

MINUTES OF BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ SEPTEMBER 4, 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 Father John Maxwell of St. George and Alexandra Orthodox 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 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 August 23, 2012 regular meeting were presented for approval. Settle, seconded by Catsavis, moved approval of the minutes as written. The members all voting aye, the Mayor declared the motion carried.

Item No. 1 consisted of the following presentations:

- ▶ In recognition of the Mayor's Second Annual Communitywide Food Drive, Mayor Sanders presented a proclamation declaring September 2012 as Hunger Action Month in Fort Smith to Mr. Ken Kupchick, representing the River Valley Regional Food Bank.
- ▶ The Mayor also presented Mr. David Ransom with the Good Neighbor Award. Ms. Patty Yarborough nominated Mr. Ransom citing his valued assistance to her and other surrounding neighbors.

Item No. 2 consisted of the following items relative to appeal of Planning Commission decision denying the development plan located at 900 South Waldron Road (*appeal filed by Rocky Walker & Aaron Wirth, Developers*):

- A. Resolution affirming the action of the Planning Commission denying the development plan for a multi-family development located at 900 South Waldron Road

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- B. Resolution approving a development plan for a multi-family development located at 900 South Waldron Road

Director of Development Services Wally Bailey briefed the Board on the item advising such is per the appeal of Rocky Walker and Aaron Wirth, developers. The Board of Directors rezoned the subject property in 2010. A development plan was submitted at that time, identified as the 2010 Development Plan, which consisted of a fifty-six (56) unit multi-family development with five (5) buildings including a mix of two (2) and three (3) story buildings. With the enhanced setback requirements in the Unified Development Ordinance (UDO), variances were needed to permit the previously submitted development. After reviewing the possibility of variances, the developers decided to revise the development plan so that it did not require any variances. The revised development plan, identified as the 2012 Development Plan, consists of a fifty-six (56) unit multi-family development, but with three (3), three (3) story buildings. A neighborhood meeting was held on August 9, 2012 with approximately twenty-five (25) surrounding neighbors in attendance, who voice various objections to the project citing opposition to the three (3) story design, traffic concerns and property devaluation. The Planning Commission reviewed the 2012 Development Plan and unanimously amended the request to make approval subject to the following:

- ▶ All construction must be built in accordance with the submitted development plan.
- ▶ The final development plan must provide details on the proposed exterior lighting that complies with Section 27-602-5 Commercial and Outdoor Lighting requirements.
- ▶ All signage will require staff review and permitting.

The Planning Commission denied the amended request by a vote of two (2) in favor, six (6) opposed, and one (1) abstention. The denial was based on the fact that the

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proposed development would not be consistent with the area's established development pattern and character, and that it fails to respect the context of the surrounding neighborhood. Mr. Walker filed an appeal of the Planning Commission denial with the City Clerk's Office on August 24, 2012. Item No. 2A affirms the action of the Planning Commission denying the 2012 Development Plan. Item No. 2B overturns the action of the Planning Commission and approves the 2012 Development Plan for the multi-family development.

The following individual was present to address the Board:

- Mr. Rocky Walker, developer
Fort Smith, Arkansas

Re: Spoke in favor of the submitted 2012 Development Plan citing such was designed according to all City guidelines and standards, and alleged such is consistent with the approved zoning in 2010. Regarding the basis for Planning Commission denial, he noted the city attorney opinion which states, *"argued incompatibility of the development plan with other, nearby properties, are not appropriate factors in performing development plan review under this section. (Section 27-331-1)"*; therefore, he recommended approval of Item No. 2B.

- Mr. John Alford
Fort Smith, Arkansas

Re: Spoke in opposition to the submitted 2012 Development Plan and requested all those in attendance who were also opposed to stand whereby approximately thirty (30) attendees participated. He expressed concern regarding increased traffic citing 689 traffic citations were issued on Waldron Road in 2011, and alleged the proposed development is not consistent with requirements noted within the UDO.

