

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

**TUESDAY ~ OCTOBER 20, 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 Ngoc Quan Ha of Gospel Baptist 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 October 6, 2015 regular meeting was presented for approval. Settle, seconded by Lorenz, moved approval of the minutes as written. The members all voting aye, the Mayor declared the motion carried.

Item No. 1 was an ordinance to amend Chapter 25, Article II of the Fort Smith Municipal Code to amend billing utilities procedures ~ *Pennartz/Lau placed on agenda at the September 8, 2015 study session / First reading at the October 6, 2015 regular meeting / SECOND READING ~*

Acting City Administrator Jeff Dingman briefed the Board on the item advising the ordinance was adopted at the October 6, 2015 regular meeting; however, such did not obtain the five (5) affirmative votes required for passage on its first reading. The ordinance must read in its entirety on three (3) separate dates. The first reading was accomplished

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at the October 6, 2015 regular meeting; therefore, the City Clerk read the ordinance in its entirety for its second reading. The third and final reading of the ordinance will occur at the November 3, 2015 regular meeting.

Item No. 2 was a resolution approving and authorizing implementation of the Five-Year (2016-2020) Sales Tax Program for street, bridges and related drainage improvements ~ *Pennartz/Hutchings placed on the agenda at the October 13, 2015 study session* ~

Director of Engineering Stan Snodgrass briefed the board on the item as discussed at the October 13, 2015 study session. Such authorizes implementation of the proposed projects within the Sales Tax Program.

The following individuals were present to address the Board:

- Mitch Minnick, Executive Director of the Fort Smith Housing Authority  
Fort Smith, Arkansas

Re: At the October 27, 2015 study session, a comment was made that the Fort Smith Housing Authority (FSHA) *“is like other developers”* and taxpayer dollars should not be expended to provide street and drainage improvements to assist with a FSHA development (CIP Program - Item No. 17). He conveyed objection to the statement citing the FSHA provides a valuable service and assistance to the city of Fort Smith by constructing quality homes for low-income residents; therefore, the FSHA should not be compared to other developers. Concern was also expressed that the aforementioned project (CIP Program - Item No. 17) should not be funded because the FSHA does not pay property taxes. Although he conceded that is currently true, such may not be the case for long. Regardless, he urged the Board to approve the proposed CIP Program as recommended.

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- David Harris  
Fort Smith, Arkansas

Re: Expressed opposition to CIP Program Item No. 4, i.e. North "B" Street Truck Route project, alleging such could have a detrimental effect to traffic to and from the riverfront.

- Mark Rumsey, representing Zero Mountain, Inc.  
Fort Smith, Arkansas

Re: Regarding CIP Program Item No. 15 (Highway 45 widening, south of Zero Street), which contains no funding until 2020, he advised of over sixty (60) accidents at the subject location. Zero Mountain, Inc. anticipates the addition of approximately one hundred and forty (140) employees in the next several years, which will increase traffic thereby increasing the potential for more accidents. Due to such, he urged the Board to take necessary action to ensure the project is expedited.

- Sam Cope, representing Maverick Transportation, Inc.  
Fort Smith, Arkansas

Re: Regarding the CIP Program Item No. 15 (Highway 45 widening, south of Zero Street), he reiterated the comments of Mr. Rumsey citing traffic flow problems and accidents in the subject area. Another trailer yard is anticipated to be located in the general vicinity, which prompted great concern that such will further congest and effect traffic flow. He requested a traffic flow study be initiated in hopes such will provide evidence that the project should be expedited.

Director Settle requested a brief explanation of the CIP Program Item No. 15 (Highway 45 widening, south of Zero Street), specifically near Planters Road.

Mr. Snodgrass provided a brief history of the project citing such was first initiated in early 2000. The surrounding properties are not within the corporate limits of the city of Fort Smith; therefore, Sebastian County actually initiated contact with the AHTD and the

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City, as well as the County, was requested and agreed to cost-share in the project. The AHTD determined the project was a greater undertaking than first imagined due to the requirement of radius improvements and gas & water line relocations, as well as right-of-way issues. Due to the aforementioned, preliminary evaluations indicated a very high project cost and the AHTD simply did not maintain adequate funding to proceed with the project. The last correspondence was in 2006 whereby the AHTD advised funding was still not available; therefore, the City utilized its portion of the cost-sharing funds to move forward with the Chad Colley Boulevard project.

Directors Pennartz spoke in favor of the subject project and urged City staff to initiate communication and “*do whatever it takes*” to convince AHTD to expedite the project.

Mayor Sanders noted that if both the City and County can advise the AHTD that funding is available, such may encourage the State to move forward. He further recommended staff follow-up with County Judge David Hudson on the issue.

