

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

**TUESDAY ~ JUNE 7, 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.

The Mayor 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 May 17, 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 urged all those who wish to address the Board of Directors during the meeting to promptly complete a speakers card and submit to the City Clerk. He further advised those who address the Board need only provide their name and city of residence.

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. Two (2) minutes will be allotted for consent agenda items and for those participating in the citizens forum.

Item No. 1 was an ordinance ordering the owners of certain dilapidated and substandard structures to demolish same, authorizing the City Administrator to cause the demolition of such structures to occur, and for other purposes *(2801 Royal Scots Way)*

*~ Tabled for 30 days at the May 3, 2011 regular meeting ~*

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As noted at the May 3, 2011 regular meeting, Building Official Jimmie Deer advised the structure burned in September 2010 and the insurance company alleges such was due to arson; therefore, the owners insurance claim was denied. The property owners have recently retained an attorney in hopes to resolve the matter with the insurance company; however, to date, no settlement has been reached and very little has been done to the property due to lack of funds. The pool has been drained and the owners attempted to secure the structure by placing a tarp over part of the roof; however, such has come loose and is currently hanging from the structure.

The following individual was present to address the Board:

- John Verkamp, attorney for the property owner  
Charleston, AR

Re: Advised he is diligently pursuing resolution of the matter with the insurance company, who have not yet completed their investigation. He anticipates a response within the next week or two and conveyed much confidence the matter will soon be resolved, and insurance funds distributed. Upon receipt of said funds, repairs will be initiated immediately; therefore, he requested the matter be tabled for another thirty (30) days to allow completion of the insurance investigation and distribution of insurance money to the property owners.

Director Settle advised of multiple complaints from the neighbors and expressed discontent that no attempt was made to secure the structure until two (2) weeks ago. Due to such, he spoke in opposition to the requested postponement citing the structure "needs to come down".

Director Catsavis also spoke in opposition to additional delay and urged immediate renovation if at all possible.

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Mr. Verkamp advised it is the property owners desire to renovate the structure as soon as possible; however, such is financially unfeasible until the insurance claim is approved and funds distributed. Upon disbursement, he reiterated much assurance the property owners will immediately initiate the repairs.

Multiple questions were offered with regard to timing of the demolition and the process to renovate the structure.

Upon approval of the ordinance, Mr. Deer advised the property owners will have thirty (30) days to demolish the structure. If such is not completed by the owner, the City will accomplish the demolition. If the property owners receive the insurance money prior to demolition, the property owners may not initiate renovations without first obtaining the necessary permits to do so. Such permits cannot be issued until the Board adopts an ordinance to cease demolition action.

At the request of Director Good, Mr. Martinez, son of the property owner, conveyed much assurance that upon receipt of insurance funds, the repairs will be initiated immediately.

Director Tyler expressed much concern that no renovation plan has been conveyed other than such will be initiated upon receipt of insurance funds. Since the insurance investigation is still ongoing, and the potential for litigation if the claim is denied, he spoke in favor of the demolition.

Settle, seconded by Hutchings, 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

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for its readings and the members voted as follows: ayes - Tyler, Hutchings, Catsavis, Weber, Settle and Merry; nays - Good. Settle, seconded by Tyler, moved adoption of Section 5 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. 37-11.

Item No. 2 was an ordinance amending Ordinance No. 9-11 regarding property located at 2101 North 52<sup>nd</sup> Street.

Mr. Deer briefed the Board on the item advising the subject structure was condemned and demolition authorized per Ordinance No. 9-11, adopted February 3, 2011. Ms. Stephanie Kear and Ms. Teresa Kolb, heirs of the now deceased property owner, requested reconsideration of such to allow finalization of probate proceedings, which would allow the sale of the property. An ordinance to cease demolition action was presented for consideration at the April 19, 2011 regular meeting; however, the Board took no action thereby affirming previous authorization to demolish the structure. Neither Ms. Kear nor Ms. Kolb attended the April 19 regular meeting, but addressed the Board during the Citizens Forum at the May 3, 2011 regular meeting and again requested demolition action be reconsidered. The Board again took no action; however, Directors Good and Catsavis have since requested the matter be placed on the June 7, 2011 regular meeting for consideration.

