

MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ APRIL 5, 2011 ~ 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 Director Don Hutchings, followed by the Pledge of Allegiance. On roll call the following members of the Board were present: Directors Steve Tyler, Andre' Good, Don Hutchings, George Catsavis, Pam Weber, Kevin Settle and Phillip H. Merry, Jr. The Mayor declared a quorum present.

Mayor Sanders recognized the following members of Boy Scout Troop 110, who were in attendance to earn their citizenship badge:

- ▶ Logan Bollman
- ▶ Scott Conrad
- ▶ Kyle Conrad
- ▶ Josh Cormier
- ▶ Cristian Herrera
- ▶ Luke Smith
- ▶ Alec Ulmschneider
- ▶ Trevor Weihrauch

Director Weber recognized and conveyed much appreciation to Mr. Greg Smith for his leadership in coordinating a recent event, which included multiple individuals, for an Eagle Scout Project to perform cleanup work at the Ruth Armstrong Nature Park and Railroad Trail. She further expressed much gratitude to the Parks and Recreation Department for a recent reception held to honor Mr. Smith for the project. Director Tyler was also recognized as his frequently gives of his personal time to beautify the area as well.

The Mayor inquired if any Board member had any item of business to present that

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was not already on the agenda. There was none presented.

The minutes of the March 15, 2011 regular meeting were presented for approval. Settle, seconded by Tyler, moved approval of the minutes as written. The members all voting aye, the Mayor declared the motion carried.

Mayor Sanders announced this was the place and time set for a public hearing regarding the Year 37 Community Development Block Grant (CDBG) budget, the Year 18 HOME Investment Partnership Act Program budget and authorizing the submission of the Program Year 2011 Action Plan. Notice of the public hearing had been duly published as required by law. Following the public hearing, consideration of a resolution authorizing same would be given (Item No. 1).

City Administrator Ray Gosack briefed the Board on the item as discussed at the March 29, 2011 study session. The proposed resolution authorizes funding to various organizations as reviewed and recommended by the Community Development Advisory Committee (CDAC).

The following individual was present to address the board:

- Linda Gabriel, Associate Director of the Next Step Day Room
123 North 6th Street

Re: Extended much appreciation for CDBG funding citing said funds will be utilized to complete 16 homes for veterans facing homelessness in Fort Smith. She further conveyed multiple compliments with regard to CDBG staff and the CDAC citing they are "outstanding" and "fantastic".

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

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Good, seconded by Tyler, moved adoption of the resolution. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-57-11.

Item No. 2 was an ordinance rezoning identified property and amending the zoning map (*from Extra Territorial Jurisdiction Open -1 (ETJ O-1) to Extra Territorial Jurisdiction Industrial Light (ETJ I-1) by extension located at 6315, 6411, 6511, 6601, 6607, 6214, 6614, 6706, 6404, 6504 and 6637 Old Garrison Lane; and, 12417 and 12525 Highway 71 South*) ~ *Appeal of Planning Commission denial / Tabled at the February 3 and March 1, 2011 regular meetings ~*

Director of Development Services Wally Bailey briefed the Board on the item advising such is per the request of Drew Harmon, agent. The purpose of the rezoning request is to correct the zoning to match the development of the area. The property was developed prior to the implementation of the ETJ Land Use Plan and the ETJ zoning ordinance. All property in the ETJ area were given an Open-1 zoning district merely as a placeholder until development occurs that required a zone change, and existing land uses were permitted to continue as nonconforming uses. The Planning Commission held a public hearing on January 11, 2011 with multiple individuals present in opposition to the rezoning request. The Planning Commission denied the rezoning request by a vote of four (4) in favor, two (2) opposed and one (1) abstention. Such was denied as rezoning requests require five (5) affirmative votes for approval for recommendation to the Board of Directors. The applicant filed an appeal of the Planning Commission denial with City Clerk's Office on January 12, 2011. The matter has been tabled on two (2) occasions to

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allow the applicants and the surrounding property owners to mitigate concerns.

The following individuals were present to address the Board:

- Michael Redd, agent
5401 Rogers Avenue

Re: Advised a compromise was reached just prior to the meeting whereby his clients will consider annexation of the subject property. Such will allow concerns of the surrounding property owners regarding noise, lights and drainage be governed by City regulations. Other concerns have also been addressed whereby his clients have agreed to remove several land uses such as an animal pound, gun range, etc. In order to allow the annexation process, he recommended the matter be tabled pending completion of the annexation.

- Greg Smith, representing the surrounding property owners

Re: Advised the surrounding property owners concur with the aforementioned proposal provided the annexation is approved by the Board of Directors.

