

MINUTES OF BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ NOVEMBER 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 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 Philip H. Merry, Jr. 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. The following requests were offered:

1. Merry, seconded by Hutchings, moved an item be placed on the agenda to discuss the Van Buren water true-up. The members all voting affirmatively, the Mayor declared the motion carried and item would be added to the agenda as Item No. 6.
2. Director Weber advised of a citizen request to move the citizens forum to immediately prior to the executive session.

City Administrator Ray Gosack advised the procedure for placement of the citizens forum is established by the Fort Smith Municipal Code; therefore, such cannot be accomplished without approval of an amendment to the Code of Ordinances.

The minutes of the November 1, 2011 regular meeting were presented for approval. Hutchings, seconded by Settle, moved approval of the minutes as written. The members all voting aye, the Mayor declared the motion carried.

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

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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.

Mayor Sanders announced that this was the time and place set for a public hearing to certify to the Sebastian County Tax Collector delinquent property cleanup liens. 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. 1).

The Mayor announced that if any individual was present to address the Board without first having presented their appeal to the Property Owners Appeal Board (POAB), he encouraged the liens be removed from the proposed ordinance and allow the property owners to go before the POAB.

The following individuals were present to address the Board:

- Trinh Nguyen
Fort Smith, Arkansas

Re: Regarding cleanup liens on 703 South 19th Street, owner - Lam Family Trust, Ms. Nguyen advised no notice of the impending cleanup was received.

- Maria Ruvalcaba
Van Buren, Arkansas

Re: Regarding cleanup liens on 723 North 13th Street, she requested the opportunity to go before the Property Owners Appeal Board.

- William Jones

Re: Regarding cleanup liens on 705 North 35th Street, he to requested the opportunity to go before the Property Owners Appeal Board.

Building Official Jimmie Deer addressed the Board on each of the above noted

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properties, whereby each of the property owners did not take advantage of their opportunity for appeal before the Property Owners Appeal Board hearings held on September 26 and 28. He reiterated the Mayor's previous comments and recommended each of the subject liens be removed from the ordinance and referred back to the Property Owners Appeal Board at their next regular meeting, Monday, December 12, 2011.

There being no further individuals present to address the Board, Mayor Sanders closed the public hearing.

Tyler, seconded by Weber, moved adoption of the ordinance including 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 motion further included the removal of liens for properties located at 703 South 19th Street, 723 North 13th Street and 705 North 35th Street to allow the property owners to go before the Property Owners Appeal Board. The motion also included a provision to allow the removal of liens that have been paid since preparation of the ordinance. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given No. 91-11.

Item No. 2 was an ordinance amending Ordinance No. 60-10 and setting the location and time for regular meetings of the Board of Directors for the year 2012.

The following individual was present to address the Board:

- Elizabeth Mayo
Fort Smith, Arkansas

Re: Expressed appreciation to several members of the Board for their recent efforts to ensure citizens comments are heard.

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Hutchings, seconded by Merry, moved adoption of the ordinance. The motion included suspending the rule to allow the three (3) three 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. 92-11.

Item No. 3 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 (*1906 South "N" Street and 2405 North 31st Street and rear storage*).

Administrator Gosack advised the structures have been determined to be unsafe and detrimental to the public welfare; therefore, he recommended approval.

The following individual was present to address the Board:

- Genia Peerson
Fort Smith, Arkansas

Re: Advised she resides next to the structure at 1906 South "N" Street. The structure is now home to multiple feral cats and causes a very bad smell in the neighborhood; therefore, she recommended approval of the ordinance.

Settle, seconded by Tyler, moved adoption of the ordinance. The motion included suspending the rule to allow the three (3) three 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 5 the emergency clause. The members all voting affirmatively, the Mayor declared the motion carried and the

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ordinance and emergency clause were adopted and given No. 93-11.

Item No. 4 was an ordinance amending Chapter 18, Article III of the Fort Smith Municipal Code to add Section 18-81 through 18-85 regarding park rules.

Director of Parks and Recreation Mike Alsup briefed the Board on the item advising the proposed ordinance establishes rules regarding the authorization and permitting of public assemblies, the sale of food or merchandise, and non-commercial solicitation on City property. Upon approval, such will establish a permit system for these areas to improve the management and scheduling of the parks and clarify the park rules.

The following individual was present to address the Board:

- Frank Glidewell
Fort Smith, Arkansas

Re: Regarding Section 18-83 of the proposed ordinance, he questioned the constitutionality citing the matter violates "free speech". He recommended consideration of the ordinance be tabled pending receipt of a legal opinion from the State of Arkansas Attorney General. If the City does not wish to request said opinion, he alleged Senator Denny Altes has conveyed his agreement to submit the request on behalf of the City. If the Board adopts the proposed ordinance as presented, he asserted the ordinance will be challenged. If the Attorney General determines Section 18-83 is constitutional, such will be accepted with no further opposition.

