

MINUTES OF BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ NOVEMBER 2, 2010 ~ 6:00 P.M.

FORT SMITH PUBLIC SCHOOLS SERVICE CENTER

The meeting was called to order by Mayor Ray Baker, presiding. Invocation was given by Director Cole Goodman, followed by the Pledge of Allegiance. On roll call the following members of the Board were present: Directors Steve Tyler, Andre' Good, Don Hutchings, Bill Maddox, Gary Campbell, Kevin Settle and Cole Goodman. The Mayor declared a quorum present.

The Mayor inquired if any Board member had an item of business to present that was not already on the agenda. There was none presented.

The minutes of the October 19, 2010 regular meeting were presented for approval. Settle, seconded by Hutchings, 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, Mayor Baker communicated that five (5) minutes per side would be extended on controversial items with three (3) minutes for rebuttal per side.

Item No. 1 was a presentation to out-going Director Bill Maddox.

Mayor Baker presented a "Plaque of Appreciation", along with a rose, to Director Maddox for multiple years of service as City Director Ward Four and contributions to the citizens of Fort Smith from November 1982 to December 1988 and January 2005 to November 2010. A reception was held prior to the meeting in honor of Director Maddox.

(Director Maddox resigned with two (2) years remaining in his current term.)

November 2, 2010 Regular Meeting

Director Maddox conveyed much appreciation to members of his family for their support throughout his directorship, as well as the citizens of Fort Smith for their confidence in allowing him to represent them.

Mayor Baker announced that this was the time and place set for a public hearing regarding the issuance of Airport Refunding Revenue Bonds; providing for the payment of the principal of and interest on the bonds; and prescribing other matters relating thereto. Notice of the public hearing was duly published as required by law. Following the public hearing, consideration of an ordinance authorizing same would be given (Item No. 2).

Attorney Shepherd Russell (bond counsel) briefed the Board on the item. In 1999, bonds were issued for improvements to the Fort Smith Municipal Airport terminal. At that time, the interest rates were much higher than the current interest rate. Upon approval, at today's interest rate, the refinancing of the 1999 bonds will result in a substantial cost savings for the airport. Repayment of the bonds will come solely from airport revenues; therefore, the City maintains no financial obligation for payment on the bonds.

Director Hutchings questioned the anticipated cost savings for refinancing the 1999 bonds.

Mr. Russell advised a minimum of \$250,000 over the remaining life of the bonds; however, he reiterated such is only the minimum and the cost savings could be greater.

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

Campbell, seconded by Good, moved to suspend the rules 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 members all voting affirmatively, the Mayor declared the motion carried and the

November 2, 2010 Regular Meeting

City Clerk read the ordinance for its readings. Hutchings, seconded by Settle, moved adoption of the ordinance. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given No. 53-10.

Item No. 3 was presentation of the proposed 2011 City Budget

Deputy Administrator Ray Gosack advised that copies of the proposed budget had been provided to the Mayor and Board prior to the meeting. The budget review sessions are scheduled for November 8, 9 and 15 at 6:00 p.m. each evening in the Bartlett Community Room of the Fort Smith Police Department.

Administrator Kelly also addressed the Board and presented a memo from Director of Utilities Steve Parke regarding budget cuts in the Utility Department to ensure the water/wastewater bond debt coverage ratio was increased to the required 110%. Such was accomplished via the removal of multiple projects as well as the elimination of nine (9) employee positions.

He also distributed a memo to the Board with recommendations for the 2011 budget to address the loss of revenue for the convention center. The recommendation consisted of two (2) tiers of employee position eliminations and/or layoffs with each tier representing approximately \$500,000. If the Board opts to close the convention center, only the first tier would be required and terminations/layoffs would be effective July 2011. If the Board opts to continue to operate the convention center, the second tier would also be required. Such would result in the required \$1 million and the first tier would still be effective July 2011 and the second tier effective January 2012.

Mr. Kelly provided an alternate option which consisted of an "across the board"

November 2, 2010 Regular Meeting

salary reduction to all employees. To attain the \$500,000 required to maintain the convention center in a closed down state, a 1.13% salary reduction would be required; however, if the convention center remains open, a 2.26% salary reduction for all employees would be required.

