

MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ MARCH 17, 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 John Treude of Our Redeemer Lutheran Church, followed by the Pledge of Allegiance. On roll call the following members of the Board were present: Directors Keith Lau, Mike Lorenz, George Catsavis, Tracy Pennartz, Kevin Settle and Don Hutchings; absent - Director Andre' Good. The Mayor declared a quorum present.

The Mayor announced that Director Good is "*down with the flu*"; therefore, conveyed much hope that he feels better soon.

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 March 3, 2015 regular meeting were 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 recognized the following members of Boy Scout Troop 110, who were in attendance to earn their Citizenship in the Community badge:

- ▶ Luke Monk
- ▶ Thomas Farrell
- ▶ Kadin Tougas
- ▶ Braden Springs
- ▶ J.D. Boyd

The Mayor also recognized Troop Leader Michael Farrell, who was also in attendance.

Mayor Sanders announced this was the time and place set for a public hearing regarding the Year 41 Community Development Block Grant Budget, the Year 22 HOME

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Investment Partnership Act Program Budget, authorizing submission of the Program Year 2015 Action Plan and for other purposes ~ *Hutchings/Pennartz placed on the agenda at the March 10, 2015 study session* ~. Notice of the public hearing was duly published as required by law. Following the public hearing, a resolution authorizing same would be given (Item No. 1).

Director of Community Development Matt Jennings briefed the Board on the item as discussed at the March 10, 2015 study session. The proposed resolution authorizes funding to various organizations as reviewed and recommended by the Community Development Advisory Committee (CDAC) for the funding cycle of July 1, 2015 to June 30, 2016.

Director Hutchings expressed much gratitude to Community Development staff and the CDAC for their time and effort to review all funding applications.

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

Hutchings, seconded by Lorenz, moved adoption of the resolution. The members present all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-46-15.

Item No. 2 consisted of the following items regarding rates for services of the sanitary sewer system:

- A. Public hearing
- B. Ordinance to provide for rates for services of the sanitary sewer system and superseding ordinances in conflict herewith

Regarding Item No. 2A, Mayor Sanders announced this was the time and place set

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for a public hearing rates for services of the sanitary sewer system. Notice of the public hearing had been duly published as required by law. Following the public hearing, an ordinance authorizing same (Item No. 2B) will be presented for approval.

Mr. David Naumann, rate consultant with Burns and McDonnell, presented a PowerPoint presentation, which consisted of current rates compared to other cities of the same size; funding requirements relative to the consent decree programs; existing and proposed sewer rates; impacts to residential sewer billings based on the volume used; and, the financial timeline to ensure revenue requirements are in place.

The following individuals were present to speak in the public hearing:

- Anthony DeKunffy
Fort Smith, Arkansas

Re: Conveyed understanding that sewer rate increases must be accomplished; however, he encouraged the City to obtain an independent review to ensure rates are at an appropriate level. If it's determined the higher rates are not necessary in the future, he urged the Board to reduce said rates to their original amount. He also recommended the City control spending; consider assessing an additional fee for those residents who utilize more water/sewer services; and, consideration of a sales tax to prevent future, additional sewer rate increases.

- Constance Durkin
Fort Smith, Arkansas

Re: Read a prepared statement alleging the proposed rate increases are "*unconstitutional*" and "*discriminatory*"; therefore, she conveyed much assurance that if the proposed ordinance is adopted, residents will initiate the referendum process to put the matter to a vote of the people.

- Noah Steffy
Fort Smith, Arkansas

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Re: Alleged several residents were supposed to be in attendance to speak in the public hearing; however, they opted not to attend due to being *“afraid of being arrested.”* He conveyed much opposition to the proposed sewer rate increases citing people are *“watering down their milk to make ends meet and eating dog food to survive.”* Although he conveyed his intent to move out of Fort Smith, he urged the City to explore other funding options in lieu of the proposed rate increases. He further implored the Board to *“act honorably”* and defeat the proposed ordinance.

Mayor Sanders advised the City of Fort Smith maintains a Utility Assistance Program to assist low-income families with utility billings; therefore, he encouraged those who may qualify to file for participation in the aforementioned program. Such may be accomplished through the Senior Retired Citizens Association (SRCA).

