconded by Settle, moved adoption of the 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. 77-11.

Item No. 7 was an ordinance amending Chapter 16 of the Fort Smith Municipal Code to provide regulations for exterior lighting.

Mr. Bailey briefed the Board on the item as discussed at the September 13, 2011 study session. The purpose of the proposed amendment is to address extreme exterior lighting which negatively affects residential properties. Violations must be reported to the Fort Smith Police Department with ultimate enforcement conducted by the City Prosecutor's Office. Since court action will be required, the complainant must be willing to testify in court proceedings; therefore, no anonymous complaints will be accepted. Upon approval, the ordinance will be effective December 1, 2011. Such is to allow approximately sixty (60) days for public education of the new ordinance.

Director Hutchings questioned if such is when industrial lighting impedes upon residential property and further inquired if specific wattage will be considered to determine if a violation exists.

Mr. Bailey noted the proposed ordinance addresses any lighting which negatively impacts residential property. With regard to determining if a violation exists, such will be considered a violation if lighting causes, "...*annoyance, discomfort, or loss of visual performance and ability of reasonable persons of ordinary sensitivities.*" Complainants must prove the aforementioned exists before enforcement will proceed.

Good, seconded by Catsavis, moved adoption of the ordinance. The motion

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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. 78-11.

Item No. 8 was an ordinance for the purpose of adopting Storm Drainage Standards for the City of Fort Smith.

Director of Engineering Stan Snodgrass briefed the Board on the item as discussed at the September 27, 2011 study session. The existing Storm Drainage Standards, which were adopted in 1975 and updated in 1987, do not address the water quality requirements established by the Arkansas Department of Environmental Quality in the City's Municipal Separate Storm Sewer System (MS4) Permit. Upon approval, such will enhance the ability of the City to combat flooding issues and will ensure compliance with the applicable sections of the City's MS4 permit.

Director Settle questioned if the proposed drainage standards will affect items being considered by the Planning Commission whereby Mr. Snodgrass responded "no".

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. Settle, 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. 79-11.

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Item No. 9 was a resolution approving and authorizing implementation of the Five-Year (2012-2016) Sales Tax Program for streets, bridges and related drainage improvements and implementation of the 2012 Sidewalk Program.

Mr. Snodgrass briefed the Board on the item as discussed at the September 27, 2011 study session. Such authorizes implementation of the proposed projects within the Sales Tax Program and 2012 Sidewalk Program.

The following individual was present to address the Board:

- David Harris  
Fort Smith, Arkansas

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

Director Hutchings questioned when the Jenny Lind Project is expected to begin and estimated completion.

Mr. Snodgrass advised such is expected to start in late 2012 with estimated completion in two (2) years.

Settle, seconded by Good, moved adoption of the resolution. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-180-11.

Item No. 10 was an ordinance amending portions of Chapter 25 of the Fort Smith Municipal Code, Article VI - Sewers and Sewage Disposal, Division 1 - Generally; establishing Division 2 - Pretreatment Regulations and Permits; repealing ordinances in conflict herewith; and, for other purposes.

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Director of Utilities Steve Parke briefed the Board on the item advising the existing regulations have essentially been the same since 1997. As part of the pretreatment program audit performed by the Environmental Protection Agency (EPA) and the Arkansas Department of Environmental Quality (ADEQ), the agencies have requested the rules and regulations for the industrial pretreatment program be separated into its own category to improve the auditing process. The proposed ordinance does not impose any material change or regulations on any current sewer user; however, such includes required federal language changes and responds to the EPA and ADEQ request for pretreatment program regulations be in a separate division.

Tyler, 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 all voting affirmatively, the Mayor declared the motion carried. Settle, seconded by Tyler, moved adoption of Section 8 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. 80-11.

Item No. 11 consisted of the following millage ordinances:

- 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 2011 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

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- C. Ordinance to levy one (1) mill tax upon each dollar of assessed value of taxable real and personal property for Police 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

Administrator Gosack briefed the Board advising 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 Merry, 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 all voting affirmatively, the Mayor declared the motion carried and the ordinances were adopted and numbered 81-11 through 84-11 respectively.

The Consent Agenda (Item No. 12) was introduced for consideration, the items being as follows:

- A. Resolution authorizing Change Order No. 1 to the contract for demolition of the building at 800 North 9th Street (\$18,642.00 decrease / Budgeted - General Fund)
- B. Resolution accepting completion of and authorizing final payment for the demolition of the building at 800 North 9th Street (\$130,669.60 / Budgeted - General Fund)
- C. Resolution authorizing donation of materials from demolition of the building at 800 North 9th Street (former Mallalieu Church)