There was extensive discussion whereby Mayor Baker and Directors Maddox, Campbell and Good conveyed much disappointment and opposition to the recommendations citing penalizing the employees via layoffs or salary reductions is not the option to address the convention center revenue crisis. The convention center is a valued sales tax revenue stream; therefore, it is imperative that the convention center remain open.

Regarding the Utility Department budget cuts, Director Maddox noted that the budget cuts are solely to meet water/wastewater bond debt service payment requirements; therefore, he requested staff initiate the process to determine the feasibility of refinancing said bonds.

Mr. Gosack noted that such was recently reviewed and determined that such was not feasible. Due to the cost to refinance the bonds, the savings would be very minimal, if any; however, due to the severity of the budget shortfalls, Director Maddox requested such be reviewed again.

Director Settle also spoke in opposition to the recommendations and requested staff review and prepare a list of all non-essential projects and expenditures such as the Mayor's 4th of July fireworks celebration, mowing of I-540 interchange, etc.

Mayor Baker requested a brief status of sales tax revenue numbers.

November 2, 2010 Regular Meeting

Deputy Administrator Ray Gosack advised recent reports have indicated that although sales tax revenue has not increased, it has “stopped declining”. He further noted that due to the county-wide property tax reappraisal, the City’s portion of property tax revenues are expected to increase by approximately 7% to 8% in 2011.

Director Tyler inquired if the water rate analysis has been obtained whereby Mr. Gosack advised preliminary numbers are included within the proposed budget.

Mayor Baker announced that the below Items 4A, 4B, 5 and 6 are all companion items and the applicant for annexation has requested Items 4A & 4B be tabled to a date yet to be determined. The purpose of such is to allow the applicants to restructure their individual partnerships into a Limited Liability Corporation (LLC) and resolve issues within the pre-annexation agreement.

Item No. 4 consisted of the following items relative to Middleton Farms annexation:

- A. Resolution approving a pre-annexation agreement with Richard Griffin, Bradley Kidder, Bennie Westphal and Patsy Bateman for the Middleton Farms Subdivision
- B. Ordinance accepting certain territory into the city of Fort Smith, Arkansas (327 acres)

Item No. 5: Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan - Extra Territorial Jurisdiction Low Density Residential to Residential Detached, Residential Attached and Commercial Neighborhood; Rezoning - Extra Territorial Jurisdiction Open-1 (ETJ O-1) to RS-3 by extension; RS-4, RS-5, RM-3, RSD-3 and Commercial-2 by classification / 12905 Rye Hill Road, Middleton Farms*)

Item No. 6: Ordinance amending the Master Street Plan of the City of Fort Smith, Arkansas

November 2, 2010 Regular Meeting

Settle, seconded by Good, moved to postpone consideration of Items No. 4A, 4B, 5 and 6 until the applicant/developer is ready to proceed. Prior to the vote, Director Goodman noted that the Board received a petition from a surrounding property owner alleging multiple property owners were not properly notified of a public hearing before the Planning Commission (regarding Item No. 5). Due to such, he questioned the feasibility of referring the matter back to the Planning Commission to ensure all property owners are properly notified and provided the opportunity to be heard.

If the matter was referred back to the Planning Commission, Director Settle questioned if the matter would be presented to the Board in December or January.

Director of Development Services Wally Bailey noted that staff has not received a copy of the aforementioned petition; however, if the Board refers the matter back to the Planning Commission, it would be January before it would come back before the Board of Directors. He further noted that property owners within 300 feet (provided by the applicant) were forwarded a certified letter, the public hearing notice was published in the paper and notice was posted on the property.

The following individuals were present to address the Board:

- James Wright
8331 Howard Hill Road

Re: Advised he provided the aforementioned petition to the Board and alleged he and other neighbors were not notified of the public hearing before the Planning Commission. He feels certain such is because the records within Sebastian County Assessor's Office website are not regularly updated. He purchased his home in May 2010 and their records were just recently updated to identify him as the owner. In order to

November 2, 2010 Regular Meeting

properly notify all interested parties, he recommended the matter be referred back to the Planning Commission as such will require the re-initiation of the notification process.

Director Settle questioned if the applicant had any objection to the matter being referred back to the Planning Commission.