- Joel Culberson
Fort Smith, Arkansas

Re: Reiterated Mr. Glidewell's concern, but also expressed concern that an "Application for Permit" must be submitted at least forty-five (45) days in advance.

Director Catsavis questioned the estimated time anticipated to receive an opinion

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from the Attorney General and requested confirmation that the proposed language would withstand a legal challenge.

City Attorney Jerry Canfield conveyed no time-frame to receive the aforementioned opinion. With regard to constitutionality, the language within the proposed ordinance is "content neutral"; however, the issue could be challenged as an improper or too restrictive regulation as it relates to "free speech".

At the request of Administrator Gosack, Mr. Canfield clarified the City maintains no authority to submit a request for an opinion from the Attorney General. Said opinions may only be requested by the Governor's Office, Prosecutor Offices, members of the General Assembly, or members of election commissions.

There was brief discussion regarding the application for permit and the required forty-five (45) day advance submission whereby much concern was expressed. Such would prohibit obtaining a permit to assemble and obtain signatures on a petition, such as the recent petition drive whereby said signatures had to be obtained within thirty (30) days.

Catsavis, seconded by Settle, moved to table the ordinance for six (6) months with the caveat that the City contact a member of the General Assembly to request the aforementioned Attorney General opinion. The members all voting affirmatively, the Mayor declared the motion carried.

The Consent Agenda (Item No. 5) was introduced for consideration, the items being as follows:

- A. Ordinance declaring exceptional circumstance and authorizing continuation of agreement with Data-Tronics Corporation

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- B. Resolution authorizing the offering of water and sewer revenue bonds to refund outstanding Water and Sewer Refunding Revenue Bonds, Series 2005A; and prescribing other matters relating thereto
- C. Resolution authorizing an agreement between the City of Fort Smith, Arkansas and the Fort Chaffee Redevelopment Authority to jointly design, construct and fund the McClure Amphitheater Road, Project 12-00-A
- D. Resolution authorizing a change order for the construction of Chad Colley Boulevard Extension, Project No. 10-00-A (\$10,205.83 / Engineering Department / Budgeted - Sales Tax Fund)
- E. Resolution accepting completion of and authorizing final payment for the construction of Chad Colley Boulevard Extension, Project No. 10-00-A (\$69,094.46 / Engineering Department / Budgeted - Sales Tax Fund)
- F. Resolution authorizing the Mayor to enter into an amended lease agreement with Produce Row Development, LLC for operating a portion of the Park at West End
- G. See Item No. 4
- H. Resolution authorizing Contract Amendment No. 1 with Crawford Construction Company for the renovation and additions to the transit facilities located at 6812 Jenny Lind Road Project No. 10-02 (\$37,182.66 / Transit Department / Budgeted - Encumbered from 2010 Budget - 100% funded by the American Recovery Reinvestment Act of 2009)
- I. Resolution authorizing partial payment to Crossland Heavy Contractors, Inc. for construction of the Lake Fort Smith Water Treatment Plant - Contract 3 (\$821,432.17 / Utility Department / Budgeted - 2008 Revenue Bonds)
- J. Resolution authorizing the City Administrator to accept offer made by property owner for the acquisition of real property interests for the Lake Fort Smith Water Supply Project (\$126,000.00 / Utility Department / Budgeted - Capital Improvement Program Fund)

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- K. Resolution accepting the project as complete and authorizing final payment to Silco Construction, Inc. for construction of the site restoration for the Sunnymede Wet Weather and Walking Trail Improvements (\$51,030.38 / Utility Department / Budgeted - 2009 Sales Tax Bonds)

- L. Resolution accepting the project as complete and authorizing final payment to M. Phillips Construction, Inc. for the 27-Inch Transmission Line Replacement - Lancaster Place (\$169,572.86 / Utility Department / Budgeted - 2008 Revenue Bonds)

Regarding Item No. 5C, Director Catsavis questioned the funding for the project, as well as the operating costs for the McClure Amphitheater.

Director of Engineering Stan Snodgrass advised one-half (½) of the street project will be funded by the City of Fort Smith Street Sales Tax Fund and the remaining half will be covered by the Fort Chaffee Redevelopment Authority.

Regarding operating costs for the amphitheater, Mr. Alsup noted the City will be responsible for the electric bill, which is estimated to cost \$6,000 annually. The Board has already approved the agreement and the estimated cost is included in the proposed 2012 Budget.