- Mr. Tom Robertson

Re: Also spoke in opposition to the submitted 2012 Development Plan citing such does not conform with the character or pattern of the surrounding neighborhood.

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There was brief discussion with several members of the Board conveying concern regarding the density and parking of the development, traffic and uniformity with the existing character of the surrounding neighborhood. An inquiry was also conveyed regarding the possibility of access from Waldron Road only and other developments that could be constructed on the subject property, as well as nearby vacant property.

Mr. Bailey advised the density of the development and parking conforms with the existing requirements of the UDO and noted public safety officials would 'prefer' multiple access to the development from both Free Ferry and Waldron Road. With regard to other allowable development, he advised the property was rezoned in 2010 specifically for a high-density, multi-family development; however, such included a provision that required Planning Commission approval of the development plan. With regard to allowable development on vacant land nearby, he advised such is currently zoned for commercial development.

Tyler, seconded by Weber, moved adoption of Item No. 2A. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-192-12.

Items No. 3 and 4 were presented collectively, the items being as follows:

3. Ordinance amending Chapter 4, Article I of the Fort Smith Municipal Code regulating animals, establishing mandatory registration, spay and neuter regulations, and a 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 / Tabled for 90 days at the October 4, 2011 regular meeting / Tabled for 9 months at the January 3, 2012 regular meeting ~ ** Second reading ***
4. 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 / Tabled for 90 days at the*

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*October 4, 2011 regular meeting / Tabled for 9 months at the
January 3, 2012 regular meeting ~ ** Second reading ***

Administrator Gosack 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 and was tabled for six (6) months. At the October 4, 2011 regular meeting, the second readings were tabled for ninety (90) days to allow the Animal Services Task Force to complete their work and present recommendations. At the January 3, 2012 regular meeting, the second readings were again tabled, but for ninety (90) days.

Item No. 3 establishes mandatory registration, spay and neuter regulations, and hobbyist permits for dogs and cats. Item No. 4 merely amends the existing definitions to accomplish regulations adopted in Item No. 3. 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.

Merry, seconded by Settle, moved to table the items indefinitely. The motion also included that the Animal Services Advisory Board review the current "leash law" to encourage pet owners to spay/neuter their pets whereby incentives would be provided that the fine could potentially be waived in its entirety, as well as implementation of an increased fine scale for multiple violations of unaltered pets running at large. The members all voting affirmatively, the Mayor declared the motion carried.

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Item No. 5 consisted of the following items regarding aquatic center and softball fields at Ben Geren Regional Park:

- A. Ordinance accepting certain territory into the city of Fort Smith, Arkansas (*Ben Geren Regional Park*)
- B. Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan - from Extraterritorial Jurisdiction Low Density Residential to General Commercial; Rezoning - from Extraterritorial Jurisdiction Open-1 (ETJ O-1) to Commercial Heavy (C-5) by extension located at 7300 South Zero Street and 6618 Softball Lane*) ~ Tabled at the August 7, 2012 regular meeting ~

Mr. Bailey briefed the Board on the items collectively advising construction of the aquatic center and softball fields at Ben Geren Regional Park requires the annexation and rezoning of a portion of the park where the facilities will be constructed. The City of Fort Smith and the Sebastian County Quorum Court approved and have executed an agreement that provides for the annexation to facilitate these facilities. Item No. 5A accepts the annexation of approximately 27.89 acres into the corporate limits of the City of Fort Smith.

Item No. 5B is per the request of Sebastian County to amend the Master Land Use Plan and request a zone change to facilitate the aquatic center and softball fields in the aforementioned 27.89 acres to be annexed. A neighborhood meeting was held on July 2, 2012 with three (3) surrounding property owners in attendance; however, no objections or concerns were expressed. The Planning Commission held a public hearing on July 10, 2012 with no individual present to speak in opposition. The Planning Commission unanimously amended the request to make approval subject to annexation of the property into the city of Fort Smith. The Planning Commission approved amended Master Land Use

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Plan and rezoning by a vote of seven (7) in favor and zero (0) opposed.

