

## **MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING**

**TUESDAY ~ SEPTEMBER 2, 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 Fire Chief Mike Richards, 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 August 19, 2014 regular meeting was presented for approval. Catsavis, seconded by Settle, moved approval of the minutes as written. The members all voting aye, the Mayor declared the motion carried.

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.

The Mayor, Board of Directors and Administration recognized the Scott Barr family upon being named the 2014 National Military Family of the Year by the National Military Family Association (Item No. 1). Earlier this year, the Barr's were also named the Arkansas Air Guard Family of the Year, and eventually beat out 91 other families for the national title. The Mayor extended much congratulations for the national recognitions.

Mayor Sanders announced this was the time and place set for a public hearing to close and vacate a portion of public right-of-way (South 10<sup>th</sup> Street). Notice of the public

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hearing had been duly published as required by law. Following the public hearing, consideration of an ordinance authorizing same would be given (Item No. 2).

Director of Development Services Wally Bailey briefed the Board on the item advising such is per the petition of Baldor Electric Company. The purpose of the proposed closure is to allow the area to be converted into a green space for use by the company, who owns all property surrounding the subject area. Property owners within three-hundred (300) feet have been notified with no objections conveyed. All franchise utilities and appropriate city departments were also notified of the proposed closure. Only Arkansas Oklahoma Gas (AOG) and Oklahoma Gas & Electric (OG&E) have existing infrastructure in the right-of-way; however, they have conveyed no objection to the closure provided necessary easements are maintained, which Baldor Electric Company has already executed. The petitioner has also executed a memorandum of understanding which stipulates that the applicant or their assigns will not make any claims for compensation in the event the City of Fort Smith exercises the power of eminent domain to reclaim the abandoned right-of-way.

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

Lau, 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. Settle, seconded by Lau, moved adoption of Section 3 the emergency clause. The

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members all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and given Ordinance No. 47-14.

The Mayor announced this was the time and place set for a public hearing to close and vacate a portion of public right-of-way located in Chaffee Crossing (Veterans Avenue). Notice of the public hearing had been duly published as required by law. Following the public hearing, consideration of an ordinance authorizing same would be given (Item No. 3).

Mr. Bailey briefed the Board on the item advising such is per the application of The Degen Foundation. The proposed closure is to facilitate the Arkansas College of Osteopathic Medicine, which will be located on Chad Colley Boulevard and south of Frontier Drive. The closure is requested because the portion of right-of-way proposed for abandonment bisects the medical school site and is of no value to the school's overall master plan. The subject area proposed for closure is currently used as the route for trucks which serve surrounding industries. Traffic counts were initiated which indicated an average daily traffic of 693 vehicles. Of said vehicles, 186 were three (3) axle trucks or larger (27% of the daily total). Upon approval, such will require the trucks to be rerouted east along Frontier Road, then to Taylor Avenue, then to Fort Chaffee Boulevard and finally back west along Roberts Boulevard. Such will result in an additional round trip mileage between four (4) to five (5) miles; however, such is the most suitable option as rerouting down Wells Lake Road is not feasible due to anticipated construction of a new high school and/or expansion of the medical school to the west. Routing trucks down Chad Colley Boulevard is also not an option due to the proximity of the medical school; however,

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some trucks must still utilize Chad Colley Boulevard due to the significant truck turning radius requirements. Routing trucks down Massard Road is also not an option due to the significant residential development in the area.

All franchise utilities and appropriate city departments were contacted regarding any ongoing or future interests in the subject right-of-way whereby no objections were received. Only OG&E maintains infrastructure in the right-of-way; however, they too conveyed no objection to the closure provided any necessary easement is maintained. The Degen Foundation has already executed said easement. The applicant has also executed a memorandum of understanding, which stipulates the applicant or their assigns will not make any claims for compensation in the event the City of Fort Smith exercises the power of eminent domain to reclaim the abandoned right-of-way. All property owners within three-hundred (300) feet were notified of the proposed closure. To date, the Planning Department has merely received three (3) inquiries; however, no objections to the proposed closure were conveyed. Unlike the previous street closing (Item No. 2), there is no emergency clause associated with this particular street closure. Such is not necessary and will allow time to provide notification to the public and all trucking companies of the necessary rerouting of traffic.