The following individual was present to address the Board:

- Mr. Deric Yoakley, attorney representing the heirs  
Charleston, AR

Re: Advised he has been retained by the heirs to finalize a

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“small estate probate”, which he estimated completion within thirty (30) to forty (40) days, and address mortgage issues relating to the subject property. The insurance funds were distributed to another family member who did not utilize the funds to either initiate repairs or pay off the mortgage. Due to such, the mortgage holder maintains a lien on the property; however, they have indicated their willingness to release said mortgage provided the property is sold. Due to such, he requested demolition be delayed in order to allow finalization of both the probate proceedings and sale of the property.

- David Greene  
Fort Smith, AR

Re: Advised he resides near the property and expressed much concern the property has been allowed to remain in disrepair and the yard not maintained. He alleged the grass in the back yard is over 1 ½ feet tall.

Due to a mattress and hot tub currently in the front yard, several directors expressed great concern with the condition of the property and that the heirs have initiated no action to ensure the property is properly maintained.

Ms. Teresa Kolb also addressed the Board citing the structure was broken into and the reason for non-action is because the new owner has indicated his intent to remove the items when he brings a dumpster to initiate renovation.

After much discussion, Mr. Yoakley and Ms. Kolb conveyed much assurance the property will be cleaned immediately.

Directors Tyler and Settle expressed much concern that all issues may not be resolved in a timely manner as anticipated; therefore, conveyed their intent to vote “no” on the ordinance.

Good moved adoption of the ordinance. No second was offered; therefore, the

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Mayor announced the motion died for lack of a second.

Item No. 3 was an ordinance rezoning identified property and amending the zoning map *(from Commercial Light (C-2) to Residential Multi-Family Medium Density (RM-3) by extension located at 1526 North 34<sup>th</sup> Street)*

Director of Development Services Wally Bailey briefed the Board on the item advising such is per the request of Thomas Robertson, Jr., agent for the property owner. The purpose of the rezoning is to allow the zoning to accurately reflect how the property has developed. Upon approval, the rezoning would also allow the property to be altered, expanded or sold. The Planning Commission held a public hearing on May 10, 2011 with no individual present to speak in opposition. The Planning Commission approved the rezoning request by a vote of nine (9) in favor and zero (0) opposed.

The following individual was present to address the Board:

- Thomas Robertson, Jr., agent  
Fort Smith, AR

Re: Simply spoke in favor of the proposed rezoning citing such will increase the probability of an expeditious sale of the property.

Settle, seconded by Hutchings, 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. 38-11.

Item No. 4 was an ordinance rezoning identified property and amending the zoning map *(from Industrial Light (I-1) to Commercial-6 (C-6) by extension located at 1110 South "A" Street)*

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Mr. Bailey briefed the Board on the item advising such is per the request of Casey Hargrave, agent. The purpose of the rezoning request is to allow the property to be utilized as a mixed use development including a professional office and residence. The subject location is within the boundary of the Central Business Improvement District (CBID) and the CBID has indicated support of the proposed rezoning. The Planning Commission held a public hearing on May 10, 2011 with no individual present to speak in opposition. The Planning Commission approved the request by a vote of nine (9) in favor and zero (0) opposed.

Merry, 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 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. 39-11.

Item No. 5 was an ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use from Residential Detached to General Commercial and rezoning from Residential Multi-Family Medium Density (RM-3 to Commercial Heavy (C-5) by extension located at 6550 Rogers Avenue*)

Mr. Bailey briefed the Board on the item advising such is per the application of Mr. Tim Whitten, agent. The purpose of the proposed amendments are to facilitate the commercial development of a restaurant with outdoor dining, with said location being constructed on the north side of the proposed structure. Landscaping and a four (4) ft.

