

MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ AUGUST 6, 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 Father Mike Lager of St. John's Episcopal Church, followed by the Pledge of Allegiance. On roll call the following members of the Board were present: Directors Keith Lau, Andre' Good, Mike Lorenz, George Catsavis, Pam Weber, Kevin Settle and Philip H. Merry, Jr. The Mayor declared a quorum present.

The Mayor recognized Nicholas Crowell and Casey Robbins of Boy Scout Troop 2, who were in attendance to earn their Citizenship and Community Badge. He also noted attendance of Troop 2 Scoutmaster David Crowell.

Mayor Sanders 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 July 16, 2013 regular meeting were presented for approval. Settle, seconded by Lorenz, 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 items relative to an appeal of the Planning Commission's denial of a conditional use request for an auto and vehicle impoundment or holding yard (*Appeal of Josh Niles / 1302 South Zero Street*)

- A. Resolution affirming the action of the Planning Commission denying the Conditional Use No. 18-7-13 for an auto and vehicle impoundment or holding yard
- B. Resolution approving an appeal of Conditional Use No. 18-7-13 for an auto and vehicle impoundment or holding yard

Director of Development Services Wally Bailey briefed the Board on the item

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advising such is per the appeal of Planning Commission denial of a conditional use application to allow an auto and vehicle impounding or holding yard at the subject location. The Planning Commission reviewed the application at its July 9, 2013 meeting whereby such was amended by a vote of six (6) in favor and two (2) opposed to make approval subject to the following conditions:

- ▶ All construction must be built in accordance with the submitted development plan and with any Planning Commission amendments.
- ▶ The proposed fence gate at the driveway entrance shall be offset from the street to avoid vehicles stopping/standing within the street right-of-way.
- ▶ Fences placed at or in proximity to the right-of-way line must not create a sight obstruction for vehicles exiting the site.
- ▶ The proposed fence shall be a six(6) foot privacy fence constructed out of cedar and maintained.
- ▶ All site lighting shall comply with the lighting requirement of the UDO, Section 27-602-5.
- ▶ All signage shall comply with the UDO General Sign Regulations and Permitted signs in open, commercial and industrial zones, Section 27-704-5 and Section 27-704-3.
- ▶ Landscaping shall be required and maintained in accordance with the UDO along the Zero Street frontage.
- ▶ Removal of all broken plastic sign pieces.

Although the above conditions were approved, the Planning Commission ultimately denied the conditional use application as amended by a vote of four (4) in favor and four (4) opposed citing the use was incompatible with the location. Planning staff concurs with the determination. Mr. John Niles filed an appeal with the City Clerk's Office on July 15, 2013. Item No. 1A affirms the action of the Planning Commission denying the conditional

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use request. Item No. 1B overturns the Planning Commission denial and approves the conditional use request. If the Board so desires to adopt Item No. 1B, staff recommends the motion include all the above noted conditions.

The following individuals were present to address the Board:

- Josh Niles, applicant

Re: Spoke in favor of Item No. 1B and clarified the intended use is not for a salvage yard, but as a holding yard for repossessed vehicles. Although he stated the above noted conditions were not necessary at Planning Commission consideration, he conveyed no objection to their inclusion if such is necessary for Board approval. He further alleged similar conditional use requests have been approved in the past; therefore, he stated that he's, *"not asking the Board to bend the rules"*, but merely that his request be considered *"the same as others."*

- Charles Farnam

Re: Advised he has owned the property for approximately ten (10) years and has tried to rent such for approximately six (6) years, but to no avail. Due to such, he stated, *"any use is better than no use"* and recommended approval of Item No. 1B. He further noted that his wife is currently undergoing multiple treatments for cancer; therefore, approval of the item would ensure income for his family to accommodate their financial needs related to her medical treatment.

- DeWayne Hicks

Re: Noted he's the pastor of the church located near Mr. Niles' current location citing he's a *"very good neighbor."* Approval of the conditional permit (Item No. 1B) would create much needed jobs within the city; therefore, he noted denial of the proposed conditional use *"would be a shame."*

There was much discussion among the Board with concern that the intended use

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does not fit the area, location of fencing being too close to the street, and overturning a decision of the Planning Commission.

