

MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ DECEMBER 3, 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 Pastor Lorenzo Lee of Unity Missionary Baptist 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.

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 November 19, 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.

Mayor Sanders recognized Ms. Deanna Rice, Executive Director of S.R.C.A, Inc. On behalf of the below senior centers, she wished a Merry Christmas to the Mayor and Board. The following individuals presented personal holiday greetings and Christmas cards from each of the below noted senior centers (Item No. 1):

- ▶ Marsha Stroud - Ray Baker Senior Activity Center
- ▶ Candyce Graham - Beckman Senior Activity Center
- ▶ Becky Grist - Barling Senior Activity Center
- ▶ Don Chitwoodk Midtown Senior Activity Center
- ▶ Deanna Rice - Fort Smith Senior Activity Center

Item No. 2 was an ordinance rezoning identified property and amending the zoning map (*from Residential Single Family-Duplex Low/Medium Density (RSD-2) and Residential Multi-Family High Density (RM-4-SPL) to Planned Zoning District located at 1000 South Waldron Road*).

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Director of Development Services Wally Bailey briefed the Board on the item advising such is per the request of Mercy Health Fort Smith Communities, agent for First Asset Holdings, LLC; Michael Butler Living Trust; and, Cynthia Butler Farrell. The purpose of the rezoning is to allow for the development of a doctor's office and clinic. The subject property contains 3.94 acres and bounded by Fern Street, Free Ferry Road and Waldron Road. The requested Planning Zoning District (PZD) provides for all minimum standards of the Unified Development Ordinance (UDO) and established higher standards for signage, higher quality of building materials and a larger percentage of high quality building materials, places a restriction and limitation on land uses, provides for more parking spaces and prohibits driveway access on Fern Street. A traffic impact statement has been submitted and approved by the Engineering Department. The standards and development regulations for the PZD are described in the required Project Booklet, which is on file with the City Clerk's Office. A neighborhood meeting was held on Tuesday, October 29, 2013 with three (3) neighboring property owners in attendance. The Planning Commission held a public hearing on November 12, 2013 with Mr. Alan Schluterman, 5300 Fern Street, present to convey concern with the types of businesses that could locate in PZD if Mercy were to relocate. It was noted that any use would be restricted basically to professional types of services. The Planning Commission approved the rezoning request with eight (8) in favor, zero (0) opposed and one (1) abstention (Hood).

Settle, seconded by Merry, 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, Lorenz, Weber, Settle and

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Merry; nays - Catsavis; recusal - Lau. The Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 63-13.

Item No. 3 was an ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan: from Mixed Use Employment & Park/Open Space to Mixed Use Employment / Rezoning: from Residential Estate One Acre (RE-1) and Industrial Moderate (I-2) to a Planned Zoning District located at 201 to 3201 Riverfront Drive*).

Mr. Bailey briefed the Board on the item advising such is per the application of Pat Mickle, agent for Westphal Leasing, LLC; Riverfront Exploration; Ozark Oil & Gas, Inc.; Widmer Place, Inc.; Betsy and Bennie Westphal; Robin Clegg; Clayton Riverfront, LLC; and, U.S. Marshals Museum, Inc. The purpose of the requests is to allow for the future development of higher quality growth of the riverfront. The subject property contains 115.5 acres. The requested Planning Zoning District (PZD) provides for all minimum standards of the Unified Development Ordinance (UDO) and established higher standards for signage, higher quality of building materials and a larger percentage of high quality building materials, places a restriction and limitation on land uses, and provides for higher landscaping standards. The standards and development regulations for the PZD are described in the required Project Booklet, which is on file with the City Clerk's Office. A neighborhood meeting was held on Monday, October 28, 2013 with two (2) neighboring property owners in attendance with no objection conveyed. The Planning Commission held a public hearing on November 12, 2013 with no individual present to speak in opposition. The applicant submitted a revised Project Booklet to correct minor discrepancies. The Master Land Use Plan and rezoning requests were unanimously

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amended to make approval subject to the revised code amendments for the Planning Zoning District Project Booklet. The Planning Commission approved the amended requests by a vote of nine (9) in favor and zero (0) opposed.

The following individual was present to address the Board:

- Rick Griffin
Fort Smith, AR

Re: Spoke in favor of the item and requested the City of Fort Smith establish an Overlay District east of the subject property, which he alleged is in dire need of improvement. If such is not accomplished, he fears such will hinder future development of the entire area.

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 and the ordinance was adopted and given Ordinance No. 64-13.

