

MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ FEBRUARY 18, 2014 ~ 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 Antony of Immaculate Conception Catholic 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 inquired if any Board member had any item of business to present that was not already on the agenda. There was none presented.

Mayor Sanders recognized Matthew Dawkins from Boy Scout Troop 110, who was in attendance to earn his Citizenship in the Community merit badge.

The minutes of the February 4, 2014 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 was a resolution approving a contingent fee agreement with Baron and Budd, P.C. and the Sims Law Office regarding the pursuit of claims against Whirlpool Corporation for TCE pollution ~ *Merry / Weber placed on agenda at the February 11, 2014 study session ~*

City Administrator Ray Gosack briefed the Board on the item as discussed and requested at the February 11, 2014 study session. The resolution originally presented authorized an agreement with only the Sims Law Office; however, such as been revised to include the law firm of Baron and Budd, P.C. The proposed resolution authorizes an agreement to address the arrangement for compensation and the process in which litigation will proceed to pursue claims against Whirlpool Corporation for TCE

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contamination. The city attorney has provided information about the pollution enforcement case in Illinois, Fort Smith ordinances, and the state law regarding the statute of limitations. Currently, it is uncertain whether the proposed litigation will proceed criminally or civilly. Regardless, each possibility maintains its own set of decisions and consequences, all of which will require consideration by the Board after Ms. Sims conducts her research and offers a recommendation. The city attorney and city prosecutor will likely need to have input on such matters.

Director Merry expressed his desire to hold firm to the rule of law citing such applies to everyone; therefore, Whirlpool Corporation should be held accountable for the contamination. Due to such, he spoke in favor of the proposed measure citing various local attorneys have also indicated approval of the prospect that the City of Fort Smith may pursue litigation.

Director Settle advised considerable thought has gone into how he will vote on the proposed item and has considered the effect such will have regarding the future industries that will inhabit the property, as well as the affected homeowners. Much certainty was conveyed that approval of this proposed agreement will hinder the homeowner's ongoing litigation and stifle future industries occupancy of the property. He further noted that contamination violations are strictly regulated by state and federal agencies; therefore, he spoke in opposition of the proposed item.

Director Good noted concurrence with Director Settle's comments. If the proposed resolution is approved and the City receives a settlement, the City is prohibited by law to distribute said funds to private individuals, i.e. the affected homeowners. He also conveyed opposition to the proposed resolution.

Good, seconded by Lau, moved adoption of the resolution as revised. Prior to the vote, Director Weber inquired if settlement proceeds may be utilized to purchase the

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homeowners properties to build a city park whereby Administrator Gosack advised such is a permissible use of said funds.

Director Weber further conveyed much discontent with Whirlpool Corporation citing their failure to address the contamination in a timely manner. Due to such and because a motion to adopt is on the floor, she indicated her intent to vote in favor of the item; however, she noted her preference to table the item to allow additional and more thorough review of the item.

Mayor Sanders implied opposition to the City utilizing settlement funds to purchase the affected properties by simply stating "Whirlpool should purchase the properties."

Director Lau reminded all of the legal opinion provided by the city attorney citing a potential difficulty in applying the existing language of current ordinances to the Whirlpool situation. A city's responsibility is to promote business by being fair and equitable to all companies as well as ensure the safety and welfare of its citizens. Great concern was expressed alleging approval of the proposed resolution will send a bad message to potential businesses contemplating coming to Fort Smith and that such could be detrimental to the lawsuit filed by the affected homeowners. Due to such, he also spoke in opposition to the item.

The motion remaining on the floor, the members voted as follows: ayes – Weber and Merry; nays – Lau, Good, Lorenz, Catsavis and Settle. The Mayor declared the motion defeated.

Item No. 2 was an ordinance amending Ordinance No. 16-94 (*correction of 1994 annexation legal description*).

Administrator Gosack briefed the Board on the item advising such is merely to correct an error in the legal description included within Ordinance No. 16-94, which

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annexed property near Old Greenwood Road and Zero Street in 1994. Staff discovered the error while reviewing the zoning boundary lines in the subject area; therefore and in order to correct the city boundary as per the 1994 annexation petition, he recommended approval of the item.

Settle, 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 and the ordinance was adopted and given Ordinance No. 17-14.

Item No. 3 was an ordinance amending Section 16-15 of the Fort Smith Municipal Code regarding the required number of Property Owners Appeal Board members to constitute a quorum.

City Clerk Sherri Gard briefed the Board on the item advising the Property Owners Appeal Board (POAB) consists of five (5) members; however, the Fort Smith Municipal Code specifically states that four (4) members constitute a quorum. The POAB discussed the matter at their February 10, 2014 meeting and voted four (4) in favor and zero (0) opposed to recommend the number required to constitute a quorum be reduced from four (4) to three (3) members.

Merry, 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 and the ordinance was adopted and given Ordinance No. 18-14.

Item No. 4 was a resolution of the Board of Directors of the City of Fort Smith certifying local government endorsement of business to participate in the Tax Back

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Program (as authorized by Section 15-4-2706(d) of the Consolidated Incentive Act of 2003) (*Butler & Cook, Inc.*).