Administrator Gosack requested confirmation that upon approval of the annexation the proposed rezoning request will be withdrawn. He further inquired if four (4) months would be adequate time for his clients to pursue and complete the annexation, whereby Mr. Redd responded 'yes' to both inquiries.

Settle, seconded by Weber, moved to table consideration of the item for four (4) months to allow adequate time for annexation of the area. The members all voting affirmatively, the Mayor declared the motion carried.

Item No. 3 was an ordinance amending the 2009 Unified Development Ordinance of the City of Fort Smith (*ETJ Land Use Matrix*)

Mr. Bailey briefed the Board advising the proposed amendments are to address

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several land uses currently within the Light Industrial District in the ETJ area, which were found to be inconsistent with the purpose statement. Such inconsistencies were discovered during the Planning Commission's review of the Old Harrison Lane rezoning (Item No. 2). The Planning Commission reviewed the proposed amendments at their March 8, 2011 meeting and unanimously recommend approval by the Board of Directors.

Hutchings, 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. Hutchings, seconded by Settle, 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 No. 24-11.

Item No. 4 was an ordinance amending Ordinance No. 10-96 as previously amended granting a non-exclusive franchise with David J. Stoufer, Sr. And Elva Stoufer d/b/a Non-Ambulatory Transportation Service, Inc.

Administrator Gosack briefed the Board on the item advising the Stoufer's, d/b/a Non-Ambulatory Transportation Service, Inc., have an existing non-exclusive franchise for the non-ambulatory transportation of handicapped and elderly persons living in Fort Smith. They have requested the existing franchise be continued for an additional five (5) years. Upon approval, such will extend the existing franchise through the end of April 2016.

Catsavis, 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

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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 Catsavis, 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 No. 25-11.

Item No. 5 consisted of the following items regarding land use and rezoning for Middleton Farms:

- A. Motion to reconsider
- B. 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) **** Third and final reading ****

Regarding Item No. 5A, Mayor Sanders advised that a motion to reconsider may only be offered by a director who voted on the prevailing side of the previous consideration of Item No. 5B, which was denied at the March 15, 2011 regular meeting (*ayes - Hutchings, Settle and Merry; nays - Tyler, Good and Catsavis; abstention - Weber*). He clarified that any director may second the motion and such merely requires a majority vote (4 in favor) for approval.

Tyler, seconded by Settle, moved to reconsider Item No. 5B. The members voted as follows: *ayes - Tyler, Good, Hutchings, Catsavis, Settle and Merry; abstention - Weber*. The Mayor declared the motion carried.

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Tyler, seconded by Settle, moved to amend Item No. 5B to change the Master Land Use Plan for the 2.63 acre tract from Commercial Neighborhood to Unclassified, change the zoning from Commercial-2 to Unzoned, and remove Exhibit A, which established design standards for the commercial development. Prior to the vote, the following individuals were present to address the Board:

- James Wright
8331 Howard Hill Road

Re: Spoke in opposition to the Commercial-2 and duplex zoning and reiterated previous assertions that the developer is unwilling to compromise with the surrounding property owners. Although the motion has been made to remove the Commercial-2 zoning, he urged the Board to also remove the RS-3 zoning, which would disallow the construction of duplexes within the development.

- Richard Griffin
3008 Dallas Drive

Re: Read a prepared statement conveying much appreciation for the Board's willingness to reconsider the matter and conveyed various aspects of the proposed development. He spoke in opposition to any proposed amendment and urged the Board to reconsider the ordinance as originally presented.

Upon approval of the proposed amendment to remove the commercial zoning, Director Catsavis questioned if and when the developer may again request to include the commercial zoning.

Mr. Bailey advised the developer must submit a new rezoning request, which would require Planning Commission approval. If the developer requests the exact same zoning, typically, the developer may not resubmit the petition for six (6) months. If the request is

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for a different zone classification, there is no time constraint whereby the developer may submit a petition for a zone change at any time; however, he advised that a legal review may be required to confirm such.

Merry, seconded by Hutchings, offered a substitute motion to adopt the ordinance as originally presented. The motion included suspending the rule to allow the third and final reading to be by caption. Prior to the vote, Director Merry spoke in favor of maintaining the commercial zoning in order for residents to be aware of the intended future use of the 2.63 acre tract.

Director Good expressed concern that the commercial zoning would drastically affect the quality of the place for the development; therefore, he spoke in opposition to its inclusion.

Director Tyler conveyed concern that if the rezoning is not approved, such will delay the proposed development and noted that the issue of the commercial zoning can be addressed at a later date.

Mayor Sanders clarified that Director Weber has abstained from voting on the matters as she was a member of the Planning Commission at the time Item No. 5B was reviewed by the Planning Commission.