The following individual was present to address the Board:

- Jim Nunnelee  
Fort Smith, Arkansas

Re: Advised he purchased a property in close proximity to the proposed closure area; therefore, he expressed concern the proposed street closure will restrict access to the recently purchased property.

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It was determined the subject area will not extend to Mr. Nunnelee's property; therefore, he conveyed no objection to the proposed street closure.

- Larry R. Hall, agent  
Fort Smith, Arkansas

Re: Due to an inquiry of Director Lau, he indicated that although the school retains no current plans for future expansion, the school feels the proposed street closure will ensure any future expansion is "*not limited.*" The school will be located close to the street right-of-way and because such currently maintains large truck traffic, the proposed closure is intended to remove a safety concern by eliminating truck traffic near the campus.

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

There was very minimal discussion regarding the matter with several directors inquiring about the aforementioned reroute options for truck traffic and Director Settle speaking in favor of the item.

Settle, 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 all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 48-14.

Item No. 4 was an ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan: from Residential Detached to General Commercial / Rezoning: from Residential Estate One (RE-1) to Commercial Heavy (C-5) by extension located at 9900 Highway 71 South*).

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Mr. Bailey briefed the Board on the item advising such is per the request of Ron Brixey, agent for Thomas and Nancy Spahn. The purpose of the amendments is to allow for an undeveloped portion of the site to be utilized for climate controlled mini-storages. A neighborhood meeting was held on Thursday, August 7, 2014 with only two (2) individuals in attendance with neither conveying any objection to the proposed amendments. The Planning Commission held a public hearing on August 12, 2014 with no individual present to speak in opposition. The Planning Commission considered approval of the development plan for the site whereby the Planning Commission amended such to make approval of the development plan subject to the following:

- ▶ Approval of the Master Land Use Plan and rezoning amendments.
- ▶ A lighting plan shall be submitted with the building permit plans verifying that the proposed exterior lighting complies with the Commercial and Outdoor Lighting Requirements in UDO Section 27-602-5.
- ▶ All drainage improvements shall be approved by the Engineering Department.

The Planning Commission approved the amended development plan by a vote of seven (7) in favor and zero (0) opposed. The Planning Commission also approved both the Master Land Use Plan and rezoning amendments by a vote of seven (7) in favor and zero (0) opposed.

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 all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 49-14.

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Item No. 5 was an ordinance amending the 2009 Unified Development Ordinance of the City of Fort Smith (September 2014 Amendments).

Mr. Bailey briefed the Board on the item providing explanation of the proposed amendments, which are as follows:

1. When the UDO was adopted, the section exempting the Commercial Downtown (C-6) zone from the parking requirements was inadvertently omitted.
2. The proposed amendment to Section 27-503-11, subdivision landscaping requirements, makes it clear that this section only applies to residential subdivisions. The landscaping for commercial and industrial developments is installed when each lot is developed.
3. The current language that establishes criteria for landscaping of industrial developments is ambiguous and inconsistent with another section of the code. The current criteria is different with regard to when landscaping is required and when high quality building materials are required. Using the same criteria for each should provide clarification and consistency. This amendment makes the standard for landscaping industrial properties the same as it is for the architectural design standards.
4. Correction to an incorrect section reference.
5. The proposed amendment allows residential subdivisions to have two (2) signs per entrance. Many subdivision entrances have architectural features on each side of the street entering the subdivision. This amendment will allow a sign on each side of the entrance.
6. The land use change permits bicycle sales and service with no outdoor storage in all commercial zoning districts, as well as the Industrial Light zoning district. This will allow bicycle shops in many commercial retail developments that are currently zoned Commercial-2 (C-2).