Mr. Bailey noted that although the Planning Commission amended the request to include the above noted conditions, there was concern expressed among the Planning Commission with Mr. Nile's intended or unintended unwillingness to comply with the conditions required for issuance of the conditional use permit.

After inquiries of what Mr. Niles can do to accommodate issuance of the conditional use permit, Mr. Bailey advised the Board may either approve Item No. 1B with inclusion of the above noted amendments or Mr. Niles may reapply to the Planning Commission with another plan for development.

Several members of the Board spoke in favor of referring the matter back to the Planning Commission; however, Mr. Niles spoke in opposition and conveyed much certainty his application would again be denied. Due to such, he urged the Board to consider the resolutions presented for consideration.

Weber, seconded by Good, moved adoption of Item No. 1A affirming the Planning Commission denial of the conditional use permit. The members all voted affirmatively, with the exception of Director Merry who voted "no". The Mayor declared the motion carried and the resolution was adopted and given No. R-111-13.

Item No. 2 was an ordinance rezoning identified property and amending the zoning map (*from Residential Estate One Acre (RE-1) to Residential Single Family Medium Density (RS-2) by classification located at 4101-4299 Cliff Drive*).

Mr. Bailey briefed the Board on the item advising such is per the request of Pat Mickle, agent for RA Young Properties Limited Partners. The purpose of the rezoning

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request is to allow the construction of a 24 lot single-family subdivision. The Planning Commission held a public hearing on July 9, 2013 with no individual present to speak in opposition. The Planning Commission approved the rezoning by a vote of eight (8) in favor and zero (0) opposed.

Director Settle extended much appreciation to Planning staff citing such is a great plan. He further requested the City Administrator include the extension of Leigh Avenue in the Capital Improvements Program to alleviate traffic concerns.

Settle, 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 all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given No. 31-13.

Item No. 3 was an ordinance rezoning identified property and amending the zoning map (*from Residential Single Family Duplex Low/Medium Density (RSD-2) to Commercial Light (C-2) by classification located at 8201 Phoenix Avenue*).

Mr. Bailey briefed the Board on the item advising such is per the request of Larry Hall, agent for Lawrence and Mildred Sharum Living Trust. The purpose of the rezoning request is to facilitate the development of a bank. The Planning Commission held a public hearing on July 9, 2013 with no individual present to speak in opposition. The Planning Commission approved the rezoning request by a vote of six (6) in favor, zero (0) opposed and two (2) abstentions (Keese & Cooper).

Lorenz, 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

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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. 32-13.

Item No. 4 was an ordinance amending Sections 13-251 through 13-253 of the Fort Smith Municipal Code regulating charitable fundraising.

Police Chief Kevin Lindsey briefed the Board on the item advising such proposes amendments concerning charitable organizations and solicitation of funds using the City's rights-of-way. The primary change is to substitute the chief of police for the city administrator as the permitting authority for the City. The Police Department has prepared a formal application and such requires the inclusion of information from the State Attorney General's Charities Database. Professional fundraisers/solicitors must register their organization with the State before they can be issued a permit to conduct local fundraising or soliciting.

Director Settle questioned if those conducting door-to-door solicitation require a permit to do so, and Director Merry inquired if permits would be required for the Boys and Girls Scouts organizations as well whereby Chief Lindsey responded "yes" to each.

Weber, 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 all voting affirmatively, the Mayor declared the motion carried. Settle, seconded by Good, moved adoption of Section IV 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. 33-13.

