

MINUTES OF BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ MAY 15, 2012 ~ 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.

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

The minutes of the May 1, 2012 regular meeting was presented for approval. Hutchings, seconded by Merry, 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 items with three (3) minutes for rebuttal per side.

Item No. 1 was presentation of proclamations for Public Works Week (May 20-26, 2012); therefore, Mayor Sanders proclaimed this same week as "*Public Works Week in Fort Smith.*" This year's theme is: *Public Works - Creating a Lasting Impression.* The special week provides an opportunity to recognize the importance of street, water & sewer, sanitation, stormwater, parks, public transit, and capital project management. A public works employee appreciation picnic will be held Thursday, May 24th at Creekmore Park from 11:00 a.m. to 1:00 p.m.

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Mayor Sanders, along with the Board of Directors and Administration, extended appreciation to the following departments and presented proclamations to each department director:

- ▶ Ken Savage, Director of Fort Smith Public Transit
- ▶ Baridi Nkokheli, Director of Sanitation
- ▶ Mike Alsup, Director of Parks & Recreation
- ▶ Greg Riley, Director of Operations
- ▶ Stan Snodgrass, Director of Engineering
- ▶ Steve Parke, Director of Utilities

Item No. 2 was an ordinance repealing and replacing Section 25-268(b) of the Fort Smith Municipal Code (placement and removal of trash containers) ~ *Settle/Hutchings placed on agenda at the April 24, 2012 study session ~ **Second Reading***

Mayor Sanders advised the item is merely the second reading; therefore, no briefing was provided.

The following individual was present to address the Board:

- Cheryl Arnold
Fort Smith, Arkansas

Re: Advised she resides in the Sleepy Hollow area and spoke in opposition to the ordinance. She expressed concern the large automated carts will be an inconvenience to residents and alleges one of the reasons she purchased her residence was due to sanitation collection being in the alleyway.

Director Weber advised she's received multiple comments on the issue and noted ordinance is already in place that requires residents to maintain alleyways.

Weber, seconded by Catsavis, moved adoption of the ordinance. The motion included suspending the rule to allow the second and third readings of the ordinance to be by caption and to occur on the same date.

Prior to the vote, Director Good spoke in favor of the items citing such merely

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ensures all residents must adhere to the same regulations with regard to removal of trash containers.

Director Settle noted concurrence with Director Good; therefore, he spoke in favor of the item as well.

The motion remaining on the floor, the City Clerk read the ordinance for its second and third readings, and the members voted as follows: ayes - Good, Hutchings, and Settle; nays - Tyler, Catsavis, Weber and Merry. The Mayor declared the motion defeated.

Item No. 3 was an ordinance repealing the existing Chapter 14, Article IV, Division 5, Sections 14-141 through 14-166, of the Fort Smith Municipal Code and replacing them with new sections 14-141 through 14-166 and two new sections 14-167 and 14-168, redefining and classifying sexually oriented businesses; providing restrictions on the location of sexually oriented businesses; providing for the licensing of sexually oriented businesses and their employees; providing regulations concerning the operation of sexually oriented businesses; and providing penalties for violations ~ *Settle/Good placed on the agenda at the May 8, 2012 study session* ~

Administrator Gosack advised that in order to accurately reflect state law, the proposed ordinance has been revised to change "residential district" to "residence".

Police Chief Kevin Lindsey briefed the Board on the item as discussed at the May 8, 2012 study session citing the proposed ordinance includes the requested minimum distance of 1,000 from residences. At the request of the city attorney, the ordinance also now includes a 1,000 required minimum distance from any walking trail, recreational area or facility, public library and playground as additional criteria. Such follows best practices and is anticipated to withstand constitutional scrutiny.

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Director Settle questioned if any existing business will be affected by the proposed ordinance and further inquired if the Police Department foresees a potential problem if a sexually oriented business is located near the outer limits of the city.

Chief Lindsey advised only one (1) sexually oriented business is currently located within the city; however, such will not be affected by the proposed ordinance. With regard to location, the Police Department foresees no potential problem with any permitted location, or relocation, of a sexually oriented business.

There was brief discussion regarding the potential for a legal challenge relative to maintaining the existing 500 ft. versus the proposed 1,000 ft. minimum distance from the residences, parks, etc. and permitted zoning classifications. Upon approval of the proposed ordinance, such will only provide 1.4% of the city's land use for the location of a sexually oriented business; however, with the proposed permitted zoning locations and a 500 ft. minimum distance, such would provide 4% of the city's land use.