The substitute motion remaining on the floor, City Clerk read the ordinance for its third and final reading and the members voted as follows: ayes - Hutchings, Settle and Merry; nays - Tyler, Good and Catsavis; abstention - Weber. The Mayor declared the motion defeated.

The original motion remaining on the floor (to amend Item No. 5B), the members

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voted as follows: ayes - Tyler, Good, Hutching, Catsavis, Settle and Merry; abstention - Weber. The Mayor declared the motion carried.

Settle, seconded by Tyler, moved adoption of the ordinance as amended. The motion included suspending the rule to allow the third and final reading to be by caption. The City Clerk read the ordinance for its third and final reading and the members voted as follows: ayes - Tyler, Good, Hutching, Catsavis, Settle and Merry; abstention - Weber. The Mayor declared the motion carried and the ordinance was adopted and given No. 26-11.

Mayor Sanders noted that the Board has expended much time to thoroughly review all issues relative to the proposed ordinance; therefore, he expressed much appreciation to the Board for their careful consideration.

The Consent Agenda (Item No. 6) was introduced for consideration, the items being as follows:

- A. Resolution authorizing execution of a takeover agreement for the 2010 Capital Improvements Program, Street Overlays/Reconstruction, Project No. 10-03-C
- B. Resolution accepting the bid for the purchase of 65 and 96 gallon refuse carts (\$338,940.00) ~ *Sanitation Department* ~
- C. Resolution accepting the bid for the purchase of a tandem axle roll-off hoist & body refuse truck (\$157,109.00) ~ *Sanitation Department* ~
- D. Resolution accepting the bid for the purchase of an automated side loading refuse truck with packer body (\$244,264.00) ~ *Sanitation Department* ~
- E. Resolution accepting the bid for the Traffic Signal Retrofit Project (\$157,599.00) ~ *Street Department* ~

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- F. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Forsgren, Inc. for the Zero Street Outfall Sewer Improvements - Phase II (\$2,234,951.90)
- G. Resolution authorizing the Mayor to execute Authorization Number Two with Morrison-Shipley Engineers, Inc. for engineering services associated with the Zero Street Outfall Sewer Improvements - Phase II (\$148,016.00)
- H. Resolution authorizing partial payment to Crossland Heavy Contractors, Inc. for construction of the Lake Fort Smith Water Treatment Plant - Contract 3 (\$948,492.44)
- I. Resolution authorizing the City Administrator to accept the offer made by property owner for the acquisition of real property interests for the Zero Street Outfall Phase II Sewer Improvements Project (\$5,000.00)
- J. Resolution authorizing a two-year renewal and extension of a solid waste disposal agreement with Waste Management of Arkansas, Inc.
- K. Resolution authorizing the submission of an application for CDBG Disaster Assistance Funds from the State of Arkansas for storm related damage related to the wind and storm damage in March and April 2008

Regarding Items No. 6B and 6D, Director Catsavis requested a brief explanation of the items and questioned when the City's total financial investment will be realized.

Director of Sanitation Baridi Nkokheli advised both purchases will be utilized to accommodate the expansion of automated garbage and recycling collection services for approximately 3,500 households in 2011. With regard to the City's investment, the Department of Sanitation is already realizing the investment by reducing expenses. Such is realized from reducing garbage collections from three (3) days a week to one (1) day a week, as well as the number of trucks and personnel utilized to provide the service. The

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personnel no longer needed for manual collections are being utilized in other much needed areas and services within the department. Expansion of the automated service ensures expenses do not exceed revenue.

Director Settle requested confirmation that the City currently services the area with manual collection and such is merely a matter of converting to an automated service, whereby Mr. Nkokheli responded "yes".

Merry, seconded by Hutchings, moved adoption of all consent agenda items. The members all voting affirmatively, the Mayor declared the motion carried and the resolutions were adopted and numbered R-58-11 through R-68-11 respectively.

Mayor Sanders announced that Items No. 7 & 8 consist of the second reading for the following ordinances:

7. Ordinance amending Chapter, Article I of the Fort Smith Municipal Code regulating animals, establishing mandatory registration, spay and neuter regulations, and hobbyist permit for dogs and cats ~ *First reading at the March 15, 2011 regular meeting* ~ ** *Second reading* **
8. Ordinance amending Chapter 4, Article I, Section 4-1 of the Fort Smith Municipal Code regulating animals ~ *First reading at the March 15, 2011 regular meeting* ~ ** *Second reading* **

Director Weber noted that JoAnn Barton, Executive Director of the Sebastian County Humane Society, has requested the ordinances be tabled to allow additional educational sessions regarding the proposed regulations. Ms. Barton has indicated her desire to have speakers address the Board at the April 26, 2011 study session to provide various information.