Hutchings, seconded by Settle, moved adoption of Item No. 5A. 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. 61-12.

Settle, seconded by Weber, moved adoption of Item No. 5B. 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. 62-12.

Item No. 6 consisted of the following items regarding property development at 9022 and 9100 Highway 271 South:

- A. Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan - from Unclassified to Extraterritorial Jurisdiction Light Industrial; Rezoning - from Extraterritorial Jurisdiction Open-1 (ETJ O-1) to Extraterritorial Jurisdiction Industrial Light (ETJ I-1) by classification located at 9022 and 9100 South Highway 271*)
- B. Ordinance amending the 2009 Unified Development Ordinance of the City of Fort Smith (*ETJ Use Matrix*)

Mayor Sanders announced Item No. 6A had been revised to correct a typographical error in the address noted within the ordinance (*9200 should be 9022 South Highway 271*); therefore, the motion to adopt must include the noted revision.

Mr. Bailey briefed the Board on the items advising Item No. 6A is per the request of C. J. Klinger, agent for Eastern Tank Services, Inc. The purpose of the requests is to allow

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Eastern Tank Services to obtain proper zoning on their existing development at 9100 Highway 271 South and to expand their existing operation to 9022 Highway 271 South. The business is located within the Extraterritorial Jurisdiction; therefore, is considered a nonconforming use. In order to facilitate the proposed expansion to the contiguous property, such requires the proposed zone change.

Regarding Item No. 6B, during review of the above noted Master Land Use Plan and rezoning, it was determined that a land use that adequately described Eastern Tank Services was not found within the ETJ land use matrix; therefore, the proposed ordinance includes oil and gas equipment (sales and service) to the ETJ Industrial Light and ETJ Industrial Moderate zoning districts. The Planning Commission held a public hearing on August 14, 2012 with no individual present to speak in opposition. The Planning Commission approved the Master Land Use Plan amendment, rezoning and UDO amendment by a vote of seven (7) in favor and zero (0) opposed.

Good, seconded by Settle, moved adoption of Item No. 6A as revised to reflect the aforementioned typographical error. The motion also 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. 63-12.

Settle, seconded by Good, moved adoption of Item No. 6B. 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 Tyler, moved adoption of Section 3 the emergency clause. The

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members all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and given No. 64-12.

Item No. 7 was an ordinance rezoning identified property and amending the zoning map (*from Not Zoned to Residential Single-Family Medium/High Density (RS-3), Residential Single Family Duplex Medium/High Density (RSD-3) and Residential Multi-Family Medium Density (RM-3) by classification located at 9450, 9600 and 9850 Chad Colley Blvd*)

Mr. Bailey briefed the Board on the item advising such is per the request of Pat Mickle, agent. The purpose of the rezoning request is to facilitate a subdivision containing single-family dwellings and duplexes. The petitioner also requested a development plan deferral for Lots 60, 99 and 100 as the developer anticipates duplexes, but does not have a defined plan for the areas. The Planning Commission held a public hearing on August 14, 2012 with no individual present to speak in opposition. The Planning Commission approved the rezoning request by a vote of nine (9) in favor and zero (0) opposed.

Hutchings, 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 and the ordinance was adopted and given No. 65-12.

Item No. 8 was an ordinance rezoning identified property and amending the zoning map (*from Not Zoned to Transitional (T) by classification located at 8101 McClure Drive*)

Mr. Bailey briefed the Board on the item advising such is per the request of Rob Coleman, agent. The purpose of the request is to allow for the development of an office building. The Chaffee Crossing Redevelopment Plan Future Land Use Plan currently

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classifies the site as single-family residential, which does not permit the Transitional zoning district. Due to such, the City of Fort Smith recommended the Fort Chaffee Redevelopment Authority (FCRA) change the land use classification to Mixed Use: Neighborhood Commercial/Office whereby such was ultimately approved. The Planning Commission held a public hearing on August 14, 2012 with Mr. John Fisher in attendance to inquire of the type of professional office proposed. The Planning Commission unanimously amended the request to make approval subject to the FCRA amending the Chaffee Crossing Redevelopment Plan Future Land Use Plan. The Planning Commission approved the amended request by a vote of nine (9) in favor and zero (0) opposed.