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

Director Pennartz inquired about the average usage of residential customers; the number of residential customers; and, requested a breakdown of usage between residential and commercial customers. She further requested clarification of how the affordability measure is used whereby Mr. Naumann provided a brief explanation of such. Regarding the Utility Assistance Program, she conveyed much appreciation for the recent media release regarding the Program; however, she recommended such also be available on the City's website to ensure residents are aware of its existence.

With regard to the number of residential customers, Rate Analyst Kevin Sandy advised the City provides service to approximately 25,000 residential users and conveyed assurance the requested information regarding all classes of users will be forwarded as soon as possible.

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With regard to the Utility Assistance Program, Administrator Gosack confirmed that such is already available on the City's website and the Finance Department is currently working on software to allow potential participants to submit their application electronically.

Director Settle questioned if an additional rate increase could be required in the future. After review of the documentation, he further questioned the necessity of the proposed number of additional employees stating such *"does not make sense"* and recommended the City move forward with employment of additional personnel solely on an as needed basis.

Mayor Sanders conveyed assurance that no one is in favor of increasing rates; however and regrettably, such is a matter that the City must address citing at least the proposed rates are not as high as originally anticipated. Regardless, he further expressed much appreciation to the Board for their very thorough review of the matter and actions to *"do what's right for Fort Smith."*

Due to citizen comment, the absence of Director Good and the discussion anticipated at the March 19, 2015 special study session, Director Pennartz moved to table consideration of the ordinance (Item No. 2B) to the April 7, 2015 regular meeting. The motion was seconded by Director Lau; however, prior to the vote, Director Hutchings inquired if the proposed delay would affect any timeline regarding the purchase of bonds associated the proposed rate increases.

City Administrator Ray Gosack advised if the ordinance is delayed to the April 7, 2015 regular meeting, the ordinance must be amended to include an emergency clause to ensure the proposed rates go into effect on May 1, 2015 as proposed. An emergency clause must be considered separately and obtain five (5) affirmative votes for passage. If

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five (5) affirmative votes are not received, the ordinance would not go into effect for thirty (30) days after the ordinance is adopted.

The motion remaining on the floor, the members present all voted affirmatively with the exception of Director Hutchings, who voted “no.” The Mayor declared the motion carried and consideration of the ordinance was tabled to the April 7, 2015 regular meeting.

Item No. 3 was an ordinance amending Ordinance No. 85-11 and approving the Human Resources Policy for non-uniformed employees relating to domestic violence ~
Discussed at the January 27 and February 10, 2015 study sessions ~

Director of Human Resources Richard Jones briefed the Board on the item as discussed at the January 27 and February 10, 2015 study sessions. The Board determined that a “zero tolerance for domestic violence” should be included within the personnel policy; therefore, such is presented for consideration.

Regarding the last sentence of Section G.1, Director Settle questioned why such maintains the verbiage of, “...*subject to disciplinary action up to and including termination of employment*” rather than “*will be terminated.*”

Mr. Jones advised such language provides more latitude for disciplinary action without requirement of immediate termination depending on the circumstance; however, he conveyed much assurance that upon clear conviction of domestic violation, termination of employment would definitely be accomplished.

Director Lau conveyed his wish that the verbiage was stronger and requested Administrator Gosack to explain why the proposed addresses non-uniform employees only.

Administrator Gosack and Mr. Jones advised that policies are already in place for uniform / civil service employees (police & fire).

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Settle, seconded by Lau, moved to amend the ordinance to make the last sentence of Section G.1. to read as follows:

"City employees who are convicted of a domestic violence offense ~~are subject to disciplinary action, up to and including termination of employment~~ will be terminated."

Prior to the vote, Administrator Gosack clarified that the policy not only includes those convicted, but also those employees who are aware of an occurrence of domestic violence and fails to report such; therefore, he conveyed much caution with the proposed amendment.

If the proposed verbiage of "*will be terminated*" is incorporated, Director Catsavis questioned what would happen if an employee is convicted of domestic violence and duly terminated, but then said employee appeals the conviction and is found innocent.

Mr. Jones advised that such is unknown because said instance has not occurred in the past; however, he expressed concern that such could create a potential for the City to be sued for wrongful termination.

At the request of Director Hutchings, City Attorney Jerry Canfield addressed the Board advising conviction is most usually defined for clarity, i.e. initial conviction, final judicial determination or something intermediate. Regardless, he expressed some concern that the proposed does not address what action is to occur regarding a judicial appeal.