Administrator Gosack also noted that a Board member requested a review of providing a 3,000 ft. buffer of protected uses by adding an additional industrial zoning classification. Such resulted in a 3% land use area for said businesses.

At the request of Director Tyler, City Attorney Jerry Canfield advised that case law indicates the highest percentage successfully challenged included 5% permitted land use area. The proposed 4% would be more easily defended if legally challenged; however, there is no legal precedent that would indicate the 1.4% would be inappropriate. If the 1.4% is challenged, the court will review all facts and determine if the City provided a reasonable opportunity for constitutional expression.

Tyler, seconded by Settle, moved to amend the ordinance to include Industrial

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Medium and Industrial Heavy land use classifications, which would increase the permitted land use area to 4%.

Prior to the vote, Director Hutchings advised such would provide thirteen (13) areas for such businesses, which he feels is “unacceptable” for the city; therefore, he spoke in opposition to the proposed amendment.

Director Weber noted concurrence with Director Hutchings and also advised of her intent to vote against the amendment.

Director Settle clarified that if the amendment is defeated, the thirteen (13) areas will remain as allowable locations for a sexually oriented business. He alleged the only way to address the issue would be to approve a 3,000 ft. buffer, which he fears would not withstand a legal challenge.

Director Catsavis inquired what zoning classifications could be included to ensure a 5% permitted land use area.

Director of Development Services Wally Bailey advised such would require further review; however, if Industrial Light zoning were to be included, such would increase the land use availability to approximately 10% to 13%.

There was continued discussion whereby Director Hutchings called the question; therefore, the members voted as follows on the motion to amend the ordinance: ayes - Tyler, Good and Settle; nays - Hutchings, Catsavis, Weber and Merry. The Mayor declared the motion defeated.

Hutchings, seconded by Catsavis, moved adoption of the ordinance as revised to reflect the change of “residential district” to “residence”, which was previously noted. The motion included suspending the rule to allow the three (3) full readings of the ordinance to

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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 - Good, Hutchings, Catsavis, Weber and Merry; nays - Tyler and Settle. The Mayor declared the motion carried. Merry, seconded by Weber, moved adoption of Section 4 the emergency clause. The members voted as follows: ayes - Good, Hutchings, Catsavis, Weber and Merry; nays - Tyler and Settle. The Mayor declared the motion carried and the ordinance and emergency clause were adopted and given Ordinance No. 38-12.

Item No. 4 was an ordinance amending the 2009 Unified Development Ordinance (*Phoenix Avenue sign regulations*) ~ *Catsavis/Settle placed on the agenda at the May 1, 2012 regular meeting* ~

Administrator Gosack briefed the Board on the item advising such was previously presented at the March 6, 2012. The issue of Phoenix Avenue sign regulations was tabled and referred back to the Planning Commission on said date; however, the Board requested the matter be presented for approval. Such will provide more flexibility for business owners whereby the proposed ordinance will not limit the number of signs permitted on the wall surface as long as the total number of signs per wall is equal to or less than the 20% of the wall surface for the principal structure and 5% of the wall surface of an accessory structure.

Catsavis, 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. Weber, seconded by Hutchings, 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 Ordinance No. 39-12.

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

- A. Ordinance to abandon a portion of a public utility easement located in Jeffrey Way, an addition to the City of Fort Smith, Sebastian County, Arkansas (*63 Jeffrey Way / Phil Taylor, applicant*)
- B. Resolution authorizing the Mayor to submit a CDBG grant application from the State of Arkansas for the River Bend Industries Project
- C. Resolution authorizing the execution of a memorandum of understanding concerning mobile data support between the City of Fort Smith, Arkansas, and the City of Van Buren, Arkansas
- D. Resolution authorizing acquisition of real property interests for the Sunnymede Basin Sewer Improvements (*\$348.74 / Utility Department / Budgeted - 2009 Sales Tax Bond*)
- E. 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 (*\$12,500.00 / Utility Department / Budgeted - Capital Improvement Program Fund*)
- F. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Forsgren, Inc. for the Riverfront Development Water and Sewer Extensions (*\$364,615.85 / Utility Department / Budgeted - Capital Improvement Program Fund*)
- G. Resolution authorizing the Mayor to execute an agreement with Hawkins-Weir Engineering, Inc. for engineering services for the 2011 Sanitary Sewer Improvements (*\$150,000.00 / Utility Department / Budgeted - 2009 Sales Tax Bonds*)
- H. Resolution accepting the bid of and authorizing the Mayor to execute a contract with T-G Excavating, Inc. for the 2011 Sanitary Sewer Improvements, Phase 1 (*\$1,977,777.00 / Utility Department / Budgeted - 2009 Sales Tax Bonds*)
- I. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Cummins Mid-South, LLC for the