The Planning Commission held a public hearing on August 12, 2014 with no

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individual present to speak in opposition. The Planning Commission recommended the above noted amendments for consideration by the Board of Directors by a vote of seven (7) in favor and zero (0) opposed.

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. Catsavis, seconded by Lorenz, 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 given Ordinance No. 50-14.

Item No. 6 was an ordinance adopting the 2012 Edition of the National Fire Protection Association Life Safety Code and other provisions relating thereto.

Police Chief Mike Richards briefed the Board on the item advising the 2012 Arkansas Fire Prevention Code adopted by the Fort Smith Board of Directors on August 5, 2014, references a section of the 2012 version of the National Fire Protection Association (NFPA) Life Safety Code. The City is currently operating under the 2003 version; therefore, in order to be consistent, it is necessary to amend Sections 10-1 and 10-2(a) of the Fort Smith Municipal Code and adopt the 2012 version of the NFPA Life Safety Code. The Fort Smith Fire Code Board of Appeals held a meeting on August 26, 2014, to discuss the adoption of the 2012 Life Safety Code whereby the Board unanimously voted to support the adoption of the 2012 NFPA Life Safety Code and recommend such to the Board of Directors for consideration.

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Good, 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 all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 51-14.

Item No. 7 was a resolution adopting Board Best Practices ~ *Lau/Lorenz placed on agenda at the August 26, 2014 study session ~*

City Administrator Ray Gosack briefed the Board on the item as discussed at the August 16, 2014 study session. The originally presented Board Governance Policy has been revised to reflect the requested changes, which are as follows:

- ▶ *Board Governance Policy* has been changed to *Board Best Practices*. References to the document being a “policy” have been deleted or changed to “document”.
- ▶ Section 12, censure of board members, has been deleted. Subsequent sections were renumbered.
- ▶ Former section 18.1 (now section 17.1), has been amended by deleting the third sentence which read:

*Individual Board members shouldn't direct their differences of opinion to staff in a manner which creates dissension or polarization in the organization.*

Director Merry conveyed his desire that Sections 17.2 and 17.3 also be deleted alleging they are “*contradictory.*”

Director Weber conveyed discontent with the item alleging, “*what we asked for and what we got, are totally different.*” She further expressed concern that such may make a future Board member feel “*handcuffed.*”

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Lau, seconded by Lorenz, moved adoption of the resolution. The members voted as follows: ayes - Lau, Good, Lorenz and Settle; nays - Catsavis, Weber and Merry. The Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-118-14.

Item No. 8 consisted of the following items regarding Whirlpool Corporation:

- A. Resolution approving and authorizing execution of cooperation and reimbursement agreement
- B. Resolution accepting donation of right-of-way for Jenny Lind Road & Ingersoll Avenue Widening, Project No. 07-01-A

Administrator Gosack briefed the Board on the items advising the City has been discussing with Whirlpool Corporation about an agreement related to the activities of Whirlpool Corporation to remediate the TCE contamination on properties on and near the manufacturing facility located along Jenny Lind Road and Ingersoll Avenue. The City has also been working on plans and property acquisition for the Jenny Lind Road and Ingersoll Avenue widening project, which involves work in areas where below surface TCE contamination has occurred. Although somewhat independently of each other, the discussion of a Cooperation and Reimbursement Agreement has proceeded at the same time as a request by the City that Whirlpool Corporation donate the needed right-of-way for the project.

Regarding Item No. 8A, such approves and authorizes execution of a the aforementioned agreement, which requires the following:

- ▶ The City must keep Whirlpool informed regarding all construction projects in area.