The motion remaining on the floor and the members present all voting affirmatively, the Mayor declared the motion carried and the ordinance stood amended.

Pennartz, seconded by Catsavis, moved adoption of the ordinance as amended. The members present all voting affirmatively, the Mayor declared the motion carried. Settle, seconded by Pennartz, moved adoption of Section 2 the emergency clause. The

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members present all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and given Ordinance No. 21-15.

Item No. 4 was a resolution authorizing acquisition of real property interests in connection with the replacement of Sewer Lift Station No. 23 (\$12,560.00 / Utility Department / Budgeted - 2014 Sales and Use Tax Bonds) ~ Tabled for 30 days at the February 17, 2015 regular meeting ~

Director of Utilities Steve Parke briefed the Board on the item advising this project was presented to the Board at its February 17, 2015 regular meeting. The presentation reviewed four (4) sewer line routing options and associated construction costs. Following the presentation by staff and the Crain's legal counsel, Steve Sharum, the Board tabled further consideration for a thirty (30) day period to allow Mr. and Mrs. Crain to develop and present a counter-offer to the City. On the evening of March 12, staff held an open house at the Woods Elementary School storm shelter building to receive public comment from the seventy-eight (78) residential addresses located within the 300-foot boundary around the four (4) sewer line routing options. The residents in attendance submitted fourteen (14) questionnaires whereby Option 1 was selected as the preferred option.

In the absence of a counter-offer from Mr. and Mrs. Crain as of Friday, March 13, staff's original recommendation remained as presented at the February 17 meeting; however, an agreement has now been reached with the property owners. Due to such, the below, alternate resolution authorizing execution of an agreement is presented for consideration:

- ▶ Resolution approving agreement for the acquisition of real property interest required in connection with the replacement of Sewer Lift Station No. 23

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Mr. Parke reviewed several aspects of the agreement, i.e. conveyance of an easement by the property owners, requirement for advance notice to property owners when access is required, the right to immediately access for emergency repair, installation of gates, limited to one (1) line on the property, etc. He conveyed much appreciation to the property owners for reconsidering some previous concerns; therefore, he recommended approval of the alternate resolution.

The following individuals were present to address the Board:

- Steve Sharum, attorney for property owners
Fort Smith, Arkansas

Re: Spoke in favor of the alternate resolution and extended much gratitude to the Board for authorizing additional time to allow the proposed agreement to be reached. He further noted that City staff was “*very accommodating*” throughout the entire process.

- Melissa Woodall
Fort Smith, Arkansas

Re: Advised she originally intended to speak solely in opposition to moving forward with eminent domain; however, since it appears an agreement has been reached, she conveyed no opposition to the resolution authorizing same. She further encouraged City staff and the Board to utilize eminent domain only as “*a last resort*” in the future.

Director Pennartz commended staff and the property owner’s ability to work out the previous issue citing the proposed agreement is a “*win, win situation*” for both parties.

Settle, seconded by Lorenz, moved adoption of the alternate resolution presented for consideration as noted above. The members present all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-47-15.

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

- A. Resolution authorizing the Mayor to execute a lease agreement amendment with Arkansas Building Authority related to the city's use of state-owned property at 801 Rogers Avenue for a surface parking lot
- B. Ordinance designating the District Court Clerk as the official responsible for the collection of fines assessed in District Court for the City of Fort Smith, Arkansas
- C. Resolution accepting the bid and authorizing a contract with Greenview Lawns, Inc. for landscape improvements at the River Park Glass Pavilion and Miss Laura's Visitors Center (\$38,685.28 / Parks Department / Budgeted - Downtown Development Capital Funds) ◆
- D. Resolution expressing the willingness of the City of Fort Smith to utilize Federal-Aid Recreational Trails Funds ◆
- E. Resolution adopting the 2015 Audit Plan
- F. Resolution adopting the Audit Charter
- G. Resolution accepting the project as complete and authorizing final payment to N.E.C, Inc. for the River Front Development Water and Sewer Extensions, Phase II (\$43,073.64 / Utility Department / Budgeted - Water & Sewer Capital Improvement Fund) ◆
- H. Resolution authorizing Amendment No. 1 to Authorization No. 1 with Hawkins-Weir Engineering, Inc. for the design of the Mill Creek Interceptor Improvements - Phase I (\$84,700.00 / Utility Department / Budgeted - 2014 Sales Tax and Use Tax Bonds)
- I. Resolution authorizing the Mayor to execute an engineering agreement and authorization with CDM Smith, Inc. to provide engineering services associated with development of a Capacity Management Operations and Maintenance Program and Implementation Plan (\$925,150.00 / Utility Department / Budgeted - 2014 Sales Tax and Use Tax Bonds) ◆