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**Wastewater Pump Station Standby Power Equipment
(\$1,341,404.00 / Utility Department / Budgeted - 2012 Sales
Tax Bonds)**

Regarding Item No. 5B, Director Settle advised River Bend Industries is making a new portable cooler and such will keep jobs in Fort Smith; therefore, he spoke in favor of the item.

With regard to Item No. 5D, Director Weber requested a brief explanation.

Director of Utilities Steve Parke advised staff is continuing to negotiate with the property owners. If a negotiated amount differs from the proposed purchase amount, staff will present a resolution to the Board for approval.

Regarding Item No. 5F, Director Settle clarified that such authorizes a contract to initiate construction of infrastructure along Riverfront Drive, which the Board has previously indicated as a goal to enhance development along the riverfront.

Hutchings, seconded by Settle, 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. 40-12 and the resolutions numbered R-101-12 through R-108-12 respectively.

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

► **Mayor Sanders**

- Re:
1. Advised the Bass Reeves statue is expected to arrive in Fort Smith tomorrow at approximately 3:00 p.m. and be placed in Pendergraft Park. The dedication ceremony is planned for 10:00 a.m., Saturday, May 26th.
 2. Announced a Memorial Day service will occur at 10:00 a.m. at the National Cemetery; therefore, he encouraged all to attend.

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▶ Director Merry

- Re:
1. Announced a dedication ceremony was held on Thursday, May 10th for the newly opened Buddy Smith Home, a 16-bed facility for the homeless.
 2. Advised on Friday, May 11th, 56 individuals became American citizens and encouraged all residents to attend future ceremonies.
 3. Extended much appreciation to Fire Chief Mike Richards.

▶ Director Good

- Re:
1. Reiterated Mayor Sanders comments about the Bass Reeves statue and encouraged all to attend.
 2. Extended congratulations to the current Citizens Academy class, who will graduate on Thursday, May 17th.

▶ Director Weber

- Re:
1. Extended appreciation to the May/Lecta/Sweet neighborhood and Director Steve Tyler for their efforts to paint the Blue Bird school house.
 2. Also recognized Carolyn Plank and the Luthern DuVall Neighborhood Association, who recently celebrated ten (10) years of existence.

▶ Administrator Gosack

- Re:
- Regarding the March 13, 2012 special election, he announced the bond closing for the projects will take place on May 22nd. Staff has been working diligently on the projects and design contracts for Fire Station No. 11 and the aquatics center at Ben Geren are anticipated to be presented for Board consideration at the June 5 regular meeting. Fire apparatus contracts are anticipated for June or July.

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

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AIRPORT COMMISSION

James E. Kelly, III M.D.
Jan Nordin (reappointment)
Terms expire June 30, 2017

COMMUNITY DEVELOPMENT ADVISORY COMMISSION

Fran Hall (reappointment)
Cinda Rusin (reappointment)
Terms expire June 30, 2015

FORT SMITH MUNICIPAL EMPLOYEES BENEVOLENT FUND

BOARD OF ADVISORS

Barbara Williams (Police)
Ronnie Rogers (Fire)
Terms expire June 30, 2015

TRANSIT ADVISORY COMMISSION

Dustin Perceful
Treopia Jordan
Terms expire June 15, 2015

Settle, seconded by Tyler, moved acceptance all appointment nominations. The members all voting aye, the Mayor declared the motion carried.

Regarding the City Administrator performance evaluation, Mayor Sanders announced the Board is satisfied Mr. Gosack's performance and noted another evaluation will be held in six (6) months.

There being no further business to come before the Board, Merry moved that the meeting adjourn. The motion was seconded by Settle and the members all voting aye, the Mayor declared the motion carried, and the meeting stood adjourned at 8:28 p.m.

APPROVED:


MAYOR

ATTEST:


CITY CLERK