

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

**TUESDAY ~ FEBRUARY 3, 2015 ~ 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 Reverend Don Brewer of St. Luke Lutheran 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, Tracy Pennartz, Kevin Settle and Don Hutchings. 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 January 20, 2015 regular meeting was presented for approval. Settle, seconded by Pennartz, moved approval of the minutes as written. The members present all voting aye, the Mayor declared the motion carried.

Mayor Sanders and City Administrator Ray Gosack advised they have been participating in the University of Arkansas at Fort Smith (UAFS) Mentoring Program. They recognized UAFS staff member Rick Goins, who heads the mentoring program, conveying appreciation for his efforts in providing such a valuable tool for students. They further recognized UAFS student, Minzhi Hickerson, and UAFS graduate Brad Andrews, whom they have recently been mentoring.

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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. 1 consisted of the following items pertaining to the Steel Horse Rally:

- A. Consideration of Mayor's veto of Ordinance No. 9-15 authorizing the appropriation of funds from the General Fund *(Steel Horse Rally scheduled for May 1 & 2, 2015)*
- B. Ordinance authorizing the Mayor to execute an agreement with the Steel Horse Rally, Inc. for certain services for inhabitants of the City of Fort Smith ~ *Settle/Catsavis placed on agenda at the January 13, 2015 study session ~*

Administrator Gosack briefed the Board on the item advising Mayor Sanders vetoed Ordinance No. 9-15 authorizing the appropriation of funds from the General Fund for the Steel Horse Rally scheduled for May 1 & 2, 2015. The ordinance was adopted by the Board of Directors at the January 20, 2015 regular meeting. Per Section 2-34(a) of the Fort Smith Municipal Code, "...a veto by the mayor may be overridden by the affirmative vote of five (5) or more members of the board of directors." If an affirmative vote of five (5) or more members of the Board is not received, the Mayor's veto will be upheld.

Item No. 1B is an agreement that's validity hinges on the action taken on Item No. 1A. If the veto is overridden and funds appropriated, the Board will need to consider the service agreement with Steel Horse Rally, Inc., which specifies the services to be provided by the organization and payment to be made by the City for said services. If the veto is upheld, the service agreement

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will be irrelevant and no action necessary since no funding would be made available.

The following individuals were present to address the Board:

- Dennis Snow, representing Steel Horse Rally, Inc.  
Fort Smith, Arkansas

Re: Spoke in favor of the item and expressed gratitude to the Board for passage of the ordinance at the January 20, 2015 regular meeting. He alleged such was never about the subject funds citing he “never expected it to be approved”. The event will generate tax dollars; therefore, the intent was to put forth an effort to obtain City funding merely to help the event be even larger out of the gate. The subject funds are intended for advertising in multiple states to get the message out to bring in the largest possible crowd.

- Keith Gray, volunteer for the veteran’s in Fort Smith  
Mountainburg, AR

Re: Spoke in favor of the item alleging the return on investment for the city will be measurable with sales tax revenues. More importantly, such will also spotlight veteran’s service organizations and the return on said investment will provide much needed recognitions to veterans for their service.

Mayor Sanders conveyed his support of the Steel Horse Rally; however, he simply cannot justify the use of tax dollars for what should be a private sector effort such as Bikes, Blues and Barbeque in Fayetteville. The Board of Directors and staff devoted a great amount of time and effort to establish the 2015 Budget, whereby every single department had funding requests reduced. During the budget process, approximately \$90,000 in additional income was identified and presented to the Board for consideration; however, the Board denied the proposed revenue increases, which creates a revenue issue with the 2015

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Budget as originally adopted. Furthermore, the City has a process for organizations to participate in an extensive application process to receive funds from the City, which includes a thorough review by the Outside Agency Review Panel. Such review resulted in approximately \$145,800 for approximately 20 non-profit organizations to receive City funding for worthwhile causes and events, which is a reduction of \$16,200 from last year. He expressed concern with allocating the subject funds when multiple organizations were required to participate in the extensive process to receive funding from the City. Concern was also conveyed that the ordinance sets an unhealthy precedent citing such has already prompted contact by other organizations requesting funding for their event, also without participation in the aforementioned process. A great deal of thought and evaluation was put into the veto alleging is in the best overall interest of the City. Although, his desire is for the veto to be upheld, he also reiterated and conveyed much support that the Steel Horse Rally is a great success.

Director Lorenz expressed his opinion that a precedent has already been set and provided the Board with a list of events from the Finance Department from the last ten (10) years that have received contributions from the City. Such list excludes the outside agency funding. He announced the Steel Horse Rally has the full support of the Board and all want the event to succeed. Much appreciation was extended to all those in attendance to show support of the event and also conveyed heartfelt gratitude to the veterans for their service.