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- J. Resolution authorizing the Mayor to execute an agreement and authorization with CDM Smith, Inc. for providing engineering services associated with updating of the wastewater collection system hydraulic model and preparing a Capacity Assessment Report and Remedial Measures Plan (\$630,550.00 / Utility Department / Budgeted - 2014 Sales Tax and Use Tax Bonds)



◆ Future Fort Smith Item

Hutchings, seconded by Lau, moved adoption of all consent agenda items. The members present voted affirmatively on all items with the exception of Item No. 5C whereby Director Catsavis voted “no” and Items No. 5I and 5J whereby Director Settle voted “no.” The Mayor declared the motion carried and the ordinance and resolutions were adopted with the ordinance given Ordinance No. 22-15 and the resolutions given Resolution No. R-48-15 through R-56-15 respectively.

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

► Mayor Sanders

- Re:
1. Expressed appreciation to the Fort Smith Fire Department for sponsoring the St. Patrick’s Day Parade on Saturday, March 14th.
 2. Announced the U.S. Marshals Museum commemorative coin project was recently recognized with an Arkansas Department of Parks and Tourism Henry Award.
 3. Advised Beautify Fort Smith’s Bi-Annual Spring Cleanup will take place on Saturday, April 18th. Participates can obtain supplies at the Central Mall parking lot.
 4. Announced Charolette Tidwell is the recipient of The Outstanding Alumni Award in Health and Human Services awarded by the University of Arkansas College of Education and Health Sciences. She was selected due to her

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exceptional professional and personal achievement and extraordinary distinction in the health and human service profession via her organization, Antioch for Youth and Family, and is the 5th person to receive the award.

The Leadership Fort Smith Alumni Association has also selected Ms. Tidwell as the 2015 recipient of the Community Leadership Award in the non-profit category. Due to this recognition, she was recently noted on the NBC Nightly News broadcast, which prompted contributions to her organization from all over the nation and a couple from France.

Due to the above noted recognitions, Mayor Sanders extended congratulations to Ms. Tidwell and conveyed much gratitude for her many contributions to the community!

(Note: Mayor Sanders announced the above on behalf of Director Good, who was unable to attend the meeting.)

▶ Director Pennartz

- Re:
1. Regarding the City of Fort Smith Audit Plan and Audit Charter (Consent Agenda Items No. 5E & 5F), she commended Internal Auditor Tracey Shockley for an *“excellent job!”*
 2. Reiterated congratulations to Ms. Charlotte Tidwell for the aforementioned recognitions citing she is very deserving of the honors.

▶ Director Settle

- Re: Recognized the University of Arkansas Fort Smith (UAFS) womens basketball team for recently making it to the second round of the National Tournament stating, *“they have represented the City of Fort Smith very well.”*

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The Board entered into executive session at approximately 7:02 p.m. and after reconvening, the Mayor announced the following appointment nominations:

ANIMAL SERVICES ADVISORY BOARD

No action taken

HOUSING ASSISTANCE BOARD

Jim Rose (reappointment)
John Ross (reappointment)
Mike Jacimore (reappointment)
Terms expire April 30, 2017

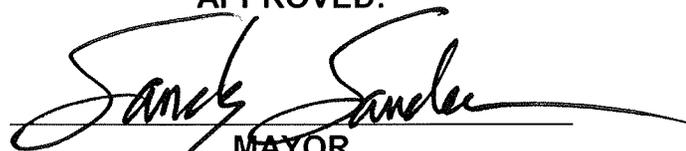
PLANNING COMMISSION

Talicia Richardson
Josh Carson
Sarah Howe
Terms expire April 30, 2018

Pennartz, seconded by Hutchings, moved acceptance of the above named nominations. The members present all voting aye, the Mayor declared the motion carried.

There being no further business to come before the Board, Lau moved that the meeting adjourn. The motion was seconded by Catsavis 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