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- ▶ The City will provide access to Whirlpool to test results in the event of dewatering, excavation and other construction activities.
- ▶ Permits potential temporary use of City property or right-of-way for contamination remediation efforts and provides for reimbursement of extra expenses incurred by the City caused by adherence to Whirlpool advice regarding dewatering, excavation and other activities.

With regard to Item No. 8B, because of the Jenny Lind Road and Ingersoll Avenue project is partially funded by federal and state funds, the City is required to appraise all property acquisitions and offer the appraised value to the property owner. The appraisal for the property interests required from the Whirlpool Corporation indicates a value of \$53,900.00. As required by law, Whirlpool has been advised of the appraisal and offered the appraised value for the property; however, Whirlpool Corporation has indicated its willingness to donate the property interests to the City. Upon approval of Item No. 8B, such merely accepts donation of the property.

Due to necessity of excavation for the project and the presence of TCE contamination in the area, Director Settle expressed concern with employee safety; therefore, he questioned if the City will test before construction begins.

Director of Engineering Stan Snodgrass advised TCE contamination has only been detected in the groundwater, which is approximately fifteen (15) feet below the surface, but no contamination has been discovered in the soil. Regardless and in order to ensure employee safety, he confirmed that testing will be conducted prior to initiation of construction.

Settle, seconded by Lorenz, moved adoption of Item No. 8A. The members all

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voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-119-14.

Catsavis, seconded by Merry, moved adoption of Item No. 8B. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-120-14.

Item No. 9 consisted of the following the items regarding property interests in connection with the replacement of Sewer Lift Station No. 17:

- A. Resolution authorizing acquisition of real property interests in connection with the replacement of Sewer Lift Station No. 17 (*\$2,500.00 / Utility Department / Budgeted - 2012 Sales Tax and Use Tax Bonds*)
- B. Resolution authorizing the City Administrator to accept an offer made by a property owner for the acquisition of real property interests for the replacement of Sewer Lift Station No. 17 (*\$146,000.00 / Utility Department / Budgeted - 2012 Sales Tax and Use Tax Bonds*)

Director of Utilities Steve Parke briefed the Board on the item advising the City has a funded project to address needed improvements to four (4) existing sewer pump stations in the Village Harbor and Harbor Landing subdivisions. One (1) of the stations to be replaced is Station No. 17, which is located in a small easement area at the corner of Old Harbor Road and Edgewater Road. The site is not large enough to construct a new pump station and keep the existing station in service during the construction, which necessitates the acquisition of additional property. In order for the project to proceed, staff is seeking direction from the Board as to which site they prefer, i.e. Site A (Item No. 9A) or Site B (Item No. 9B).

Site "A" is approximately 270 feet south of the existing pump station and on the

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same side of Edgewater Road as the existing station. It is situated such that the largest portion of the site is located on an apartment complex property, and a smaller portion of necessary property crosses over onto the property adjacent to the apartment complex. The owners of the larger portion of the site have agreed and granted the necessary site easement; however and in spite of multiple attempts, the property owner for the smaller portion has declined the City's offer. Because the smaller portion is necessary for the project, Item No. 9A authorizes acquisition of the property via eminent domain. If the Board opts for Site "A", as always, representatives of the City will continue discussions with the property owner in an effort to reach a mutually agreeable settlement.

Site "B" is located at 10906 Edgewater Road, which is directly across the street from the existing pump station. It is a full residential lot with a single-family residence, which would require removal if the Board opts to select this site. The property owners have moved and the property is on the market for sale. The property owners have offered to sell the property to the City for \$146,000.00; however, if a formal appraisal results in a lower cost, the City would offer such rather than merely accept the aforementioned property owners offer.

Director Weber advised she is directly involved with the sale of one of the subject properties; therefore, she announced her intent to abstain from voting on the item.

There was brief discussion regarding the options and potential for future noise complaints with the new facility.

Mr. Parke advised the option is provided solely for purpose of advising the Board of the availability of the property directly across from the existing pump station. With

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regard to noise concerns, he advised there is no sound when the station is in normal operation. The proposed construction will be very similar to the existing facility, which has not resulted in any complaints from surrounding neighbors.

