

MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ JULY 15, 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 Associate Pastor Matthew Stevenson at Evangel Temple, 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 July 1, 2014 regular meeting was presented for approval. Good, seconded by Merry, moved approval of the minutes as written. The members all voting aye, the Mayor declared the motion carried.

Colonel Mark Anderson of the Air National Guard 188th Wing presented a framed print of an A-10 Warthog aircraft to the Mayor and Board. Since the aircraft is no longer a part of the 188th Wing's mission, such was presented to commemorate the aircraft's lengthy residence in and service to Fort Smith. He extended much appreciation to the City of Fort Smith for its past and continued support of the 188th Wing and further introduced the following members of the 188th Wing, who were also in attendance (Item No. 1):

- ▶ Master Sergeant Brian Mays
- ▶ Lieutenant Colonel Judith Mathewson
- ▶ Mr. Jeff Gibson
- ▶ Master Sergeant Katrina Kinard

Mayor Sanders extended much appreciation for the framed print citing such will be displayed proudly. He further conveyed much gratitude to the 188th Wing, not only for their

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service to and protection of the United States, but also for the many volunteer hours members of the 188th Wing have contributed to the city of Fort Smith.

With regard to the time limit policy for persons wishing to address the Board, the 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. 2 was a resolution of intent of the Board of Directors of the City of Fort Smith, Arkansas, regarding the issuance of bonds for the purpose of assisting in the financing of an industrial facility to be located within the city (*ArcBest Corporation*).

City Administrator Ray Gosack briefed the Board on the item advising ArcBest Corporation has requested the use of industrial revenue bonds (IRB's) for its new corporate headquarters building project at Chaffee Crossing. The principal advantage of IRB's is a property tax reduction. The state will also be supporting ArcBest's project with incentives. ArcBest anticipates adding 975 new jobs over the next 7 years with an estimated \$30 million investment in its new building and approximately \$16 million in office furnishings and computer equipment. The term is 12 years except for the computer equipment, which has a shorter life. The bonds are not general obligations of the City; therefore, ArcBest Corporation will be solely responsible for all bond payments.

Director Settle merely conveyed much appreciation to ArcBest Corporation for their investment in Fort Smith.

Catsavis, seconded by Merry, moved adoption of the resolution. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-81-14.

Item No. 3 was a resolution authorizing the providing of legal defense and

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reimbursement of legal fee and expenses with reference to litigation styled as Jack Swink v. the City of Fort Smith, et al.

Administrator Gosack briefed the Board on the item advising the above styled lawsuit was filed against the City of Fort Smith, the city clerk and four (4) directors (*Directors Keith Lau, Mike Lorenz, George Catsavis and Kevin Settle*) alleging violations of the Freedom of Information Act (FOIA). As provided by the Fort Smith Municipal Code, legal defense for each defendant is being tendered by the city attorney; however, Director Keith Lau is concerned that the possibility of being named individually as a defendant could lead to the consideration of misdemeanor violations under the FOIA. Such could affect his ability to hold professional licenses which are essential to his livelihood; therefore, he has requested that he be allowed to retain his own legal representation. The use of outside legal counsel requires approval by the Board of Directors. A similar instance occurred in 2005 whereby three (3) city directors and the former city administrator were allowed to retain their own legal representation in litigation filed by former airport director, Robert Johnson.

Director Merry inquired if other defendants expressed interest in seeking their own legal representation and inferred if the request was due to confidence in the ability of the City's legal team. Although he conveyed no objection to Director Lau seeking separate legal counsel, he expressed concern that the City could incur duplicate billing for the same legal representation.

Administrator Gosack advised all remaining defendants were made aware of their ability to select their own legal counsel; however, none have expressed desire to do so. Upon approval, he conveyed much confidence that the city attorney and Director Lau's attorney will work together to avoid any duplicate billing as much as possible.

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Director Lau stated he maintains *“all the confidence in the world”* in the Daily & Woods law firm as it pertains to him as a director, as well as the City of Fort Smith; however, he feels additional representation is needed to ensure his business interests are adequately represented. His attorney is very knowledgeable of his businesses and issues relating to the Arkansas and Oklahoma Real Estate Commissions; therefore, such is merely to provide him with *“tandem coverage.”*

Settle, seconded by Lorenz, moved adoption of the resolution. The members voted as follows: ayes - Good, Lorenz, Catsavis and Settle; nays - Weber and Merry; abstention - Lau. The Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-82-14.