Pennartz, seconded by Lau, moved to amend the Sales Tax Program to delete Item No. 17, i.e. Housing Authority - Street and Drainage Improvements, and that associated funds be reallocated to Item No. 1, i.e. Street Overlays/Reconstruction. Prior to the vote, Director Good reminded the Board of various developments completed by the Fort Smith Housing Authority and spoke in opposition to the offered motion to delete said project.

The motion remaining on the floor, the members voted as follows on the proposed amendment: ayes - Lau, Lorenz, Catsavis, Pennartz and Settle; nays - Good and Hutchings. The Mayor declared the motion carried.

Settle, seconded by Pennartz, moved adoption of the resolution as amended. The

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members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-191-15.

Mayor Sanders recognized Sam Long of Boy Scout Troop 3, who was in attendance to earn his Citizenship in the Community Badge.

Item No. 3 was an ordinance amending Chapter 10, Article I of the Fort Smith Municipal Code to add Section 10-5, authorizing the Fort Smith Fire Department to provide firefighting machinery and equipment, with the necessary firefighters to operate it, to combat fires beyond the corporate limits of the city ~ *Pennartz/Lorenz placed on agenda at the September 22, 2015 study session* ~

Fire Chief Mike Richards briefed the Board on the item as discussed at the September 22, 2015 study session. The proposed item authorizes the City of Fort Smith Fire Department to provide firefighting assistance (including machinery and equipment with the necessary firefighters to operate it) to businesses located outside the corporate city limits of Fort Smith. The proposed contract template will provide all current and future firefighting assistance contract customers a clear understanding of the basis of the contract fee and what services they can expect for said fee. It will also provide a fair and equitable formula similar to what property owners within the corporate city limits of Fort Smith pay for the same services. No Board action is required with regard to the contract template; however, each and contract must be approved by the Board via resolution. Due to the change in fee structure of the proposed and existing contracts, some existing customers will experience either an increase or decrease in the fee due. Due to such, any increase or decrease will be phased-in over the next three (3) years.

Due to Chief Richards impending retirement (October 30, 2015), Directors

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Hutchings and Settle extended much gratitude for his service to the city of Fort Smith and wished him a *"Happy Retirement."*

Director Pennartz spoke in favor of the aforementioned phase-in; however, the contract template provided does not contain any language regarding same. Due to such, she recommended verbiage be included within the contract denoting the phase-in provision. As previously stated, no Board action is required for the contract template; however, there was no opposition conveyed to the recommendation.

Hutchings, seconded by Pennartz, 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 Pennartz, moved adoption of Section 2 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. 70-15.

Item No. 4 was a resolution approving Amendment No. 1 to the pre-annexation agreement for the Middleton Farms Subdivision with Richard Griffin, Bradley Kidder, Bennie Westphal and Patsy Bateman.

Director of Development Wally Bailey briefed the Board on the item advising such is per the request of Patrick J. Mickle, agent for the owners and developers of the Middleton Farm Subdivision. In 2011, three hundred and twenty (320) acres of the Middleton Farms area was annexed into the City of Fort Smith. There were numerous development related issues that were incorporated into a pre-annexation agreement that was approved by the Board of Directors on February 15, 2011 (Resolution No. R- 27-11).

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An issue within the pre-annexation agreement concerned improvements to the existing Rye Hill Road-Howard Hill Road intersection. Both parties (City of Fort Smith and Middleton Farms) agreed to a financial participation and allocation for intersection improvements. One (1) of the triggers that would initiate the intersection improvements is the platting of any property south of Howard Hill Road. Mr. Mickle indicates the original Master Plan was to develop the project in phases of sixty (60), eighty (80), or one hundred (100) lots and with this number of lots, the additional traffic would have an immediate effect on the intersection. The Master Plan for the development of Middleton Farms has changed and shows fourteen (14) estate size lots that front Howard Hill Road. Mr. Mickle advises the traffic demand of fourteen to seventeen (14-17) estate size lots on Howard Hill Road will have little effect on the intersection when compared to a sixty (60) to one hundred (100) lots phase of the development; therefore, intersection improvements will not be necessary. The Planning and Engineering Departments agree with such; therefore, the proposed will address the change in the Master Plan and not require the intersection improvements as required within the current pre-annexation agreement.

Director Hutchings questioned if notification of the proposed amendment was provided to property owners.

Mr. Bailey confirmed that certified letters were sent to all property owners within three hundred (300) feet of the subject location.

Lau, seconded by Hutchings, 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-192-15.