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screening fence is proposed behind the retaining wall which separates the development from the residential neighborhood to the south. Ingress and egress is only from Rogers Avenue; therefore, no access will be from South 65<sup>th</sup> Street. The Planning Commission held a public hearing on May 10, 2011 with no individual present to speak in opposition. The Planning Commission unanimously amended the Master Land Use Plan request to make approval subject to the property not having street access from South 65<sup>th</sup> Street whereby the amended request was approved by a vote of nine (9) in favor and zero (0) opposed. The Planning Commission also voted unanimously to amend the rezoning request to make approval subject to Planning Commission approval for any change to the development plan or submission of a new development plan. The Planning Commission approved the amended rezoning request by a vote of nine (9) in favor and zero (0) opposed.

Director Settle questioned the estimated opening date for the proposed restaurant and Director Catsavis inquired how many jobs the restaurant is anticipated to create.

Mr. Kurt Jones, developer, simply advised construction is anticipated to begin "this summer" and estimates such will create fifty (50) to sixty (60) jobs for Fort Smith.

Director Good conveyed much appreciation to the applicants for opting to locate the outdoor dining section of the restaurant next to Rogers Avenue.

Catsavis, seconded by Good, 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

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carried and the ordinance was adopted and given No. 40-11.

Item No. 6 was an ordinance rezoning identified property and amending the zoning map *(from Industrial Moderate (I-2) to Residential Multi-Family High Density (RM-4) by extension located at 1301, 1307, 1311, 1315, 1317 and 1323 North 5<sup>th</sup> Street)*

Mr. Bailey briefed the Board on the item advising such is per the request of the City of Fort Smith, agent. The purpose of the proposed ordinance is to provide a corrective rezoning to reflect how the area has developed. Currently, the existing industrial zone classification will not allow the existing residential structures to be altered or expanded. The Planning Commission held a public hearing on May 10, 2011 with no individual present to speak in opposition. The Planning Commission approved the request by a vote of nine (9) in favor and zero (0) opposed.

Weber, seconded by Good, 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. 41-11.

Item No. 7 was an ordinance rezoning identified property and amending the zoning map *(from Unzoned to Residential Multi-Family Medium Density (RM-3) by classification located at 9000 Massard Road)*

Mr. Bailey briefed the Board on the item advising such is per the request of Randy Coleman, agent. The purpose of the rezoning is to facilitate the development of a five (5) acre site with a 76 unit multi-family development consisting of four (4) 4 plex buildings,

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three (3) 8 plex buildings and three (3) 12 plex buildings with all units being two-story and containing two (2) bedrooms. The subject property is in the area of the Fort Chaffee Redevelopment Authority (FCRA); however, they have indicated support of the proposed development. The Planning Commission held a public hearing on May 10, 2011 with no individual present to speak in opposition. The Planning Commission approved the rezoning request by a vote of nine (9) in favor and zero (0) opposed. The Planning Commission also reviewed the proposed development plan and unanimously amended such to make approval subject to Planning Commission approval for any changes to the submitted plan. The Planning Commission unanimously approved the development plan as amended.

Director Settle spoke in favor of the ordinance citing the development is a "great project".

Settle, seconded by Hutchings, 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. 42-11.

Item No. 8 was an ordinance rezoning identified property and amending the zoning map *(from Unzoned to Commercial-3 (C-3) by classification located at 9101 Chad Colley Boulevard)*

Mr. Bailey briefed the Board on the item advising such is per the request of Randy Coleman, agent. The purpose of the proposed rezoning is to facilitate a retail and commercial development on the subject property, which is located within the area of the

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Fort Chaffee Redevelopment Authority and contains approximately twenty (20) acres. The FCRA has authorized the sale of the property and support the proposed development. The Planning Commission held a public hearing on May 10, 2011 with no individual present to speak in opposition. The Planning Commission unanimously amended the request to make approval subject to the following:

- Development plan must be submitted to the Planning Commission for review and approval prior to the issuance of any building permits.
- An amendment to the Chaffee Crossing Master Land Use Plan must be approved by the Fort Chaffee Redevelopment Authority (FCRA).