Item No. 4 was an ordinance amending the 2009 Unified Development Ordinance of the City of Fort Smith (*December 2013 Amendments*).

Mr. Bailey briefed the Board on the item advising the proposed Unified Development Ordinance (UDO) amendments provides clarification between the definitions of auto body and paint shop, and auto repair land uses. There has been confusion with regard to the definitions of each, which create difficulty when reviewing applications for building permits and business license applications. The Planning Commission held a public hearing on November 12, 2013 with no individual present to speak in opposition. The Planning Commission approved the proposed amendments by a vote of (9) in favor and (0) opposed.

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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. Lorenz, 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 the ordinance was given Ordinance No. 65-13.

Item No. 5 was an ordinance amending the 2013 Operating Budget.

City Administrator Ray Gosack briefed the Board advising that in order to comply with governmental accounting standards, the City is required to adjust the General Fund and Street Maintenance Fund revenues during the current year. He provided a brief summary of the required appropriations. All were taken into consideration when the 2013 estimates were presented in the 2014 proposed budget, with the exception of the WTR invoices for the Comprehensive Plan Update.

Good, seconded by Lorenz, moved adoption of the ordinance. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance was given Ordinance No. 66-13.

Mayor Sanders announced this was the time and place set for a public hearing regarding the fiscal year 2014 Operating Budget ~ *Merry/Lorenz placed on the agenda at the November 26, 2013 study session* ~. Following the public hearing, consideration of an ordinance authorizing same would be given (Item No. 6).

Administrator Gosack briefed the Board on the item as discussed and presented at the November 26, 2013 study session.

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There being no individual present to speak, Mayor Sanders closed the public hearing.

Director Lau conveyed much opposition to the proposed budget alleging expenses could be reduced and revenues increased. He encouraged each member of the board to demand revenues and expenditures be balanced in future budgets.

Merry, seconded by Good, moved adoption of the ordinance. The members all voted affirmatively, with the exception of Director Lau who voted "no". The Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 67-13.

Item No. 7 was an ordinance establishing salaries and benefits and related procedures for City employees.

Administrator Gosack briefed the Board on the item advising such authorizes the salaries and benefits for uniformed and non-uniformed employees for 2014. The proposed ordinance is essentially the same as previous years; however, it suspends all merit, performance, step or time in grade pay increases for 2014. Although no merit increases will occur in 2014 and in order to ensure employee performance is recorded, employee performance evaluations will be still be conducted throughout 2014.

Lorenz, seconded by Weber, moved adoption of the ordinance. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 68-13.

Item No.8 was an ordinance amending rate schedule for transit department services. Public Transit Director Ken Savage briefed the Board on the item advising the proposed ordinance amends the Public Transit fare rate schedule. Transit rates for the fixed routes have not been adjusted since they were established in 1999 and demand

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response rates were last amended in 2005. The revised schedule also includes adjusted rates for private charter service. The revised charter rates include travel time to and from destinations within Fort Smith which was previously charged separately. Higher fuel and equipment prices necessitate the need for the associated increases. The presented rate adjustments are anticipated to provide a \$30,000 increase in revenue, which will help establish equality among current rates for urban transportation services across Arkansas. The Transit Advisory Commission conducted a three (3) month long public hearing review period, which included a survey. Survey comments and highlights were included in the board packet for review. There were two (2) comments in opposition as well as suggestions concerning fares. The survey revealed 86% agree with some amount of fare increase, while 10 % do not agree and no comments were received regarding adjustments to private charter rates. The Transit Advisory Commission reviewed the proposed fare/rate increased at their November 7, 2013 meeting and unanimously approved that such be presented to the Board of Directors for consideration.

The following individual was present to address the Board:

- Pauline Novack
Fort Smith, AR

Re: Expressed discontent and spoke in opposition to the item alleging any rate increase will ensure a decrease in ridership.

Good, seconded by Lorenz, moved adoption of the ordinance. The members all voted affirmatively, with the exception of Director Catsavis who voted "no". The Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 69-13.