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

- A. Resolution accepting the bid and authorizing the Mayor to execute a contract for repairs to the city parking facility at 700 Rogers Avenue (\$54,516.00 / *Planning Department / Budgeted - Parking Authority Fund*)
- B. Resolution authorizing the execution of a memorandum of understanding between the City of Fort Smith, Arkansas, and Sebastian County, Arkansas, regarding the 2013 Edward Byrne Memorial Justice Assistance Grant (JAG) Program
- C. Resolution authorizing execution of a utility easement to OG&E for Fort Smith Fire Station No. 11
- D. Resolution amending the application for outside agency services funding
- E. Resolution authorizing acquisition of real property in connection with the Mill Creek Pump Station Wet Weather Improvements (\$57,000.00 / *Utility Department / Budgeted - 2012 Sales and Use Tax Bonds*)
- F. Resolution authorizing the Mayor to execute Authorization No. 2 to the agreement with RJN Group, Inc. for engineering services for the Basin 9 Collection System Improvements (\$177,965.00 / *Utility Department / Budgeted - 2012 Sales and Use Tax Bonds*)
- G. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Forsgren, Inc. for the Basin 9 Collection System Improvements (\$2,370,320.30 / *Utility Department / Budgeted - 2012 Sales and Use Tax Bonds*)
- H. Resolution authorizing the Mayor to execute Amendment No. 1 to Authorization No. 1 with CDM Smith, Inc. for engineering services for the Massard Wastewater Treatment Plant Odor Control Improvements (\$40,923.00 / *Utility Department / Budgeted - 2008 Revenue Bonds*)
- I. Resolution authorizing acquisition of real property interests in connection with the Sunnymede Interceptor Improvements (\$2,253.25 / *Utility Department / Budgeted - 2012 Sales and Use Tax Bonds*)

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- J. Resolution authorizing the Mayor to execute Authorization No. 2 to the agreement with Atkins Engineering, Inc. for the Sunnymede Interceptor Improvements (*\$88,230.00 / Utility Department / Budgeted - 2012 Sales and Use Tax Bonds*)
- K. Resolution accepting the bid of and authorizing a contract with Forsgren, Inc. for the Sunnymede Interceptor Improvements (*\$1,526,133.50 / Utility Department / Budgeted - 2012 Sales and Use Tax Bonds*)

Director Settle requested 5E, 5F and 5G be removed from the consent agenda and voted on separately.

Lorenz, seconded by Settle, moved to remove Items 5E, 5F and 5G from the consent agenda to be voted on separately. The members all voting aye, the Mayor declared the motion carried.

Weber, seconded by Merry, moved adoption of all consent agenda items, with the exception of Item No. 5E, 5F and 5G, which were removed to be voted on separately. The members all voting affirmatively, the Mayor declared the motion carried and the resolutions were adopted and numbered R-112-13 through R-115-13, and R-118-13 through R-121-13 respectively.

Regarding Item No. 5E, the following individual was present to address the Board:

- Steve Beam, property owner
B & B Properties, LLC

Re: 1. Requested additional time, beyond the two (2) minute time limit, to make his presentation.

The Mayor referred the matter to the Board whereby no Board member conveyed objection to the request.

2. Presented information to the Board indicating improvements he's made to the property since he obtained ownership in 2005. He alleged the Sebastian County Tax Assessor maintained a

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property value of \$3,300 prior to his ownership; however and due to all the improvements made, the tax assessor now maintains an appraised value of \$220,000 for the property. He alleged expenditures of approximately \$240,000 for the property, which includes the purchase price, improvements, attorney fees to acquire railroad right-of-way, etc. Mickle Wagner Coleman has indicated an estimated cost of improvements to be \$206,000 and an independent appraisal has resulted in a value of \$200,000. The matter has been discussed with City of Fort Smith Property Manager Larry Guthrie on multiple occasions; however, he alleged Mr. Guthrie maintains the appraised value of \$57,000 is the City's initial offer to acquire the property. Although no objection was conveyed with regard to acquisition of the property, he expressed disagreement with the proposed offer and requested the Board consider the above information before authorizing the \$57,000 offer and commencement of eminent domain proceedings.