- Bobby Aldridge, agent
3434 Country Club Avenue

Re: Advised Mr. Wright, as well as other neighbors, were present at the Planning Commission public hearing and were heard; however, he conveyed no objection to the referral.

Directors Settle and Good amended the previous motion to refer the items back to the Planning Commission to ensure proper notification. The members all voting affirmatively, the Mayor declared the motion carried.

Mr. Bailey clarified that only Item No. 5 should be referred back to the Planning Commission and Items No. 4A, 4B and 6 should be tabled pending reconsideration of Item No. 5 by the Planning Commission.

Goodman, seconded by Maddox, moved to table consideration of Items No. 4A, 4B and 6 pending reconsideration of Item No. 5 by the Planning Commission. The members all voting affirmatively, the Mayor declared the motion carried.

Item No. 7 was an ordinance rezoning identified property and amending the zoning map (*Industrial 1 to Commercial-5 by extension / 5504 Wheeler Avenue*)

Mr. Bailey briefed the Board on the item advising such is per the request of Steve Delassus, agent. The purpose of the rezoning request is to permit an indoor amusement

November 2, 2010 Regular Meeting

center to occupy the structure. The structure has previously been utilized by Cheer Xtreme and an auto dealer, both allowed within the proposed Commercial Heavy (C-5) zone. A neighborhood meeting was held on September 23 with no neighboring property owners in attendance. The Planning Commission held a public hearing on October 12, 2010 with no individual present to speak in opposition. The Planning Commission approved the request by a vote of seven (7) in favor and zero (0) opposed.

Campbell, seconded by Maddox, 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 No. 54-10.

Item No. 8 was an ordinance rezoning identified property and amending the zoning map (*Commercial-2 to Residential Multi-Family High Density (RM-4) by extension / 1115 South 17th Street*)

Mr. Bailey briefed the Board on the item advising such is per the request of Mont Sagely, agent. The purpose of the rezoning request is to allow for a duplex to be constructed on the property. Other multi-family dwellings are located in close proximity of the subject property. The Planning Commission held a public hearing on October 12, 2010 with no individual present to speak in opposition; however, Planning Commissioner Walton Maurras conveyed his opposition to duplexes being located within single family residential neighborhoods. The Planning Commission approved the rezoning request by a vote of five (5) in favor, one (1) opposed (Maurras) and one (1) abstention (Huffman).

November 2, 2010 Regular Meeting

Good, seconded by Maddox, 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 No. 55-10.

Item No. 9 was an ordinance rezoning identified property and amending the zoning map (*Transitional to Commercial-2 by extension / 5311 South 28th Street and 2851 South Xavier Street*)

Mr. Bailey briefed the Board on the item advising such is per the request of Jake Files, agent. The purpose of the rezoning request is to allow for some limited retail commercial uses to be interspersed within the existing office development which is located to the west of the existing multi-family residential (apartments) development. The Planning Commission held a public hearing on October 12, 2010 with no individual present to speak in opposition. The Planning Commission approved the rezoning request by a vote of seven (7) in favor and zero (0) opposed.

Campbell, seconded by Goodman, 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 No. 56-10.

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

November 2, 2010 Regular Meeting

- A. Resolution authorizing engineering service agreements for the design of projects in the 2011 Sales Tax Program (\$786,035.00 / various projects)
- B. Resolution authorizing a time extension, assessing liquidated damages, accepting completion of and authorizing final payment for the construction of Street Overlays/Reconstruction, Project No. 09-03-B (\$67.63)
- C. Resolution authorizing a time extension, assessing liquidated damages, accepting completion of and authorizing final payment for the construction of Street Overlays/Reconstruction, Project No. 09-03-D (\$211.18)
- D. Resolution authorizing a time extension, assessing liquidated damages, accepting completion and authorizing final payment for the construction of 2009 Sidewalk Program, Project No. 09-20-B, CDBG Project No. 8930 (\$234.33)
- E. Ordinance declaring an exceptional situation and waiving the requirements of competitive bidding for the repairs to the D7R Caterpillar dozer at the City Landfill (\$50,770.98)
- F. Ordinance declaring an exceptional situation and waiving the requirements of competitive bidding for the purchase of ten police vehicles for the Police Department (\$247,456.00)

Regarding Item No. 10F, Director Settle questioned if the vehicles are currently available now or within 30 to 60 days.