Director Hutchings spoke in favor of providing funding for the event citing he wants the event to take place and succeed. He also conveyed much gratitude

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to all those in attendance to support the event, as well as Mr. Snow for his efforts and Mayor Sanders for his leadership.

Director Settle expressed his desire for the City to help fund the event citing such is in line with the Board's goals. Regarding the comments of Mr. Gray, he conveyed much confidence that the event will result in a substantial "return on investment" over many years to come.

Director Good conveyed his support of the event; however, he spoke in opposition to utilizing taxpayer dollars citing organizations can also request funding from the Community Development Advisory Committee (CDAC) and the Advertising and Promotion Commission. Due to the subject funding request, he too has been contacted by an organization that intends to request funding from the City; therefore, he expressed much concern that such will, in fact, set a precedent for future requests.

Director Catsavis expressed gratitude to Mr. Snow, conveyed support of both the event and City funding, as well as gratitude to the veterans in attendance. He further questioned if a lesser amount would prompt a more favorable approval from the Board to provide City funds for the event whereby Mayor Sanders confirmed such would not sway his initial opposition to utilizing taxpayer dollars for the event.

Lorenz, seconded by Catsavis moved to override the Mayor's veto. The members voted as follows: ayes – Lorenz, Catsavis, Settle and Hutchings; nays – Lau, Good and Pennartz. The Mayor declared the motion defeated citing such did not receive the required five (5) affirmative votes to override the veto.

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Regarding Item No. 1B, no action was taken due to the Mayor's veto being upheld (Item No. 1A).

Item No. 2 consisted of the following items pertaining to property located at 8225 and 8227 Texas Road:

- A. Ordinance accepting certain territory into the city of Fort Smith, Arkansas (8225 & 8227 Texas Road)
- B. Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan: from Extra-Territorial Jurisdiction Low Density Residential to Residential Attached / Rezoning: from Extra-Territorial Jurisdiction Open-1 (ETJ O-1) to Residential Single Family Duplex Medium/High Density (RSD-3) by classification located at 8225 and 8227 Texas Road*)

Director of Development Services Wally Bailey briefed the Board on Item No. 2A advising such is per the request of Billy M. and Aretta Browder. The purpose for the annexation is to allow access to the City of Fort Smith sewer system. The subject area consists of 4.8 acres on the east side of Texas Road. In accordance with Arkansas law, a petition for annexation was filed at the County Court of Sebastian County. The Court found that the petition had been properly prepared and filed. The Sebastian County Court issued an Order of Annexation on December 11, 2014.

Item No. 2B amends the Master Land Use Plan map and zoning classifications for the subject property. The Planning Commission held a public hearing on January 13, 2015 with no individual present to speak in opposition. The Planning Commission approved the Master Land Use Plan amendment with eight (8) in favor, zero (0) opposed. The Planning Commission unanimously

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amended the rezoning request to make approval subject to the Board of Director's approval of the petition to annex said property and ultimately approved the amended rezoning request with eight (8) in favor, zero (0) opposed.

Director Pennartz expressed concern and inquired what would happen if the existing sewer line is an inadequate size to connect to the sewer system.

Mr. Bailey advised when an application for a plumbing permit is requested, such is reviewed by the Utility Department technicians to ensure the connection is adequate. If not, the matter must be addressed by the property owner prior to connection to the City's main.

Director Settle inquired if the proposed zoning coincides with the existing land use whereby Mr. Bailey confirmed such.

Lau, seconded by Hutchings, moved adoption of Item No. 2A. 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. 12-15.

Lau, seconded by Good, moved adoption of Item No. 2B. 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. 13-15.

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Item No. 3 was an ordinance amending the 2009 Unified Development Ordinance of the City of Fort Smith (*Setback exceptions for corner lots*)

Mr. Bailey briefed the Board on the item advising such addresses issues regarding setback exceptions for corner lots. Prior to the UDO, corner lots were allowed to use a reduced setback on one (1) of the adjoin streets, which is known as the exterior side yard setback. The UDO requires lots to have two (2) front yard setbacks, which allows for setback continuity of buildings constructed on both streets. Lots platted prior to the effective date of the UDO were not always platted with enough property to allow for house or duplex to be constructed and meet the increased setback requirements on both streets. The proposed amendment will add a setback exception to 27-40(C) of the UDO, that will allow residential lots platted prior to the effective date of the UDO the option to use the 15 foot exterior side yard setback which was the exterior side yard setback for residential lots. Such will not apply to multi-family developments. The Planning Commission held a public hearing on January 13, 2015 and the amendment was approved with eight (8) in favor, zero (0) opposed.