Item No. 4 was a resolution to approve financial assurance agreements in lieu of a performance/payment bond, providing financial security to the City that the River Valley Sports Complex will be completed as provided within the agreement.

Director of Parks and Recreation Mike Alsup briefed the Board on the item advising the City of Fort Smith and River Valley Sports Complex (RVSC) entered into an agreement in March of this year for the construction and operation of an eight (8) field softball complex on City property in Chaffee Crossing. The City agreed to provide funding in the amount of \$1.6 million with conditions. Section 4 of the agreement states:

“In lieu of a performance/payment bond, the City, by its Board of Directors, may, at its discretion, accept a combination of financial/insurance agreements providing financial security to the City that the agreed Sports Complex will be completed as provided herein and in the time period provided herein. The performance/payment bond or other City accepted financial security, shall remain in effect until one year after the date the final payment comes due.”

The RVSC has provided a list of equipment or work with stated discounts or

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donations. As provided in Section 6 of the agreement, the City made the first payment to RVSC for \$100,000 on March 21. The next payment will be due upon approval of the engineering and architectural plans for the complex. No additional payments will be made until the financial assurance is approved by the Board. The Army Reserve will perform the grading for the ball fields, building pads, and parking lots as a training exercise, scheduled to occur in August. The site has been cleared and is ready for the grading work to begin. Funding will be needed to support the Army Reserve's work and funds will be needed to stabilize the site when they are finished. Most of the funds for the project will be expended after the grading work is completed.

The following individual was present to address the Board:

- Mr. Lee Webb, RVSC

Re: Merely advised the project is moving forward and on schedule; therefore, he inquired if any directors had questions.

There were multiple inquiries submitted by the Mayor and Board, which consisted of, but not limited to, the following whereby Mr. Webb responded as noted below:

- ▶ Multiple documents from various vendors have indicated materials and/or services will be provided at cost; however, concern was expressed that no amounts were included.

Response: The project is still in the design and architectural plan phase; therefore, a materials list has not been created. Due to such, the vendors cannot provide exact amounts; however, he conveyed much confidence the project will be completed for the estimated cost of \$1.6 million.

- ▶ Once the Army Reserve completes the grading work, is there a plan in place to stabilize the fields?

Response: The stabilization is planned to occur soon after the grading work is completed, as well as installation of fencing to secure the fields.

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- ▶ Is there a set work-plan/timetable to indicate when phases of the project are anticipated to be completed?

Response: A specific work plan/timetable has not yet been created; however, no objection was conveyed to its creation advising such will be submitted to the City soon after the grading work has been completed.

- ▶ What is the total projected cost of the two (2) structures and eight (8) fields?

Response: The actual construction cost is currently undetermined due to donations and in-kind services; however, the facility is anticipated to maintain a value of \$4 million.

- ▶ If adequate funding for the project is not realized, will additional funds be requested from the City of Fort Smith to cover the under-funding?

Response: Much assurance was conveyed that no additional funds will be requested from the City of Fort Smith to complete the project.

- ▶ Is the sports complex planned to be a dual purpose facility?

Response: The fields are being constructed with specifications to accommodate both baseball and softball.

Merry, seconded by Weber, moved adoption of the resolution. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-83-14.

Upon completion of the grading work, Mr. Webb further encouraged the Board of Directors to hold a study session at Chaffee Crossing in August whereby he would plan a tour of the River Valley Sports Complex site.

Item No. 5 was an ordinance amending the Fort Smith Municipal Code regarding

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formulation of board meeting agendas ~ *Weber/Merry placed on the agenda at the July 1, 2014 regular meeting* ~

Administrator Gosack briefed the Board on the item advising the proposed ordinance merely repeals Section 2-31(4) of the Fort Smith Municipal Code, which provides for the removal of items from the agenda by notification of four (4) directors to the city clerk after an item has been placed on an agenda. In order to ensure all associated language is amended, such also authorizes removal of “...*unless removed by a majority of the board...*” in Section 2-37(a). He reminded all that the matter is the subject of a recent lawsuit filed against the City Clerk, four (4) directors (*Directors Keith Lau, Mike Lorenz, George Catsavis and Kevin Settle*) and the City of Fort Smith alleging the procedure for removal is a violation of the Freedom of Information Act.