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 all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given No. 66-12.

Item No. 9 was an ordinance rezoning identified property and amending the zoning map *(from Transitional (T) to Residential Multi-Family Medium Density (RM-3) by extension located at 3407 South 66th Street)*

Mr. Bailey briefed the Board on the item advising such is per the request of Brett Abbott, agent. The request is a corrective rezoning to reflect how the area has developed. The existing use of the subject property is a multi-family dwelling and currently, such is a nonconforming use. The proposed corrective rezoning will allow the apartments to become a conforming use. The Planning Commission held a public hearing on August 14, 2012 with no individual present to speak in opposition. The Planning Commission approved the rezoning request by a vote of eight (8) in favor, zero (0) opposed and one (1) abstention.

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Director Settle questioned if a proposed development on the property prompted the rezoning request whereby Mr. Bailey responded "no".

Settle, seconded by Weber, 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 and the ordinance was adopted and given No. 67-12.

Item No. 10 was an ordinance establishing a limited policy of the City of Fort Smith, Arkansas for the hearing and settling of specifically identified tort claims ~ *Good/Settle placed on agenda at the August 28, 2012 study session ~*

Director of Utilities Steve Parke briefed the Board on the item as discussed at the August 28, 2012 study session. The proposed ordinance amends the existing policy to allow for the settling of identified tort claims in which such damage was caused as a direct result of work performed by the City.

Director Hutchings requested confirmation that the proposed amendment will be utilized for limited circumstances.

Mr. Parke confirmed that such merely allows the City to consider specifically identified claim requests on a case-by-case basis.

Weber, 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 Good, 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. 68-12.

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Item No. 11 was an ordinance accepting dedication of public roadway rights-of-way
(*Fort Chaffee Redevelopment Authority*)

Director of Engineering Stan Snodgrass briefed the Board on the item advising the City of Fort Smith accepted the dedication of public roadways within the Fort Chaffee Redevelopment (FCRA) area via adoption of Ordinance No. 48-01. The aforementioned ordinance accepted responsibility of the paved surface roadways, but did not define the right-of-way widths of the streets. The streets have now been surveyed and widths established. On August 16, 2012, the FCRA approved a Public Roadway Rights-of-Way Dedication agreement; therefore, the proposed ordinance formally accepts the right-of-way dedication from the FCRA.

Settle, 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. Good, 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. 69-12.

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

- A. Resolution setting public hearing date on petition to vacate a portion of a street right-of-way located in Jefferson Place, an addition to the city of Fort Smith, Arkansas (*North "J" Street*)
- B. Resolution to accept the bids and authorize contracts for the construction of McClure Amphitheater Road, Project No. 12-00-A upon concurrence of the Fort Chaffee Redevelopment Authority (*\$1,096,317.10/Engineering Department/Budgeted - Sales Tax Program Fund*)

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- C. Resolution authorizing an amendment to the engineering services agreement for the design of 2012 Neighborhood Drainage Improvements, Project No. 12-06-C (\$42,850.00 / *Engineering Department / Budgeted - Sales Tax Program Fund*)
- D. Resolution authorizing an amendment to the engineering services agreement for the design of 2012 Neighborhood Drainage Improvements, Project No. 12-06-A (\$8,260.00 / *Engineering Department / Budgeted - Sales Tax Program Fund*)
- E. Resolution allowing the sale of surplus vehicles and equipment at public auction
- F. Resolution rescinding Resolution No. R-173-11 and accepting bid for the purchase and installation of a fuel management system (\$87,034.00 / *Sanitation Department / Budgeted Sanitation Operating Fund*)
- G. Resolution accepting bids for the purchase of trucks (\$428,825.00 / *Various capital outlay accounts*)
- H. Resolution accepting the bid for the purchase of a sewer rodding truck (\$159,873.75 / *Utilities Department / Budgeted - Water & Sewer Operating Fund*)
- I. Resolution accepting bid for the purchase of 65 and 95 gallon recycling roll-out containers (\$206,755.00 / *Sanitation Department / Budgeted - Sanitation Fund*)
- J. Resolution accepting bid for the purchase of a vacuum jet cleaner truck (\$348,522.00 / *Utilities Department / Budgeted - Water & Sewer Operating Fund*)