Police Chief Kevin Lindsey advised the vehicles are ready to be picked up and upon approval, staff will be traveling to Texas (in a matter days) to obtain the vehicles.

Hutchings, seconded by Campbell, moved approval of all consent agenda items. The members all voting affirmatively, the Mayor declared the motion carried and the ordinances and resolutions were adopted with the ordinances numbered 57-10 and 58-10 respectively and the resolutions numbered R-197-10 through R-200-10 respectively.

November 2, 2010 Regular Meeting

Mayor Campbell opened the Officials Forum with the following comment offered:

▶ Mayor Baker

Re: Extended much appreciation to Director Campbell for presiding at the meetings during his recent extended absence.

Mayor Baker announced an executive session would be held; however, while those in attendance were leaving the room, Times Record reporter Ben Boulden questioned the legality of holding an executive session to conduct a performance evaluation for the City Administrator. He alleged the Freedom of Information Act (FOIA) only allows an executive session to be held to consider employment or appointment.

City Attorney Jerry Canfield addressed the Board and confirmed the FOIA allows executive sessions for “employment” or “appointment”; however, the Arkansas Attorney General recently opined that, for purposes of executive sessions under the FOIA, the term “employment” should be narrowly read as “hiring” only. Regardless, he feels that it would be redundant under the FOIA if “employment” and “appointment” were both restricted solely to the process of hiring. It is his opinion that the Board may conduct a performance evaluation in executive session, as it relates to an annual review of the City Administrator, because his performance warrants continued employment. He conveyed confidence that such would be upheld in the Arkansas Supreme Court if litigation were pursued.

The executive session was held and after reconvening, Mayor Baker announced the Board’s desire to dismiss City Administrator Dennis Kelly and appoint Deputy Administrator Ray Gosack as Acting Administrator until a new City Administrator is selected.

Campbell, seconded by Tyler, moved to dismiss Administrator Kelly and appoint

November 2, 2010 Regular Meeting

Ray Gosack as Acting Administrator pending the employment of a new City Administrator. Prior to the vote, Director Hutchings conveyed opposition to the motion whereby Mayor Baker concurred.

The motion remaining on the floor, the members voted as follows: ayes - Tyler, Maddox, Campbell and Settle; nays - Good, Hutchings and Goodman. The Mayor declared the motion carried.

With regard to the time limit policy for persons wishing to address the Board in Citizens Forum, Mayor Campbell communicated that two (2) minutes will be allotted to each person wishing to speak.

Mayor Baker opened the Citizens Forum with the following individuals present to address the Board:

- Liz Armstrong
141 North 51st Street

- Re:
1. Advised of her recent concern with the continual property cleanup violations at Roselawn-Holy Cross Cemetery and conveyed much appreciation to City staff for requiring the owners to abate the violations.
 2. Regarding the nearby ditches, she discovered that the City currently mows the areas 4 times a year; therefore, she requested the City increase the mowing schedule to ensure City maintained properties are not allowed to become overgrown.
 3. Advised a family cleanup day for the cemetery has been scheduled for Saturday, November 6 and invited all interested parties to participate.

- Pauline Novak
5200 Johnson

November 2, 2010 Regular Meeting

- Re: 1. Conveyed much appreciation to out-going Directors Bill Maddox, Gary Campbell and Cole Goodman, as well as Mayor Baker, for their dedicated service to the city of Fort Smith.
2. She further conveyed much appreciation to the Police and Fire Departments citing they are a very valuable asset to the citizens of Fort Smith; therefore, she extended much gratitude to the directors who spoke in opposition to the employee layoffs.

- David Harris
2025 South "V" Street

Re: Noted his approval of the Board's comments regarding the budget and their insistence to "cut to the bone"; however, he recommended the Board consider eliminating their car allowances.

There being no further business to come before the Board, Maddox moved that the meeting adjourn. The motion was seconded by Tyler and the members all voting aye, the Mayor declared the motion carried, and the meeting stood adjourned.

APPROVED:



Mayor

ATTEST:



CITY CLERK