The Consent Agenda (Item No. 9) was introduced for consideration, the items being

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as follows:

- A. Resolution adopting ground rules for brain storming meetings of the Board of Directors
- B. Resolution setting public hearing date on petition to vacate a portion of an alley located in South Fort Smith, Block 18, between Lots 5-8 and Lots 9-12 and addition to the City of Fort Smith, Arkansas
- C. Resolution approving a contract with Daily & Woods, P.L.L.C. for general legal services for 2014
- D. Resolution approving specific excess insurance and aggregate excess insurance for the City's employee health coverage
- E. Resolution approving claim service, specific excess insurance and aggregate excess insurance for City's workers' compensation coverage
- F. Resolution adopting the 2014 Audit Plan
- G. Ordinance declaring exceptional circumstance and authorizing continuation of agreement with Data-Tronics Corporation
- H. Resolution to accept the bids and authorize a contract for 2013 Street Striping Replacement, Project No. 13-85-A (\$28,472.69 / *Engineering Department / Budgeted - Sales Tax Program Fund*)
- I. Resolution authorizing Amendment No. 2 to the design agreement between the Department of the Army and the City of Fort Smith, Arkansas for design for the May Branch, Fort Smith, Arkansas Project
- J. Resolution authorizing the Mayor to execute an agreement for professional services with Frontier Engineering, Inc. for the design of the River West Trail (\$156,000.00 / *Parks Department / Budgeted - 1/8 Cent Sales Tax*)
- K. Resolution authorizing a contract Change Order No. 2 to the contract for the construction of the Fort Smith Landfill Scale Facility (\$80,926.39 / *Sanitation Department / Budgeted - Sanitation Sinking Fund for Landfill Construction*)
- L. Resolution accepting the project as complete and authorizing

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final pay to Heckathorn Construction for the construction of an elevator and associated ADA facility enhancements to the transit facility located at 6821 Jenny Lind Road, Project No. 12-26 (\$59,583.50 / Transit Department / Budgeted - 2012 General Fund & Federal Transit Administration - 90 % reimbursement)

- M. Resolution authorizing acquisition of real property interests for the Mill Creek Interceptor Improvements - Phase II (\$4,041.00 / Utility Department / Budgeted - 2012 Sales and Use Tax Bonds)

With regard to Item 9I, Director Merry requested brief explanation.

Director of Engineering Stan Snodgrass advised the May Branch Drainage Project is a cost shared project between the U.S. Army Corps of Engineers (USACOE) and the City to reduce flooding along the May Branch drainage way. A resolution authorizing an agreement with the USACOE to begin design of the May Branch project was approved on October 7, 2008. Payment of the City's estimated share for the design cost in the amount of \$554,000 was made to the USACOE. On July 19, 2011, Amendment No. 1 to the design agreement was approved. This amendment was needed in order to continue design of the May Branch project due to lack of matching federal funding. This amendment allowed accelerated use of the previously deposited \$554,000 so that the design of the project would not stop. The proposed resolution authorizes Amendment No. 2 to the agreement, which will allow the design to be completed using only City funds because of inadequate federal funding. Upon approval, the City's cost will be credited towards the future cost sharing on the project when or if federal funds become available.

Administrator Gosack further advised construction of the lower section will reduce flooding for both the lower May Branch area and the Town Branch sub-basin.

With regard to Item No. 9J, Director Catsavis expressed concern with the proposed

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amount and requested a brief explanation regarding the selection process.

Directors Good and Lau also conveyed concern with the proposed cost.

Director of Parks and Recreation Mike Alsup advised staff reviewed multiple Statements of Qualifications of qualified engineers and after review, Frontier Engineering, Inc. was determined to be the firm most qualified to complete the project. He conveyed assurance that the design cost is conducive with the desired trail features and confirmed a satisfactory previous work history with the firm; however, he conceded that no benchmark with another comparable project was conducted.

Director Weber conveyed much excitement regarding the project citing its importance for the riverfront and all future development of the area.

Settle, seconded by Good, moved adoption of all consent agenda items. The members voted affirmatively on all items, with the exception of Director Catsavis voting “no” on Item No. 9J and Director Merry voting “no” on Item No. 9M. The Mayor declared the motion carried and the ordinance and resolutions were adopted with the ordinance given Ordinance No. 70-13 and the resolutions numbered R-171-13 through R-182-13 respectively.

Item No. 10 was a resolution authorizing acquisition of real property in connection with the Mill Creek Pump Station and Equalization Tank *(\$86,000.00 / Utility Department / Budgeted - 2012 Sales and Use Tax Bonds)*.