Regarding Item No. 12I, the following individual was present to address the Board:

- David Harris
Fort Smith, Arkansas

Re: Conveyed multiple questions regarding the purchase of recycling roll-out containers, i.e. how many recycle cans, how many trash cans, may residents have an extra container, can such be used for yard waste, etc.

Director of Sanitation Baridi Nkokheli responded to each inquiry accordingly.

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Director Tyler questioned the necessity of the purchase when the initiated ballot measure regarding citywide automated sanitation service has not yet been determined by the voters.

Mayor Sanders reminded all that the Board recently approved citywide automated sanitation service; therefore, the purchase of roll-out containers is necessary regardless of the outcome of the ballot initiative.

City Attorney Jerry Canfield confirmed the comments of Mayor Sanders and further noted that if the initiated measure is approved, the Arkansas Constitution renders authority to the governing body to overturn such by 2/3 vote of the Board.

Settle, seconded by Catsavis, moved adoption of all consent agenda items. The members all voting affirmatively, with the exception of Directors Tyler and Merry voting "no" on Item No. 12I, the Mayor declared the motion carried and the resolutions were adopted and numbered R-193-12 through R-202-12 respectively.

Item No. 13 was an ordinance referring a proposed initiated ordinance authorizing city-wide expansion of automated residential waste collection in the City of Fort Smith to a vote of the electorate of the city.

City Clerk Sherri Gard briefed the Board on the item advising the initiative petition has been determined to be sufficient for placement on the November 6, 2012 general election ballot. The proposed ordinance is a requirement of the Fort Smith Municipal Code whereby such must be presented to the Board for approval to formally notify the Sebastian County Board of Election Commissioners of placement of the initiated measure on the general election ballot.

The following individual was present to address the Board:

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- David Harris
Fort Smith, Arkansas

Re: Questioned if all language after the specified title within Section 1 will be included on the ballot whereby Administrator Gosack responded "yes".

Settle, 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 - Good, Hutchings, Catsavis, Weber, Settle and Merry; nays - Tyler. The Mayor declared the motion carried. Settle, seconded by Hutchings, moved adoption of Section 4 the emergency clause. The members voted as follows: ayes - Good, Hutchings, Catsavis, Weber, Settle and Merry; nays - Tyler. The Mayor declared the motion carried and the ordinance and emergency clause were adopted and given No. 70-12.

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

▶ Mayor Sanders

- Re:
1. Announced the Arkansas-Oklahoma State Fair will occur September 21 - 29, 2012 at Kay Rodgers Park and encouraged all to attend.
 2. Reminded all that the monthly Town Hall meeting will be held following adjournment advising those wishing to address the Board during said meeting must sign-in and advised the sign-in sheet is located at the back of the room.

▶ Director Settle

- Re:
1. Regarding Item No. 13, he expressed concern with the necessity of Board approval of an ordinance to formally place an initiated measure on an election ballot when the petition has been determined to be sufficient by the City Clerk. Due to such, he requested the matter be

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reviewed and provided no state requirement exists, requested the Fort Smith Municipal Code be amended to remove said requirement.

2. Requested the full expansion of Spradling Avenue be included in the upcoming discussion regarding future CIP Projects.

▶ Director Merry

Re: Regarding Item No. 3 relative to spay/neuter, he recommended the Animal Services Advisory Board place a greater emphasis on enforcement of dogs running-at-large.

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 7:28 p.m.

APPROVED:


MAYOR

ATTEST:


CITY CLERK