

MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

WEDNESDAY ~ MARCH 27, 2013 ~ 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 Reverend Odell Curtis of God's House of Prayer, followed by the Pledge of Allegiance. On roll call the following members of the Board were present: Directors Keith Lau, Andre' Good, George Catsavis, Pam Weber, Kevin Settle and Phillip H. Merry, Jr. Director Mike Lorenz arrived during presentation of Item No. 1. 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 March 5, 2013 regular meeting and March 11, 2013 special meeting were presented for approval. Weber, seconded by Good, moved approval of the minutes as written. The members present all voting aye, the Mayor declared the motion carried.

With regard to the time limit policy for persons wishing to address the Board, the Vice-Mayor communicated that five (5) minutes per side would be granted for controversial items with three (3) minutes for rebuttal per side, and two (2) minutes for comments only.

Item No. 1 was an ordinance to regulate the use of groundwater beneath certain identified lands within the city of Fort Smith, Arkansas; declaring an emergency; and for other purposes ~ *Good/Lorenz placed on agenda at the February 12, 2013 study session / Rescheduled to the March 27, 2013 regular meeting by unanimous consent of the Board of Directors on March 1, 2013 ~*

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Mr. Jeff Noel, Vice-President of Communications and Public Affairs for Whirlpool Corporation, addressed the Board and conveyed much assurance that Whirlpool takes full responsibility for the trichloroethylene (TCE) leak at the site, will remain until the matter is resolved and will do the right thing. Much public concern has been expressed; therefore, Whirlpool has contacted the affected residents, has set up an 800 number and e-mail address dedicated for Fort Smith residents and is currently in the process of creating a dedicated website, which is anticipated to be available in a couple of days. All aforementioned information will be made available to the public and media. Whirlpool is committed to share all information regarding the matter; therefore, once the aforementioned website is up and running, all related documents will be posted. The website will also maintain the ability for residents review and comment.

Since the TCE leak was first detected in 2001, Whirlpool has been working with the Arkansas Department of Environmental Quality (ADEQ) to address the matter whereby he also noted that Whirlpool has and will comply with all policies and procedures set forth by ADEQ. Remediation is a defined process whereby Whirlpool must file its final intended action with ADEQ and said filing is anticipated to be accomplished by April 8, 2013. The defined process requires a thirty (30) day public comment period; therefore, he conveyed much assurance that all interested individuals may provide input.

Mr. Noel further noted that Whirlpool is working closely with Environ, a consulting firm that assists in managing environmental, health and safety issues, and provided a brief biography of the Environ team and noted each biography was presented to the Board. The Environ team have concluded that the TCE located at the site poses “no public health risk”

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due to “no exposure or pathway” to residents because they “can’t drink it, inhale or touch it.” After years of study, it’s also been concluded that the boundaries have not changed. The proposed ordinance is presented merely as a precautionary measure and is standard practice throughout the United States for other TCE polluted sites. It was clarified that the proposed ordinance will not resolve the issue and reiterated resolution will be accomplished in multiple phases of plan review, public comment and ultimate completion of the remediation. Due to much public concern, he recommended the item either be withdrawn or tabled pending acceptance of the remediation plan by all parties whereby the proposed ordinance may again be presented for consideration. He reiterated and stated, *“we are here, we take responsibility, we’re not side-stepping that responsibility, and we look forward to continuing this process so that all the information is made available. And I very much look forward to the final plan being submitted by the ADEQ and the public comment period and public discussion that will take place with that plan, but most importantly begin implementing that plan going forward.”*

The following individuals were present to address the Board:

- Debra Keith
Fort Smith, Arkansas

Re: Alleged Whirlpool did not notify residents of the TCE contamination until December 2012 and expressed discontent with such. She contacted the Erin Brockovich firm, who advises that several areas in the community were utilized as dumping sites; therefore, noted a federal subpoena is being sought to address the issue. She did not either speak for or against the proposed ordinance, but urged the Board to ensure Whirlpool is held responsible.

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- Neal Morrison
Rudy, Arkansas

Re: Advised he owns property on Jacob's Street and alleged the ordinance is unwarranted. He urged the Board to not table the item, but to vote and defeat the proposed ordinance.