The Planning Commission approved the amended request by a vote of nine (9) in favor and zero (0) opposed.

Mr. Bailey further advised that the FCRA recently amended their Master Land Use Plan, which will coincide with the proposed rezoning and allow the development to proceed.

If the developer decides to relocate the entrance to the proposed development from Chad Colley to Massard Road, Director Settle questioned if approval would be required.

Mr. Bailey noted that any such relocation would require review and approval by the Planning Commission.

Weber, seconded by Merry, 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

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and the ordinance was adopted and given No. 43-11.

The Consent Agenda (Item No. 9) was introduced for consideration, the items being as follows:

- A. Resolution accepting an amendment to the proposal for the purchase, stabilization and renovation of the former Mallalieu Church building ~ *requested at the May 24, 2011 study session* ~
- B. Resolution accepting completion of and authorizing final payment for the construction of Street Overlays / Reconstruction Project No. 10-03-C (\$83,948.73)
- C. Resolution accepting bids for the purchase of two (2) 13 yard collection trucks (\$220,122.00) ~ *Sanitation Department* ~
- D. Resolution authorizing the execution of a Memorandum of Understanding concerning mobile data support between the City of Fort Smith, Arkansas and the City of Hackett, Arkansas
- E. Resolution authorizing the execution of a Memorandum of Understanding concerning mobile data support between the City of Fort Smith, Arkansas and the City of Bonanza, Arkansas
- F. Resolution authorizing the execution of a Memorandum of Understanding concerning mobile data support between the City of Fort Smith, Arkansas and the City of Alma, Arkansas
- G. Resolution authorizing the execution of a Memorandum of Understanding concerning mobile data support between the City of Fort Smith, Arkansas and the University of Arkansas Fort Smith
- H. Resolution accepting the project as complete and authorizing final payment to Forsgren, Inc. for Highway 45 and Zero Street Water and Sewer Relocation (\$71,253.63)
- I. Resolution authorizing the Mayor to execute an agreement with EDM Consultants, Inc. for the design of the River Front Development Water and Sewer Extensions (\$41,000.00)

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- J. Resolution authorizing the Mayor to execute an agreement with Hawkins-Weir Engineering, Inc. for the design of the 2011 Sanitary Sewer Improvements (\$259,000.00)
- K. Resolution authorizing partial payment to Crossland Heavy Contractors, Inc. for construction of the Lake Fort Smith Water Treatment Plan - Contract 3 (\$853,492.86)
- L. Resolution authorizing acquisition fo real property interests for Lift Station 7 and 14 Replacement / Consolidation (\$1,400.00)
- M. Resolution authorizing Change Order Number One with Goodwin & Goodwin, Inc. for the South 5<sup>th</sup> Street Water Line Replacement (\$8,352.00)
- N. Resolution accepting the project as complete and authorizing final payment to Goodwin & Goodwin, Inc. for the South 5<sup>th</sup> Street Water Line Replacement (\$38,788.10)

Regarding Item No. 9J, Director Good questioned if the proposed improvements addresses the Environmental Protection Agency (EPA) mandates.

Director of Utilities Steve Parke confirmed that said project meets the criteria for the City of Fort Smith to receive credit from EPA for mandatory improvements.

At the request of Director Good, Administrator Gosack briefed the Board on the importance of initiating projects to address sanitary sewer issues, especially those that create sewer backups into structures and sewer overflows into ditches and streams. All of which are direct violations of the federal Clean Water Act. One of the worst locations was the Sunnymede area; however, significant improvements have been accomplished in recent years. The City is currently working on addressing the second worst area, which is the upper Mill Creek, Zero Street and Cavanaugh area, whereby the Board has recently approved multiple contracts to initiate the much needed improvements. Although additional

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improvements are needed, he advised significant progress has been made over the last ten (10) years.