Lorenz, seconded by Catsavis, 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 Hutchings, moved adoption of Section 5 the emergency clause. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance

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and emergency clause were adopted with the ordinance given Ordinance No. 14-15.

The Consent Agenda (Item No. 4) was introduced for consideration, the items being as follows:

- A. Resolution authorizing the installation of speed tables on Cliff Drive (\$30,000.00 / *Engineering Department / Not Budgeted – Sales Tax Program*) ~ *Settle/Lorenz placed on agenda at the January 27, 2015 study session ~*
- B. Resolution authorizing acquisition of real property interests for Town Branch Drainage Improvements, Phase III, Project No. 11-06-B (\$7,500.00 / *Engineering Department / Budgeted – Street Sales Tax Fund*)
- C. Ordinance to abandon a public utility easement located in Commercial Park South, Phase II, an addition to the City of Fort Smith, Sebastian County, Arkansas
- D. Resolution authorizing agreements for easements for the Greg Smith Riverwalk
- E. Resolution authorizing the execution of a memorandum of understanding between the City of Fort Smith, Arkansas and Sebastian County, Arkansas, concerning administration and funding for the Homeland Security Grant Program (\$125,590.00 *Grant Revenue / Police Department / Not Budgeted – Homeland Security*)
- F. Ordinance declaring an exceptional situation and waiving the requirements of competitive bidding for the rehabilitation of the Lee Creek facility's horizontal Kaplan s-turbine (\$343,764.00 / *Utility Department / 2014-2015 Budgeted – Operating Budget*)
- G. Resolution authorizing the Mayor to execute an agreement with RJN Group, Inc. for providing engineering services associated with Year 2015 sewer system assessments (\$1,028,990.48 / *Utility Department / Budgeted – 2014 Sales and Use Tax Bonds*)

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- H. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Dale Crampton Company for the 3900 Kelly Highway roof renovation (\$297,983.00 / Utility Department / Budgeted – Operating Budget)

Regarding Item No. 4A, Director Catsavis inquired how many speed tables are being installed and the ability to remove if such is requested in the future. Due to the cost, he further inquired if fewer speed tables would address the speeding issue.

Director of Engineering Stan Snodgrass advised the proposed authorizes the installation of six (6) speed tables on Cliff Drive between South 30<sup>th</sup> Street and Old Greenwood Road. The proposed is essentially a pilot program and will be reevaluated after six (6) to twelve (12) months to allow for community feedback on the effectiveness and desirability of the speed tables before further installations are considered. Regarding the number of speed tables, such can be reduced; however and in order to obtain the best results of effectiveness, staff recommends the proposed number of speed tables remain intact.

Regarding Item No. 4E, Director Lau questioned the necessity of the items included in the grant, specifically the robot and watercraft. Due to such, he requested confirmation that the funds cannot be utilized to purchase other items of more necessity to the department.

Police Chief Kevin Lindsey advised the funds are from a Homeland Security Grant; therefore, very specific and restrictive on what can be purchased with said funds. He further explained the necessity of the watercraft citing the Police Department does not currently maintain such and has to use the Fire

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Department's watercraft when such is necessary. When two (2) departments must utilize the same watercraft, such tends to hamper either departments protocol and availability of use. With the anticipated development along the riverfront, he conveyed much certainty the watercraft will prove to be a much needed asset.

Regarding the aforementioned watercraft, Director Pennartz inquired if such will require additional personnel or training of current personnel, and if approval to utilize the river is required from the Corps of Engineers.

Chief Lindsey confirmed no additional personnel will be required; however, training will most certainly be scheduled for existing personnel. With regard to approval to utilize the watercraft in the Arkansas River, he also confirmed no such approval is required.

Director Catsavis inquired of the abilities and benefits of the robots whereby Chief Lindsey advised such will only enhance the safety of the officers and provided multiple instances regarding such.

Regarding Item No. 4F, Director Lau inquired if the subject company is qualified to service the s-turbines and questioned the necessity of waiving of the complete bidding requirements.

Director of Utilities Steve Parke advised the subject company was utilized to identify the routine maintenance required on the s-turbines and was identified, and utilized, as the top qualifier in the proposals evaluation process. Because they are the firm who disassembled the s-turbine for the maintenance and identified the necessary rehabilitation, it is in the best interest for the firm to

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perform the rehabilitation. Mr. Parke further provided in-depth briefing on the procedure utilized on such project.

Regarding Item No. 4G, Director Settle questioned if proposals from other companies were considered.