Director of Utilities Steve Parke briefed the Board on the item advising the property is required for the Mill Creek Pump Station and construction of a 3.5 million gallon equalization tank, which is a key project in the City’s overall strategy to address wet weather sanitary sewer overflows that occur throughout the system during period of heavy

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rainfall. The property owners, represented by Mr. Steve Beam, are aware of the City's need for the property and have not indicated an objection to its sale; however, a mutually agreed price for the property has not been reached. The City retained two (2) independent, certified appraisers to establish the value of the property. The initial appraisal by Calmo Realty established the value of the property at \$57,000. The second appraisal by Mr. Tommy Matthews established the value at \$66,000; however, due to the contributing factor of the site's gravel surfacing, such was increased to \$86,000. The owner's appraiser, Mr. Ken Colley, has established the value of the property at \$200,000. The owner has alleged that said appraisal amount is due to the value of the fill placed on the site; however, such fill does provide a benefit for the project. The project is set to begin its bidding period on December 15, 2013 and the City should hold possession of the property on or about that time; therefore, he recommended approval.

The following individual was present to address the Board:

- Mr. Steve Beam
Barling, Arkansas

Re: Although he conveyed no objection to the acquisition, he noted disagreement that the fill currently on the property provides no benefit to the project. Due to such, he spoke in opposition to the proposed offer of \$86,000 and, at the inquiry of Director Lau, indicated he would accept \$147,500 for the property.

There was very lengthy discussion regarding the matter whereby several directors expressed concern with the difference in property values, taking the property by eminent domain and the legal cost associated with such.

City Attorney Jerry Canfield advised that if eminent domain is required and if such goes to trial to determine just compensation, such could take approximately nine (9)

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months with an estimated legal cost of \$20,000. Due to pressure on the City by the Department of Justice to proceed with the project, he urged acquisition of the property be accomplished as soon as possible.

Upon approval of the proposed resolution, Mayor Sanders conveyed much assurance that negotiations will continue with the property owner in an attempt to reach an amount agreeable to both parties. If an amount cannot be reached and eminent domain proceedings progress to trial, adoption of the resolution would still ensure acquisition of the property thereby satisfying the Department of Justice requirement.

Lau, seconded by Lorenz, moved adoption of the resolution. The members voted as follows: ayes - Lau, Lorenz and Settle; nays - Good, Catsavis, Weber and Merry. The Mayor declared the motion defeated.

Due to defeat of Item No. 10, Director Settle questioned the City's next course of action.

Administrator Gosack advised the City will continue to negotiate with the property owner in the next few days. If an agreed upon amount determined and to coincide with the project schedule, he noted the possible necessity of a special meeting immediately preceding the study session scheduled for 12:00 Noon, Tuesday, December 10, 2013 to consider a resolution authorizing same.

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

◆ Mayor Sanders

Re: 1. Reminded all of the following events:

- A. Christmas Parade on Saturday, December 7, 1:00 p.m., Garrison Avenue.
- B. Holiday Express at Creekmore Park.

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- C. Comprehensive Plan Update public forum on Monday, December 9, 11:30 a.m., Creekmore Park, Rose Room.
 - D. Effective December 20, 2013, Cox Communications will move the City of Fort Smith Government Access Channel from Channel 6 to Channel 214.
2. Regarding the requested "Buy Local" campaign, he encouraged all to do their holiday shopping in Fort Smith.
 3. Extended appreciation to Police Chief Kevin Lindsey and the Police Department for their toys for kids campaign.
 4. Conveyed much gratitude to Fire Chief Mike Richard and the Fire Department for their work on recent fires.

◆ Director Merry

- Re:
1. Regarding Items No. 9M and 10, advised his vote of "no" on each item was because he feels more time should have been allotted for negotiation.
 2. He, too, encouraged all to "Buy Local". Since no sales tax is required for online purchases, he noted that individuals may opt to pay sales tax and urged all who can, to do so.
 3. Reminded all that Christmas Honors is scheduled for December 13 and 14, 2013.
 4. Conveyed a very Merry Christmas to all.

◆ Director Settle

- Re:
1. University of Arkansas Fort Smith (UAFS) Lions basketball team is ranked 18th in the nation.
 2. Encouraged all to participate in the 4th Annual UAFS Toy Toss, which is scheduled for December 14, 2013.

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◆ Director Lorenz

Re: Announced a motorcycle and four-wheeler race has been held in the city for approximately 19 years and such was held the weekend of November 29 and 30. The event had over 300 entries from eight (8) states. The winner on Saturday was from Iowa and Sunday's winner was from New Zealand. No winners were from Fort Smith; however, local brothers, Zack and Jake Ingram were in the top 10.

◆ Director Good

Re: Noted the recent passing of Ms. Henrietta Easterling, the first African American woman employed in the Communications Division of the Fort Smith Police Department, and conveyed condolences to her family.

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 7:28 p.m.

APPROVED:


MAYOR

ATTEST:


CITY CLERK