Good, seconded by Hutchings, moved adoption of all consent agenda items. The members all voting affirmatively, with the exception of Director Catsavis voting "no" on item No. 9A, the Mayor declared the motion carried and the resolutions were adopted and numbered R-97-11 through R-110-11 respectively.

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

▶ **Mayor Sanders**

Re: Recognized and introduced Hye-min Lee, an international student visiting Fort Smith from Seoul, South Korea.

▶ **Director Settle**

- Re: 1. Announced the recent grand opening of a new sanitation/sewer storage facility located on Massard Road.
2. Requested tour of treatment facilities be scheduled for the fall, specifically the Lake Fort Smith and "P" Street water treatment plants.

▶ **Director Catsavis**

Re: Regarding the 1% Prepared Food Tax lawsuit, he advised of recent phone calls regarding the City of Fort Smith police officers being utilized to serve subpoenas; therefore, he requested a brief explanation.

City Attorney Jerry Canfield advised Fort Smith police officers were utilized due to time constraints in serving the subpoenas. With 33 affiants and only five (5) days to do so, such was the only possible method, which is not out of the ordinary.

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▶ **Director Merry**

Re: Advised of the passing of Mr. Collier Wenderoth and his many contributions to the City of Fort Smith. Due to such, he requested a brief moment of silence be held in his honor. A moment of silent was then immediately held.

▶ **Administrator Gosack**

Re: 1. Introduced and welcomed new Deputy City Administrator Jeff Dingman, and provided a brief overview of his professional background.

2. Introduced his God-Son Tyler Smith, who was in attendance and visiting from College Station, Texas.

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

■ **Jerry Hamel**  
Fort Smith, Arkansas

Re: Regarding the 1% Prepared Food Tax lawsuit, he alleged the 33 subpoenas were "illegal" citing such contained multiple errors.

■ **Chuck Grams**  
Fort Smith, Arkansas

Re: Conveyed much discontent with continual traffic issues due to a very sharp "S" curve near his residence on South 21<sup>st</sup> Street. He alleged trees have been knocked down and vehicles have been driven up to twenty (20) ft. into his front yard thereby resulting in a great safety concern for his children, who he no longer allows to play in the front yard. In order to address the problem, he requested a reinstatement of a warning sign, which has been knocked down, and additional police patrol of the area.

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Director Settle requested the City take all necessary action to ensure the area is better patrolled and signage replaced.

- Liz Armstrong  
Fort Smith, Arkansas

Re: Regarding the 1% Prepared Food Tax lawsuit, she advised she was served a subpoena, which contained various incorrect information. She also indicated her wish to return the \$35 check for such; therefore, submitted the aforementioned check to Mr. Dingman.

- Louis Vincent  
Fort Smith, Arkansas

Re: Conveyed discontent with existing sales tax rate, sanitation and water rates, and immigration issues in Fort Smith.

- Elizabeth Mayo  
Fort Smith, Arkansas

Re: Spoke in opposition to the animal ordinances, which were discussed at the March 15, 2011 regular meeting.

- Eric Arthur  
Fort Smith, Arkansas

Re: 1. Urged the City to “control resources” and expenses.

2. Alleged the City maintains no ‘branding’ to fully market for future development and recommended the use of a marshal’s badge throughout the City.

3. Clayton Expressway was recently renamed Riverfront Drive; however, in order to better market the riverfront and since the U.S. Marshal Museum will soon be located on the riverfront, he recommended said street be renamed U.S. Marshal Parkway.

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There being no further business to come before the Board, Good moved that the meeting adjourn. The motion was seconded by Tyler, and the members all voting affirmatively, the Mayor declared the motion carried and the meeting stood adjourned at 7:05 p.m.

**APPROVED:**

  
Mayor

**ATTEST:**

  
City Clerk