Director Good clarified the proposed ordinance is an additional safety measure, but such does not relinquish any responsibility from Whirlpool to clean the contaminated site. After remediation completed, he conveyed much assurance that drilling of the area should not be prohibited in the affected area; therefore, he conveyed no objection to either voting on the ordinance or tabling the measure as requested. He further recommended a resolution be presented for consideration to convey the City's concern and encourage the Whirlpool Corporation and ADEQ to work diligently and expeditiously to address the issue.

There was very lengthy discussion whereby several members of the Board submitted multiple questions to Mr. Ryan Benefield, Deputy Director of ADEQ. Much discontent and concern was expressed that the matter has been allowed to continue since 2001 with no requirement for immediate resolution.

Mr. Benefield addressed each question and noted that because it was determined that no human pathway existed and there was no immediate health concern to residents, ADEQ monitors the site biannually. Whirlpool contacted ADEQ in 2001 when the contamination was discovered and an agreement between ADEQ and Whirlpool Corporation was executed in 2002 to address the issue. Whirlpool has complied with all requirements of the aforementioned agreement. If the plume expands or the level of contamination increases that requires immediate action, if Whirlpool does not initiate

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immediate remediation, ADEQ will proceed to address the contamination and seek financial reimbursement from Whirlpool. The proposed ordinance is merely an “*extra precaution....to control exposure*” while the appropriate remedy is determined, which is anticipated “*this year.*”

There was also discussion relating to devaluation of property values whereby Director Weber urged Whirlpool to purchase the affected properties and after the contamination is properly addressed, she recommended the properties then be donated to the City for use as a city park.

Director Settle read a prepared statement conveying much concern with the matter, passionately urged Whirlpool to get the matter addressed immediately and urged the Board to vote against the proposed ordinance.

Lau, seconded by Lorenz, 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; nays - Lau, Lorenz, Catsavis, Weber, Settle and Merry. The Mayor declared the ordinance defeated.

Weber, seconded by Good, moved to place a resolution on the April 2, 2013 regular meeting agenda encouraging Whirlpool Corporation and the Arkansas Department of Environmental Quality to pursue expeditious remediation of the site. Placement requires concurrence of only two (2) directors; therefore, Mayor Sanders announced the aforementioned resolution will be presented for consideration at the April 2, 2013 regular meeting.

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Director Merry urged the aforementioned resolution contain language that such is an emergency so encourage an expeditious resolution.

Item No. 2 was an ordinance amending the provisions of Fort Smith Unified Development Ordinance and Fort Smith Municipal Code regarding outdoor advertising signs.

Director of Development Services Wally Bailey briefed the Board on the item as discussed at the March 12, 2013 study session. Ordinance 98-12, adopted December 18, 2012, approved a moratorium on additional outdoor advertising signs and such expires on April 29, 2013. Approximately six (6) public meetings have been held with involvement by multiple stakeholders. The proposed ordinance will repeal the aforementioned moratorium and provides several new regulatory requirements for all outdoor advertising signs. The Planning Commission reviewed the proposed regulations and recommended approval for Board consideration at their February 20, 2013 meeting.

The following individuals were present to address the Board:

- Lorie Robertson, member of the stakeholder group
Fort Smith, Arkansas

Re: Provided several positive benefits of outdoor advertising and merely urged adoption of the proposed ordinance.

- Ron Green
Fort Smith, Arkansas

Re: Merely extended much appreciation to City staff, the Planning Commission and Board of Directors for the proposed ordinance and encouraged the Board to vote in favor of the item.

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

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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 - Lau, Good, Lorenz, Weber, Settle and Merry; nay - Catsavis. The Mayor declared the motion carried. Settle, seconded by Lorenz, moved adoption of Section 4 the emergency clause. The members voted as follows: ayes - Lau, Good, Lorenz, Weber, Settle and Merry; nay - Catsavis. The Mayor declared the motion carried and the ordinance and emergency clause were adopted and the ordinance given No. 15-13.