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- D. Resolution approving a donation agreement for historic signs from the Griffin Charitable Organization
- E. Ordinance approving the Human Resources Policy for non-uniformed employees (2011) and rescinding prior policies
- F. Resolution accepting completion of and authorizing final payment for the Fort Smith Transit Bus Stop Shelter Improvements, Project No. 10101A (\$15,319.21 / Transit Department / Budgeted - Encumbered from 2010 Budget / 100% Funded from the American Recovery and Reinvestment Act of 2009)
- G. Resolution accepting bids for the energy retrofit projects to Fire Stations No. 1 through 10 (\$526,519.00 / Fire Department / Not Budgeted - American Recovery and Reinvestment Act of 2009, EECBG Program)
- H. Resolution accepting the bid of and authorizing a contract with Utility Service Company, Inc. for Crowe Hill Elevated Tank Painting (\$89,900.00 / Utility Department / Budgeted - 6505 Capital Improvement Fund)
- I. Resolution accepting the bid of and authorizing a contract with VEI General Contractors, Inc. for "P" Street Wastewater Treatment Plant Wet Weather Improvements RAS Pump Station Number 2 and Sludge Storage Tank Rehabilitation (\$464,578.00 / Utility Department / Budgeted - 2009 Sales Tax Bonds)
- J. Resolution authorizing the Mayor to execute Authorization Number Three with Camp Dresser & McKee, Inc. for providing engineering services associated with the Mill Creek Wastewater Pump Station Wet Weather Improvements (\$43,000.00 / Utility Department / Budgeted - 2009 Sales Tax Bonds)

Regarding Item No. 12A, Director Merry expressed much appreciation to Mr. Wally Bailey, Environmental Solutions, Inc. and the Board for every effort to ensure the demolition/stabilization of the structure was a success.

With regard to Item No. 12D, Director Weber conveyed much appreciation to the Griffin Charitable Organization for donation of the historic markers.

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Regarding Item No. 12H, Director Catsavis questioned why the water tank is being repainted.

Mr. Parke advised the existing paint is fading and the paint system is beginning to fail.

Settle, seconded by Hutchings, moved adoption of all consent agenda items. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance and resolutions were adopted with the ordinance given No. 85-11 and the resolutions numbered R-181-11 through R-189-11 respectively.

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

▶ Mayor Sanders

Re: Noted success of the recently held Arkansas - Oklahoma State Fair and Fort Smith Regional Air Show and expressed much appreciated to all involved.

▶ Director Settle

Re: Noted many out-of-town family members are in the city for Thanksgiving; therefore, he requested the Christmas lights at Creekmore Park be lit and remain on the Friday and Saturday after Thanksgiving. He further requested the Holiday Express train be operated on the same weekend.

▶ Director Weber

Re: Expressed much appreciation to Director of Utilities Steve Park for the recent tour of the Lake Fort Smith facilities.

▶ Director Merry

Re: Merely conveyed much concurrence with request of Director Settle.

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▶ Administrator Gosack

Re: Requested City Attorney Jerry Canfield brief the Board on the recent ruling regarding the lawsuit filed by Mr. Joey McCutchen and Mr. David Harris relative to alleged Freedom of Information Act (FOIA) violations.

City Attorney Jerry Canfield advised the court ruled the City of Fort Smith did not violate the FOIA. He further provided detailed information regarding the City's counter-claims.

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

■ Louis Vincent  
Fort Smith, Arkansas

Re: If the 1% Prepared Food Tax does not pass at the forthcoming special election, he requested City officials take a "pay cut" to ensure existing police officers and firemen are maintained.

■ Larry Devero  
Fort Smith, Arkansas

Re: Noted the record number of attendance at the recent Fort Smith Regional Air Show and noted its economic value to Fort Smith. He recognized Colonel Tom Anderson, John Parker and Chuck Fawcett for their efforts to ensure a successful air show.

■ Elizabeth Mayo  
Fort Smith, Arkansas

Re: Referred individuals to various websites and noted an alleged change in the City's organizational chart.

Director Settle provided the current budget whereby such identifies the citizens of Fort Smith "at the top".

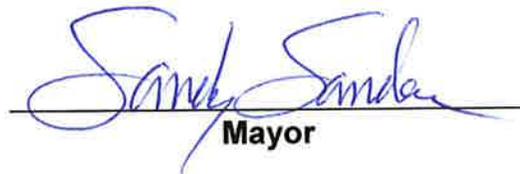
■ Linda George  
Fort Smith, Arkansas

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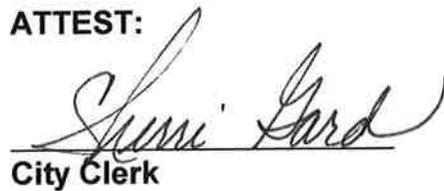
Re: Presented various information to the Board and expressed discontent with Alert Alarms, a private business; therefore, she requested the City rescind their occupation license.

There being no further business to come before the Board, Settle moved that the meeting adjourn. The motion was seconded by Merry, and the members all voting aye, the Mayor declared the motion carried and the meeting stood adjourned at 7:13 p.m.

**APPROVED:**

  
\_\_\_\_\_  
Mayor

**ATTEST:**

  
\_\_\_\_\_  
City Clerk