Mr. Parke advised due to the time constraints of the consent decree, the subject firm is recommended due to them being the most educated. Due to time constraints mandated by the consent decree, no other firms were considered because there is no time for other firms to get oriented. Although, no other firms were considered this year, other companies have been considered in the past.

Director Pennartz inquired if there is a precedent given to local or in-state firms, provided they're qualified to do the work.

Mr. Gosack advised preference to local firms is unlawful; however, the Board identified said issue as a legislative priority and is currently working with the Arkansas Municipal League on draft legislation to get such introduced in the legislature.

Mr. Parke added that the RJN Group has retained a local office in Fort Smith since 2009 and currently employs multiple Fort Smith residents.

Hutchings, seconded by Pennartz, moved adoption of all consent agenda items. The members all voted affirmatively with the exception of Director Lau voting "no" on Item No. 4A, Director Settle voting "no" on Items No. 4F and 4G. The Mayor declared the motion carried and the ordinances and resolutions were adopted with the ordinances given Ordinance No. 15-15 and 16-15, respectively, and the resolutions given Resolution No. R-18-15 through R-23-15 respectively.

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Item No. 5 was an ordinance specifying the personnel authority of the City Administrator ~ Directors Settle, Lau, Good, Lorenz & Catsavis placed on agenda 1/30/2015 ~

Administrator Gosack briefed the Board on the item was placed on the agenda at the request and concurrence of the above noted Board members, pursuant to Section 2-31(3) of the Fort Smith Municipal Code:

*“An item of business may be placed on the agenda at least forty-eight (48) hours prior to the time of the meeting of consideration by four (4) members of the board upon notice to the city clerk of the name of the proposed directors and specific subject of the items of business to be considered. The city clerk shall immediately notify the directors, the city administrator and the mayor of the specific subject of the addition to the agenda.”*

The following individuals were present to address the Board:

- David Harris  
Fort Smith, Arkansas

Re: The citizens of Fort Smith elect members of the Board of Directors to act on their behalf; therefore, he spoke in favor of the item.

- Jack Swink  
Fort Smith, Arkansas

Re: Rather than conveying support or opposition to the item, he spoke in favor of changing the form of government.

Mayor Sanders requested multiple times for Mr. Swink to speak either for or against the subject item. Mr. Swink refused and continued to speak in favor of changing the form of government; therefore, the Mayor requested the sergeant at arms to escort Mr. Swink to his seat. Prior to completion of the aforementioned request, Mr. Swink left the podium.

- Don Bales  
Bonanza, Arkansas

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Re: Expressed discontent with the action taken with Mr. Swink alleging a change in the form of government is directly related to the subject ordinance.

After the Mayor requested he, too, speak either for the against the subject ordinance, Mr. Bales stated, *"I'm in favor of giving the hire/fire authority back to the citizens"*

There was extensive discussion with multiple members of the Board conveying their opinion on the subject matter. It was determined that additional discussion was warranted; however, Director Pennartz inquired if a legal liability exists for individual directors as the ordinance is now and if it is repealed.

City Attorney Jerry Canfield advised of two (2) possible bases of liability. The first is under State law whereby if it can be proven that an individual acted intentionally to hurt someone, there would be a base for liability. He knows of no issue on an acting Board member. The second is under Federal law whereby if it was proven that someone acted on the base of race or sex, there could be a base for liability. The intentional violation of both instances would be a difficult to prove in court.

Hutchings, seconded by Pennartz, moved to table the item to the earliest possible study session. The members voted as follows: ayes – Good, Lorenz, Catsavis Pennartz and Hutchings; nays – Lau and Settle. The Mayor declared the motion carried and the item was tabled to the next available study session.

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

- Mayor Sanders

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Re: Reminded all the first Fort Smith Marthon will take place this coming Sunday, February 8, 2015, and advised such meets a Board goal of hosting a big event.

➤ Director Pennartz

Re: Congratulated Southside High School on recent national accolades.

➤ Director Settle

Re: 1. Commended Southside High School upon their recent win and advancement in the Science Bowl competition. Her further congratulated Ramsey Junior High for placing 4<sup>th</sup> in their Science Bowl competition.

2. Congratulated the University of Arkansas Fort Smith (UAFS) men's and women's basketball teams for their 1<sup>st</sup> place win at a recent conference.

3. Invited all to the upcoming games on at 5:30 p.m., Thursday, February 12, 2015 at the Stubblefield Center and 6:00 p.m., Tuesday, February 10, 2015 at Blue Lion where there will be an award ceremony for the women's volley ball team.

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 7:18 p.m.

APPROVED:

  
MAYOR

ATTEST:

  
CITY CLERK