The following individual was present to address the Board:

- David Harris
Fort Smith, Arkansas

Re: Expressed concern that the procedure allows for an item to be removed from an agenda outside of a public meeting; therefore, he spoke in favor of the proposed ordinance.

Since the proposed measure is the basis of the recently filed lawsuit, Director Catsavis announced his intention to abstain from voting on the item.

Director Lorenz concurred with Director Catsavis citing he feels such is “*not appropriate*” to consider the requested amendments at this time. He further expressed discontent that only the four (4) directors who concurred to remove items from the agenda were named individually in the lawsuit. Regardless of the current litigation, he noted objection to the proposed ordinance advising such would allow two (2) directors to

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continually place items on the agenda with no way for a majority of the Board to remove.

Director Lau noted the Fort Smith Municipal Code currently allows the Board to remove items of business from an agenda either in a public meeting or by notification of four (4) directors to the city clerk. Upon approval, the proposed ordinance would prohibit the directors from removing any item of business from an agenda. He expressed great concern with the matter citing it is critical that the Board retain the ability to remove items provided four (4) directors concur to such.

Administrator Gosack requested the city attorney address the Board regarding the proposed legislation and the affect, if any, such could have on the aforementioned litigation.

City Attorney Jerry Canfield affirmed the Board of Director's maintain the ability to control all City ordinances and conceded to the Board's authority to consider the proposed ordinance. The recently filed litigation addresses prior applications of the subject section of the Fort Smith Municipal Code, which has been in place since 1971 and utilized on multiple occasions. The proposed measure could potentially affect, or at least have an attempted affect, on the litigation; therefore and although he reaffirmed the Board's authority to consider the matter, it's his preference that the proposed ordinance not be an added issue in which he could potentially be required to address in the litigation.

Director Merry recapped recent events in which two (2) items were publically placed on agendas for review/consideration during a scheduled meeting of the Board; however, such items were then removed via notice to the City Clerk outside of a public meeting. Several citizens of Fort Smith have conveyed their desire that all items placed on an agenda should be fully considered by the Board in a public setting. If a measure is

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defeated, he conceded that majority rules; however, he conveyed his desire to represent the will of the people and recommended approval of the item.

Director Weber spoke in favor of the proposed ordinance citing the citizenry want transparency in government. In response to an issue whereby two (2) directors can continually place items on an agenda with no ability for a majority of the Board to remove, she commented, “...*the minority has a lot of things to say sometimes that maybe the majority needs to listen to...*” citing prompted discussion can bring about a better understanding of an issue.

Director Settle conveyed opposition to the proposed ordinance and expressed concern that only the section for removal of agenda items is before the Board. Section 2-13(3) provides the same procedure for the addition of items. Due to such, he concurred with aforementioned concerns that such will allow two (2) directors to place items on an agenda with no avenue for a majority of the Board to remove. Since only two (2) directors can place an item on an agenda, it was suggested that such may need to be increased to four (4) directors, whereby Directors Weber and Merry conveyed no objection.

Director Good noted that each member of the Board listens to a multitude of citizens and expressed concern that sometimes insignificant issues from the minority are brought before the Board when a majority of the citizens feel the issue is unwarranted. Due to such, he reiterated that approval of the proposed ordinance would ensure numerous issues could be placed on an agenda with no ability for four (4) directors or a majority to remove, which would create a “*waste of time*” and is “*not efficient.*”

Directors Weber and Merry conveyed disagreement with the implication that agendas have been or will be filled with insignificant items.

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Merry, 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 voted as follows: ayes - Weber and Merry; nays - Lau, Good, Lorenz and Settle; abstention - Catsavis. The Mayor declared the motion defeated.

The Consent Agenda (Item No. 2) was introduced for consideration, the items being as follows:

- A. Resolution authorizing a change order for the construction of 2013 Street Striping Replacement, Project No. 13-85-A (\$445.29 / *Engineering Department / Budgeted - Street Sales Tax Program Fund*)
- B. Resolution to accept completion of and authorize final payment for the construction of 2013 Street Striping Replacement, Project No. 13-85-A (\$28,917.98 / *Engineering Department / Budgeted - Street Sales Tax Program Fund*)
- C. Resolution to accept the bids and authorize a contract for the construction of Streets/Overlays Reconstruction, Project No. 14-03-A (\$2,080,125.67 / *Engineering Department / Budgeted - Street Sales Tax Program Fund*)
- D. Resolution to accept the bids and authorize a contract for the construction of Street Overlay/Reconstruction, Project No. 14-03-C (\$2,024,864.75 / *Engineering Department / Budgeted - Street Sales Tax Program Fund*)
- E. Resolution authorizing a franchise utility relocation agreement for the Jenny Lind Road & Ingersoll Avenue Widening, Project No. 07-01-A (\$214,204.19 / *Engineering Department / Budgeted - Street Sales Tax Program Fund*)
- F. Resolution authorizing the acquisition of real property interests for the Jenny Lind Road and Ingersoll Avenue Widening, Project No. 07-01-A (\$128,100.00 / *Engineering Department / Budgeted - Street Sales Tax Program Fund*)

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- G. Resolution authorizing the Mayor to execute a notice of an amendment to the Property Development Decision Document with the Arkansas Department of Environmental Quality for the Arkansas Brownfields Program in connection with the Zero Street Pump Station Wet Weather Improvements
- H. Resolution authorizing the Mayor to make application to the Arkansas Department of Parks and Tourism for grant funding assistance

Settle, seconded by Catsavis, 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-84-14 through R-91-14 respectively.

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

► Mayor Sanders

- Re:
1. Noted the groundbreaking for the fire tower and public safety training facility was held on Monday, July 14. The facility is the result of a collaborative effort between several department and the site will be a great asset for the city of Fort Smith.
 2. The Arkansas Highway and Transportation Department (AHTD) has advised of their intent to install dual signage in the vicinity of Barling and Fort Smith indicating Interstate 540 and Interstate 49.
 3. Reminded all of the Annual Mayor's Prayer Breakfast scheduled for 6:15 a.m., Friday, July 18 at the Holiday Inn City Center. Tickets are available at the door or at the Chamber of Commerce.

► Director Merry

Re: Announced a recent study group was hosted by students of Union Christian Academy at Golden Corral to discuss bringing a professional sports team to Fort Smith. He commended the students for their dream and efforts, and conveyed much appreciation to all who attended the event.

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▶ Director Lorenz

Re: On behalf of his employer, Shared Services Center, he announced the facility currently has approximately fifty (50) job openings, which need to be filled immediately. Due to such, he encouraged all with medical billing/collection background and seeking employment to go to www.chs.net and submit an application.

▶ Director Settle

Re: Extended congratulations to Mayor Sanders for his efforts in another successful Mayor's 4th of July Celebration.

Administrator Gosack noted it's estimated that approximately 14,000 were in attendance.

▶ Administrator Gosack

Re: Reminded all of the upcoming Ward 3 Meeting scheduled for 6:00 p.m., Thursday, July 17 at the Shared Services Center, 4600 Towson Avenue (*former Phoenix Expo Building*).

The Board entered into executive session at approximately 6:56 p.m. and after reconvening, the Mayor announced the following appointment nominations:

**FORT SMITH MUNICIPAL EMPLOYEES BENEVOLENT FUND
BOARD OF ADVISORS**

Rhonda Royal
Term expires June 30, 2017

HISTORIC DISTRICT COMMISSION

Graham Sharum (reappointment)
Charles Lane (reappointment)
Terms expire July 31, 2017

OUTSIDE AGENCY REVIEW PANEL

Amy Manley (reappointment)
Term expires July 17, 2016

PORT AUTHORITY

Phillip W. Doss
Term expires July 31, 2019

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PROPERTY OWNERS APPEAL BOARD

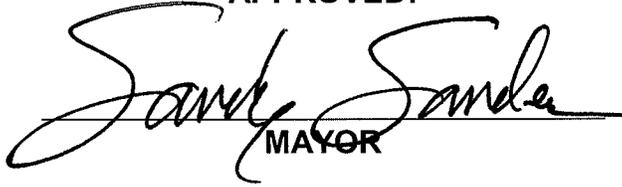
Dennis M. Shaeffer
Term expires July 14, 2019

Settle, seconded by Lorenz, moved acceptance of the above named nominations. The members all voting aye, Mayor Sanders declared the motion carried.

Mayor Sanders further announced the performance evaluation of Administrator Gosack was completed citing his performance was determined to be *"very acceptable"* and the next performance evaluation is scheduled for July 2015.

There being no further business to come before the Board, Settle 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 8:47 p.m.

APPROVED:


MAYOR

ATTEST:


CITY CLERK