Settle, seconded by Catsavis, moved adoption of Item No. 9A. The members voted as follows: ayes - Lau, Good, Lorenz and Catsavis; nays - Merry; abstention - Weber. The Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-121-14.

The Consent Agenda (Item No. 10) was introduced for consideration, the items being as follows:

- A. Resolution authorizing the Mayor to execute an agreement and Authorization No. 1 for engineering services with Burns and McDonnell for the design of fluoridation feed systems at the Lee Creek and Lake Fort Smith Water Treatment Plants (*\$180,000.00 / Utility Department / Not Budgeted - Capital Improvement Fund*)
- B. Ordinance declaring an exceptional situation and waiving the requirements for competitive bidding for the lease purchase of radio communication equipment and authorizing the Mayor and City Administrator to negotiate and execute all necessary lease documents regarding said agreement (*\$255,558.70 / Transit Department / Budgeted - General Fund & Federal Transit Administration (FTA) 80% grant reimbursement*)
- C. Resolution authorizing the Mayor to execute Authorization No. 2 to the agreement with CDM Smith, Inc. for providing engineering services with the Massard Wastewater Treatment Plant Odor Control Improvements (*\$68,550.00 / Utility Department / Budgeted - 2012 Sales Tax and Use Tax Bonds*)
- D. Resolution accepting the project as complete and authorizing final payment to Forsgren, Inc. for the Ben Geren Aquatics Center Water and Sewer Extensions (*\$51,344.27 / Utility Department / Budgeted - 2012 Sales Tax and Use Tax Bonds*)

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- E. Resolution accepting bid for the purchase of self-contained breathing apparatus (SCBA) (\$696,945.00 / Fire Department / Budgeted - Assistance to Firefighters Grant)
- F. Resolution accepting bids for the purchase of water and wastewater chemicals for 2014-2015 (Annual bid / Various Departments)
- G. Resolution allowing the sale of surplus vehicles and equipment at public auction

Regarding Item No. 10A, Director Catsavis expressed concern with the item regarding the expense to the City of Fort Smith and questioned if such could effect future water rates.

Mr. Parke advised the City must cover the cost of equipment and operation, etc.; however, the expense for equipment will be reimbursed by a Delta Dental grant. The operational cost could effect future water rates; however, because the operational cost is so minimal, such is unlikely to result in a water rate increase.

With regard to Item No. 10F, Director Settle extended much appreciation to Purchasing Manager Alie Bahsoon for striving to obtain the best bids possible and noted he *"likes the way it's being done."*

Settle, seconded by Good, moved adoption of all consent agenda items. The members all voting affirmatively, with the exception of Director Catsavis voting "no" on Item No. 10A, the Mayor declared the motion carried and the ordinance and resolutions were adopted with the ordinance given Ordinance No. 52-14 and the resolutions numbered R-122-14 through R-127-14 respectively.

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

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▶ Mayor Sanders

Re: Reminded all of the upcoming 9-11 Ceremony, which is set for 9:00 a.m., Thursday, September 11 at Fire Station No. 1.

▶ Administrator Gosack

Re: The City of Fort Smith was recently named a recipient of the Distinguished Budget Presentation Award, presented by the Government Finance Officers Association (GFOA). Such is the 26<sup>th</sup> consecutive year the City of Fort Smith has received the award; therefore, he extended much appreciation to the Director of Finance Director Kara Bushkuhl and staff for their hard work and efforts that prompted the recognition.

▶ Director Good

Re: Noted a recent fundraiser at the Fort Smith Department of Sanitation citing such was great success and *"the lunch was fantastic!"*

There being no further business to come before the Board, Catsavis 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 6:59 p.m.

**APPROVED:**

  
MAYOR

**ATTEST:**

  
CITY CLERK