Hutchings, seconded by Good, moved adoption of all consent agenda items. The members all voting affirmatively, with the exception of Director Catsavis voting “no” on Items No. 5C and 5F. The Mayor declared the motion carried and the ordinance and resolutions were adopted with the ordinance given No. 94-11 and the resolutions numbered R-204-11 through R-213-11 respectively.

Item No. 6 was discussion of the Van Buren true-up, which was added to the agenda by unanimous vote of the Board at the beginning of the meeting.

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Director Merry provided a briefing of action taken by the City to address the Van Buren water true-up and conveyed great concern with how such was handled by the City. Due to the City's failure to follow the agreement and provide information to Van Buren for the 2009 true-up in the time required, he expressed much discontent with the determination that Van Buren should not be billed for 2009 for fear of legal challenge. He recommended an invoice be forwarded to Van Buren for the 2009 true-up.

Mr. Canfield advised the true-up provision is part of a settlement agreement between the City of Fort Smith and the City of Van Buren. The true-up calculation is very complex and was determined by arbitration. The agreement states the City "shall" provide information of water usage to the City of Van Buren within sixty (60) days of the annual CAFR. The City did not provide said information within the required time-frame for 2009 as per the agreement; therefore, Van Buren could assert the City did not follow the contractual requirements thereby making the 2009 true-up uncollectible.

There was very lengthy discussion regarding the matter whereby much appreciation was expressed to Administrator Gosack for his handling of the matter. The Board ultimately concurred to request a joint meeting with the Van Buren Municipal Utilities and the City of Van Buren officials to discuss the matter, and that the City forward an invoice to Van Buren for the 2009 true-up amount.

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

► Mayor Sanders

Re: Expressed much appreciation to all who voted in the November 8, 2011 special election.

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▶ Director Settle

- Re: 1. Reminded all that the Christmas lights and Holiday Express will be running at Creekmore Park the weekend after Thanksgiving; therefore, he encouraged all to attend.
2. Advised the first Ward 1 meeting will be held at 6:00 p.m., Thursday, December 1 at Creekmore Park Community Center and encouraged all to attend.

▶ Director Tyler

Re: Advised of a conversation with a new resident, who recently moved to Fort Smith from Orlando Florida. The woman conveyed how much she loves living in Fort Smith.

▶ Pam Weber

Re: Expressed much appreciation for the invitation from the Citizens Academy Alumni for her to participate in a recent tour of the Chaffee Crossing area. She further extended gratitude to Ivy Owen, Director of the Fort Chaffee Redevelopment Authority, and Matt Pitsch, Director of the Regional Intermodal Transportation Authority, for the valuable information they provided during the tour.

▶ Director Good

Re: Conveyed gratitude to all Transit Department staff for their attendance at the recent funeral of Transit driver Boyce Brant, citing it was "very encouraging" to see their attendance.

The executive session was held and after reconvening, the Mayor announced the following appointment nominations:

AIRPORT COMMISSION

Larry Schiffner

(fill the unexpired term of Ryan Carter who resigned)

Term expires June 30, 2016

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BUILDING BOARD OF ADJUSTMENT AND APPEALS

Chip Johnson (reappointment)
Term expires November 30, 2015

OAK CEMETERY COMMISSION

Mrs. Randall Ross Viguet
Term expires November 30, 2014

Settle, seconded by Catsavis, moved acceptance of all appointment nominations.

The members all voting aye, the Mayor declared the motion carried.

Mayor Sanders announced satisfaction with the job performance Administrator Gosack and another performance evaluation will be scheduled in six (6) months.

With regard to the time limit policy for persons wishing to address the Board in the 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:

- Elizabeth Mayo
Fort Smith, Arkansas

Re: Regarding defeat of the 1% prepared food tax at the November 8, 2011 special election, she expressed discontent with the minimal media coverage regarding the issue.

- Louis Vincent
Fort Smith, Arkansas

Re: Expressed discontent the City of Fort Smith did not receive the grant for assistance to fluoridate the water supply and alleged such was denied because the City applied for too much funding.

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Director Settle clarified the amount requested was because the City of Fort Smith is a regional water supplier and equipment would be needed for two (2) water treatment locations.

Administrator Gosack advised the City may reapply for the grant funds in the future.

There being no further business to come before the Board, Good moved that the meeting adjourn. The motion was seconded by Tyler and the members all voting aye, the Mayor declared the motion carried, and the meeting stood adjourned at 8:46 p.m.

APPROVED:



MAYOR

ATTEST:



CITY CLERK