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

- A. Resolution authorizing a time extension and assessing liquidated damages for the construction of 2013 Drainage Improvements, Phase B2, Project No. 13-06-B2 (*115 days & \$3,000.00 reimbursement to city / Engineering Department / Budgeted - Sales Tax Program Fund*)
- B. Resolution accepting completion of and authorizing final payment for the construction of 2013 Drainage Improvements, Phase B2, Project No. 13-06-B2 (*\$2,008.27 / Engineering Department / Budgeted - Sales Tax Program Fund*)
- C. Resolution to accept the bid and authorize a contract for the construction of Traffic Signal Improvements, Project No. 15-09-A (*\$424,152.00 / Engineering Department / Budgeted - Sales Tax Program Fund*) ♦ *Future Fort Smith item*
- D. Resolution authorizing the Mayor to execute a non-exclusive fiber-optic network franchise agreement with Lavaca Telephone Company, Inc. d/b/a/ Pinnacle Communications
- E. Resolution authorizing the acquisition of real property interests for the Jenny Lind Road and Ingersoll Avenue Widening, Project No. 07-01-A (*\$44,000.00 / Engineering Department / Budgeted - Sales Tax Program Fund*)
- F. Resolution accepting the project as complete and authorizing final payment to Hudson Excavation Inc. for construction of the Lee Creek Reservoir Buoy Line Replacement (*\$53,187.00 / Utility Department / Budgeted - Water & Sewer Operating Budget*)
- G. Resolution accepting the project as complete and authorizing final payment to Forsgren Inc. for construction of the Neighborhood Water System Improvement - Reduced Service Area (*\$88,130.70 / Utility Department / Budgeted - 2008 Revenue Bonds*)

Regarding Item No. 5C, Director Pennartz questioned if the City has utilized this contractor in the past and inquired why their bid was significantly lower than all the other bids.

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Mr. Snodgrass confirmed the City has used the contractor in the past. With regard to the bid amount, he advised many times contractors will submit a low bid because work is slow and they simply want to ensure they retain the job.

With regard to Item No. 5D, Director Pennartz questioned if \$3,000 per year fee is standard for such franchise agreements.

Mr. Snodgrass confirmed such citing the proposed agreement mirrors a similar fiber-optic franchise agreement with Newroads Telecom, which was renewed for a ten (10) year term in 2014. In order for the fiber-optic franchise agreements to be reviewed at the same time, the proposed agreement with Pinnacle Communications will expire in nine (9) years making both fiber-optic franchise agreements expiring in 2024.

Regarding Item No. 5G, Director Pennartz questioned the \$8,600 underrun on the project.

Director of Utilities Steve Parke advised, at the request of the Engineering Department, a portion of the work made part of the neighborhood water system improvements project was transferred to their FA Overlay Phase "A" project to avoid a construction conflict between the two (2) projects. This \$101,129.78 transfer of work is responsible for the majority of the cost underruns shown on the project summary sheet. The remaining \$8,603.80 underrun is due to the lower than estimated material quantities.

Settle, seconded by Hutchings, moved adoption of all consent agenda items. The members voting affirmatively, the Mayor declared the motion carried and the resolutions were adopted and numbered R-193 through R-199-15 respectively.

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

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▶ Mayor Sanders

- Re:
1. Announced “Ghouls on Garrison Trick or Treating”, 5:00 to 7:00 p.m., October 31<sup>st</sup> and downtown merchants invite all to attend.
  2. Also noted the Western Arkansas Ballet will perform its version of Michael Jackson’s “Thriller” in front of the Fort Smith Museum of History, 8:00 p.m., October 31<sup>st</sup> and encouraged all to attend.
  3. Advised the Notice to Proceed has been obtained for the Martin Luther King Jr. Park softball field project; therefore, construction will begin soon!

▶ Director Pennartz

Re: Extended much appreciation to Arvest Bank for their generous contribution for the project to mark bike lanes on city streets between the University of Arkansas at Fort Smith (UAFS) and downtown, i.e. Blue Lion Bikeway.

▶ Director Lau

Re: Requested an item be placed on the November 3, 2015 regular meeting agenda to employ an internal auditor for the Utility Department, and that said position report solely to the Board of Directors. Director Settle concurred with the request. Since an item may be placed on a future agenda by concurrence of two (2) directors, Mayor Sanders announced said item will be placed on the November 3, 2015 regular meeting as requested.

▶ Director Settle

- Re:
1. Congratulated the UAFS women’s volleyball team citing they are currently undefeated.
  2. Announced the UAFS mens basketball team will play at 4:00 p.m., November 14<sup>th</sup>; therefore, he encouraged all to attend and support the team.

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The Board entered into executive session at approximately 6:48 p.m. and after reconvening, the Mayor announced the following appointment nominations:

**AUDIT COMMITTEE**

George Moschner (reappointment)  
Deana Infield (reappointment)  
Director Keith Lau (reappointment)  
Terms expire November 30, 2018

**BUILDING BOARD OF ADJUSTMENT AND APPEALS**

Chip Johnson (reappointment)  
Term expires November 30, 2019

**OAK CEMETERY COMMISSION**

Michael Richardson (reappointment)  
Charles Girard (reappointment)  
Reginald Moore (reappointment)  
Terms expire November 30, 2018

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

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 6:53 p.m.

**APPROVED:**

  
MAYOR

**ATTEST:**

  
CITY CLERK