At the request of Mayor Sanders, Director of Utilities Steve Parke briefed the Board on the item. The City of Fort Smith plans to construct a 115 foot diameter, 3.5 million gallon flow equalization (EQ) tank in conjunction with planned improvement to the Mill Creek wastewater pump station. The subject project is part of the city's overall strategy to address wet weather sanitary sewer overflows that occur throughout the system during periods of heavy rainfall. The EQ tank is proposed to be constructed on a 3.59 acre tract of land owned by B & B Properties, LLC and is currently being utilized as a storage yard for construction materials. As part of the project design and cost study, the City obtained an appraisal report, which indicated a property value of \$57,000. The owner reviewed the appraisal and stated he would not sell the property for the noted amount; therefore, tendered a counter offer of \$300,000. The proposed resolution authorizes acquisition of

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the property; however, in order to ensure the property is acquired in a timely manner to coincide with the project's scheduling, such also authorizes the city attorney to commence with eminent domain proceedings to ensure acquisition of the property should the land owner declines to accept the City's offer of \$57,000. Although the proposed resolution authorizes commencement of eminent domain proceedings, he clarified such does not cease negotiations for acquisition of the property and reiterated initiation of eminent domain proceedings merely ensures the property will be acquired in adequate time to coincide with the project's scheduling.

There was very lengthy discussion with several directors expressing concern with the substantial appraisal differences, initiating eminent domain proceedings to acquire any property citing such is a very serious matter, and that the Board has not been provided a copy of the City's appraisal to review. Concern was also conveyed that, upon approval, all negotiation with the property owner will cease.

Administrator Gosack clarified that although eminent domain proceedings are initiated, such does not negate the ability of the City to continue negotiations with the property owner. Many times, a settlement is reached before many. If a settlement is not reached during eminent domain proceedings, many times the judge will require mediation between the City and property owner.

Upon request, City Attorney Jerry Canfield addressed the Board and provided a brief explanation of eminent domain proceedings. The City has been very successful with negotiations and reaching settlements for acquisition of properties in which eminent domain proceedings have been initiated. He further conveyed much concern and "*finds it dangerous*" for the Board to discuss property values with property owners.

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Settle, seconded by Catsavis, moved to table consideration of Item No. 5E for thirty (30) days to allow the City and property owner to discuss the matter. Prior to the motion, Director Merry spoke in favor of tabling consideration citing such will convey the City's willingness to work with the property owner.

Director Weber questioned if mediation can be accomplished in thirty (30) days whereby Administrator Gosack conveyed doubt that a new appraisal could be accomplished and dates for mediation to be scheduled in said timeframe.

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

Director Catsavis questioned the estimated cost if eminent domain proceedings are eventually initiated.

Mr. Canfield advised the cost varies and is solely dependent upon the time required to prepare and present the case before the court. With smaller properties of lesser value that typically result in a one (1) day trial, the cost could range from \$4,000 to \$6,000; however, with \$200,000 properties with extensive differences in appraisal amounts as the proposed matter, such could require much time thereby increasing the potential for greater expense.

Settle, seconded by Lorenz, moved adoption of Items No. 5F & 5G. The members all voting affirmatively, the Mayor declared the motion carried and the resolutions were adopted and numbered R-116-13 and R-117-13, respectively.

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

◆ Mayor Sanders

Re: 1. Announced the following, recent events held in the city:

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- ▶ July 25 - Groundbreaking for the Landfill Scale House Project.
 - ▶ August 2 - Groundbreaking for the girls softball field addition at Ben Geren Regional Park.
 - ▶ July 30 - Public input meeting held regarding the update to the Fort Smith Comprehensive Plan.
2. Extended congratulations to the Young Actors Guild upon winning five (5) National Youth Arts Awards for the 2012 production of Les Miserables.
- ▶ Director Settle

- Re:
1. Extended "*Happy Birthday*" to his wife, Teri.
 2. Regarding the groundwater contamination at the Whirlpool, he conveyed the importance of public input; therefore, when the plan for removal of said contamination is finalized, he requested public hearings be scheduled to allow for such.

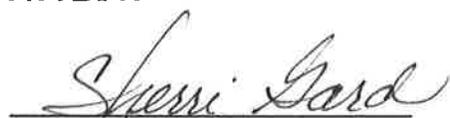
Administrator Gosack announced a briefing from Whirlpool Corporation regarding the matter has been tentatively scheduled for the September 10, 2012 study session.

There being no further business to come before the Board, Lau 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 7:33 p.m.

APPROVED:

MAYOR

ATTEST:


CITY CLERK