Deputy City Administrator Jeff Dingman briefed the Board on the item advising such is per the request from the Arkansas Economic Development Commission and the Fort Smith Regional Chamber of Commerce on behalf of Butler & Cook, Inc., who plans to expand its current facility located at 8307 Ball Road in Fort Smith. The expansion is an \$11.2 million investment and will add 45 new jobs to the region. Participation in the Tax Back Program allows for new or expanding businesses to request refunds of sales taxes paid on building materials, new equipment and other eligible expenses incurred due to construction and/or expansion, and requires governmental endorsement. Participation requires approval from the governing body; therefore, he recommended approval of the proposed resolution.

Director Settle conveyed much gratitude to Administration and staff for their work on the matter citing the Tax Back Program is a good tool to foster aid for local businesses to expand.

Lau, seconded by Lorenz, moved adoption of the resolution. The members all voting affirmatively, the Mayor declared the motion carried. Settle, seconded by Lau, moved adoption of Section 3 the emergency clause. The members all voting affirmatively the Mayor declared the motion carried and the resolution and emergency clause were adopted and given Resolution No. R-11-14.

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

- A. Resolution to accept the bids and authorize a contract for the construction of Drainage Improvements, Project No. 12-06-C2 (\$630,662.58 / *Engineering Department / Budgeted – Sales Tax Program Fund*)

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- B. Resolution approving priorities for the 2015 session of the Arkansas General Assembly ~ *Merry / Good placed on agenda at the February 11, 2014 study session ~*
- C. Resolution authorizing Change Order No. 2 to the contract with Crawford Construction Company for the Chaffee Crossing Water Supply Improvements – Pump Station (\$6,617.63 / *Utility Department / Budgeted – 2012 Sales and Use Tax Bonds*)
- D. Resolution authorizing the Mayor to execute an agreement and Authorization No. 1 with Hawkins-Weir Engineers, Inc. for providing engineering services associated with the Mill Creek Pump Station and Equalization Tank (\$1,353,600.00 / *Utility Department / Budgeted – 2012 Sales and Use Tax Bonds*)
- E. Resolution accepting the bid of and authorizing the Mayor to execute a contract with BRB Contractors, Inc. for the Mill Creek Pump Station and Equalization Tank (\$12,930,000.00 / *Utility Department / Budgeted - 2012 Sales and Use Tax Bonds*)
- F. Resolution authorizing the Mayor to execute Authorization No. 2 to the agreement with Hawkins-Weir Engineers, Inc. for engineering services for the Mill Creek Interceptor Improvements – Phase II (\$165,000.00 / *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 Mill Creek Interceptor Improvements – Phase II (\$1,917,753.10 / *Utility Department / Budgeted - 2012 Sales and Use Tax Bonds*)
- H. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Goodwin & Goodwin, Inc. for the “P” Street Wastewater Treatment Plant effluent pump installation (\$87,680.00 / *Utility Department / Budgeted – 2008 Revenue Bonds*)

With regard to Item No. 5B, the following individual was present to address the Board:

- David Harris
Fort Smith, Arkansas

Re: Regarding “Sales Tax Bond Election Ballot Questions”, he simply noted that combining popular and unpopular ballot questions into a one-vote option is an easy way for cities to ensure voter approval of the unpopular measure.

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Catsavis, seconded by Settle, moved adoption of all consent agenda items. The members all voting affirmatively, the Mayor declared the motion carried and the resolutions were adopted and numbered R-12-14 through R-19-14 respectively.

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

➤ Mayor Sanders

Re: Conveyed today's announcement that the Fort Smith Regional Health Foundation will move forward with the development of a College of Osteopathic Medicine, which will be located near Chad Colley Boulevard at Chaffee Crossing. The Fort Chaffee Redevelopment Authority (FCRA) donated approximately 200 acres for the development, which anticipates 150 students per year. Such will bring 65 high-paying jobs and various other jobs to the region and is anticipated to boost the local economy by \$75 to \$100 million.

➤ Director Settle

Re: Announced the University of Arkansas Fort Smith Lions basketball teams will play Thursday, February 20 and Saturday, February 22, 2014 at UAFS Stubblefield Center; therefore, he encouraged all to attend.

The Board entered into executive session at approximately 6:37 p.m. and after reconvening, Mayor Sanders announced the following appointment nominations:

ELECTRIC CODE APPEALS BOARD

Bill Kirk (*reappointment*)

Marvin Matlock (*reappointment*)

Terms expire March 31, 2019

PARKING AUTHORITY

Tiffany Parker

Term expires February 18, 2019

PLUMBING ADVISORY BOARD

Jan Taylor (*reappointment*)

Term expires February 28, 2018

Lau, seconded by Merry, moved acceptance of the appointment nominations.

The members all voting aye, the Mayor declared the motion carried.

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There being no further business to come before the Board, Settle moved that the meeting adjourn. The motion was seconded by Lau, and the members all voting aye, the Mayor declared the motion carried and the meeting stood adjourned at 6:41 p.m.

APPROVED:


Mayor

ATTEST:


City Clerk