The Consent Agenda (Item No. 3) 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
- B. Resolution authorizing an amendment to the engineering services agreement for the design of 2013 Street Overlay/Reconstruction Project, Phase A, Project No. 13-03-A (\$14,400.00 / Engineering Department / Budgeted - Sales Tax Program Fund)
- C. Resolution authorizing execution of a contract with Matlock Electric Co. Inc. for the replacement of emergency generators at Fire Stations 1 through 10 (\$408,730.00 / Fire Department / Budgeted - 2012 Sales Tax Bonds)
- D. Resolution authorizing an amendment to the agreement with Harris Company of Fort Smith for Storm Drainage Improvements along Massard Road (\$4,500.00 / Utility Department / Budgeted - 2012 Sales and Use Tax Bonds)
- E. Resolution authorizing the Mayor to execute an easement with the Department of the Army at the Massard Wastewater Treatment Plant (\$1,115.00 / Utility Department / Budgeted - 5603-219 Operating Fund)

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- F. Resolution authorizing the City Administrator to execute an agreement with a property owner for acquisition and release of easements in connection with the Pump Station No. 19 Force Main Replacement Project (\$6,509.00 / Utility Department / Budgeted - 2012 Sales and Use Tax Bonds)
- G. Resolution authorizing the City Administrator to accept an offer made by property owner for acquisition of easements in connection with the Lake Fort Smith 48-Inch Water Transmission Line (\$9,500.00 / Utility Department / Budgeted - 2008 Revenue Bonds)
- H. Resolution authorizing the Mayor to execute an agreement and Authorization No. 1 with Mickle Wagner Coleman, Inc. for providing engineering services associated with Chaffee Crossing Pump Station and Force Main Project (\$344,714.00 / Utility Department / Budgeted - 2008 Revenue Bonds)

Catsavis, seconded by Weber, moved adoption of all consent agenda items. The members all voting affirmatively, the Mayor declared the motion carried and ordinance and resolutions were adopted with the ordinance given No. 16-13 and the resolutions numbered R-45-13 through R-51-13 respectively.

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

◆ Mayor Sanders

- Re:
- 1. Extended appreciation for condolences extended during the recent loss of his mother.
 - 2. Announced the Mayor's Easter Egg Hunt will be held at 10:00 a.m., Saturday, March 30 at Tilles Park; therefore, encouraged attendance.

◆ Director Merry

Re: Extended appreciation to Immaculate Conception School students, who recently interviewed him and Directors Good and Lorenz as a project for the Gifted and Talented Education (GATE) Program.

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◆ Director Weber

- Re: 1. Announced Beautify Fort Smith will host a spring cleanup event on Saturday, April 20. Volunteers are requested to meet at Martin Luther King, Jr. Park at 8:00 a.m. to register and obtain supplies for the event.
2. Extended appreciation to the Hardscrabble Garden Club and Frank Sharum for their efforts regarding recent landscaping near the Farmers Market at North 2nd Street and Garrison Avenue.

◆ Administrator Gosack

- Re: Announced the special election regarding continuation of the county-wide sales tax is set for Tuesday, May 14. Several civic presentations have been planned with the “kickoff” event scheduled 11:00 a.m., April 2 at the Courts Building.

The Board convened into executive session at approximately 7:42 p.m. and after reconvening, Mayor Sanders announced the following appointment nominations:

ADVERTISING & PROMOTION COMMISSION

Calvin Remy

(to fill the unexpired term of Ronnie Townsend)

Term expires December 31, 2014

ANIMAL SERVICES ADVISORY BOARD

Amanda Heim (reappointment)

Joan Bryant (reappointment)

Terms expire April 4, 2014

ELECTRIC CODE BOARD OF APPEALS

Thomas McAllister (reappointment)

Jerald Walrod (reappointment)

Terms expire March 31, 2018

HOUSING ASSISTANCE BOARD

Jim Rose (reappointment)

John Ross (reappointment)

Hazel Brown

Pat Gooch

Terms expire April 30, 2015

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OUTSIDE AGENCY REVIEW PANEL

RECREATION

Charollette Tidwell

(to fill the unexpired term of William Tyler Lamon, who resigned)

Term expires July 17, 2013

ARTS AND HUMANITIES

Jeannie Cole

(to fill the unexpired term of Elizabeth Momand, who resigned)

Term expires March 31, 2014

PLANNING COMMISSION

Marshall Sharpe (reappointment)

Thomas James

Don Keesee

Terms expire April 30, 2016

Good, seconded by Lorenz, moved acceptance of all appointment nominations. The members all voting aye, the Mayor declared the motion carried.

There being no further business to come before the Board, Merry moved that the meeting adjourn. The motion was seconded by Lorenz and the members all voting aye, the Mayor declared the motion carried and the meeting stood adjourned at 8:29 p.m.

APPROVED:


MAYOR

ATTEST:


CITY CLERK