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Weber, seconded by Tyler, moved to table the second readings of the ordinances to the May 17, 2011 regular meeting and that an item be placed on the April 26, 2011 study session to allow additional information be presented to the Board. Prior to the vote, Director Settle recommended the individuals present be allowed to address the Board.

Director Catsavis requested the matters be tabled for a longer period of time due to much uncertainty with regard to the regulations within the ordinances.

Catsavis, seconded by Hutchings, offered a substitute motion to table the second readings for six (6) months to further review the proposed regulations. Prior to the vote, there was much discussion with multiple directors speaking in favor and opposition to the offered postponement.

Administrator Gosack advised that if the Board so desires, items may be placed on the April 26 and/or the May 10, 2011 study sessions to allow for additional information to be presented.

The substitute motion remaining on the floor, the members voted as follows: ayes - Good, Hutchings, Catsavis and Settle; nays - Tyler, Weber and Merry. The Mayor declared the motion carried.

There being multiple individuals present to address the Board, Director Settle again requested all be allowed to speak; therefore, the Mayor entertained a motion for such.

Settle, seconded by Good, moved that all individuals present wishing to speak be allowed to address the Board: The members all voting affirmatively, the Mayor declared the motion carried.

The following individuals were present and addressed the Board:

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- **Bethany Burton**
205 North 18th Street

Re: Read a prepared statement which conveyed the benefits of spay/neuter citing such will address overpopulation issues, as well as the financial burden to agencies who must incur the euthanasia cost for unwanted pets.

- **Ken Kupchick**
46 Hiland

Re: Advised he does not oppose spay/neuter for dogs and cats; however, he conveyed much opposition to such being "mandatory".

- **Dr. Chris Ashworth, Fort Smith Veterinary Medical Association (FSVMA)**
3400 Glen Flora Way

Re: Spoke in opposition to the proposed spay/neuter ordinance and alleged the FSVMA was not contacted for professional input. He read a letter from the organization (signed by approximately 20 veterinarians) citing their concerns with the ordinance as presented and requested consideration of the ordinances be tabled to allow further review.

- **Joel Culberson**
2205 South "O" Street

Re: Conveyed no opposition to spay/neuter; however, he expressed concern with enforcement and licensing citing compliance ratios are very low in other cities.

- **Mitch McDonald**
3616 Park Avenue

Re: Spoke in favor of mandatory spay/neuter citing such will address overpopulation of dogs and cats. He further read a letter from a Shelter Manager from Austin, Texas depicting the process of when an animal is brought to a shelter.

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- Ramona Roberts, River Valley Animal Welfare Association
3601 May Branch Lane

Re: Noted that overpopulation causes a financial burden to the City and agreed that voluntary spay/neuter would be ideal; however, such does not address the existing problem. She spoke in favor of the ordinances citing such will teach responsible pet ownership; therefore, she recommended approval.

- Jayne Alford
4601 Free Ferry Road

Re: Advised she adopted two (2) puppies from the Sebastian County Humane Society (SCHS), which were left by a dumpster in July, and praised the work of the SCHS.

Director Good expressed much appreciation for the comments and encouraged all residents to “get together as a community”, exchange information and submit ideals to the Board of Directors for inclusion in upcoming future review of the animal ordinances.

Director Settle reminded all that the Board of Directors recently approved the establishment of an Animal Services Advisory Board and encouraged everyone to consider serving on the said board.

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

- ▶ Administrator Gosack

Re: Regarding the recently filed 1% Prepared Food Tax referendum petitions, the City Clerk provided a letter to the organizers of said petition on April 1 advising of multiple deficiencies with the petitions. The organizers have until Monday, April 11 to provide remedies for such. In the meantime, the City Clerk has initiated the process to verify the 2,822 signatures required to refer the issue to a special election.

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

- Scott Hathaway
7718 Camelot Circle

Re: Regarding comments relative to the Building Safety Division and the Planning Department at the March 15, 2011 regular meeting, he advised that both departments have always been very accommodating and complimented the quality of staff.

Directors Merry and Good expressed appreciation to Mr. Hathaway for his compliments and noted that the concerns expressed at the March 15, 2011 regular meeting have been addressed.

- Louis Vincent
312 North 33rd Circle

Re: Simply recommended sanitation rates be reduced and an ordinance authorizing same be presented at the next regular meeting.

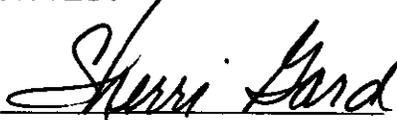
There being no further business to come before the Board, Settle moved that the meeting adjourn. The motion was seconded by Hutchings and the members all voting affirmatively, the Mayor declared the motion carried and the meeting stood adjourned.

APPROVED:



Mayor

ATTEST:



City Clerk