

MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ JULY 19, 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. Director Weber requested review of South 67th, 68th and Fern Street drainage issues be placed on an upcoming study session. Placement requires two (2) directors; therefore, Catsavis seconded the request.

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 of the time limit policy for persons wishing to address the Board, the Mayor communicated that five (5) minutes per side would be extended on 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.

The minutes of the July 5, 2011 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.

The Consent Agenda (Item No. 1) was introduced for consideration, the items being as follows:

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- A. Resolution accepting completion of and authorizing final payment for the construction of Traffic Signal Improvements, Project No. 10-09-A (\$18,288.83 / *Engineering Department; Budgeted – Street Sales Tax Fund*)
- B. Resolution authorizing partial payment to Forsgren, Inc. for the construction of Chad Colley Boulevard Extension, Project No. 10-00-A (\$583,693.52 / *Engineering Department; Budgeted – Street Sales Tax Fund*)
- C. Resolution authorizing Amendment Number One to the design agreement between the Department of the Army and the City of Fort Smith, Arkansas for design for the May Branch, Fort Smith, Arkansas Project
- D. Resolution granting a temporary revocable license for the placement of a sign within a public utility easement and authorizing the Mayor to execute agreement (*8500 South 36th Terrace*)
- E. Resolution authorizing execution of pipeline right-of-way (\$13,318.50 / *from Forest Oil Company to the City of Fort Smith*)
- F. Resolution authorizing an agreement with Sebastian County for use of the former National Guard armory building (*8400 Zero*)
- G. Resolution authorizing partial payment to Crossland Heavy Contractors, Inc. for construction of the Lake Fort Smith Water Treatment Plant – Contract 3 (\$620,088.09 / *Utility Department; Budgeted – 2008 Revenue Bonds*)
- H. Resolution accepting the bid of and authorizing a contract with M. Phillips Construction, Inc. for the Sunnymede Basin Neighborhood Sewer Improvements – Phase I (\$1,088,588.00 / *Utility Department; Budgeted – 2009 Sales Tax Bonds*)
- I. Resolution authorizing the Mayor to execute Authorization Number Two with Morrison Shipley Engineers, Inc. for engineering services associated with the Sunnymede Basin Neighborhood Sewer Improvements – Phase I (\$126,000.00 / *Utility Department; Budgeted – 2009 Sales Tax Bonds*)

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- J. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Silco Construction, Inc. for site restoration for the Sunnymede Wet Weather and Walking Trail Improvements (\$104,755.00 / Utility Department; Budgeted – 2009 Sales Tax Bond)

Regarding Item No. 1C, Director Tyler inquired if the proposed resolution includes the Midland Boulevard and Town Branch area in the scope of the design.

Director of Engineering Stan Snodgrass advised such merely allows the project to move forward, but does not complete final design of the project. The City received approval from legislators and federal agencies to accelerate the Maybranch Drainage Project and utilize the City's share to initiate the project. When federal monies become available, such will be utilized for costs in the latter phases of the project.

With regard to Items No. 1H & 1J , Director Merry cited the wide range in bid amounts and expressed concern that such creates the potential for future change orders.

Weber, seconded by Tyler, 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-130-11 through R-139-11 respectively.

Item No. 2 was continued discussion from the July 12, 2011 study session regarding the prepared food tax and litigation.

As directed by the Board at the July 12, 2011 study session, City Attorney Jerry Canfield advised no action has been initiated to appeal the Circuit Court ruling to the Arkansas Supreme Court. At said study session, the Board also conveyed their desire to refer the matter to a vote of the people. In order to accomplish such, the original

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ordinance levying the 1% prepared food tax (Ordinance No. 14-11, adopted February 24, 2011) must be repealed because referral to the electorate must be accomplished within 30 days after passage of the ordinance. Such time has expired; therefore, as previously stated, the original ordinance must be repealed and re-adopted. Upon approval of the aforementioned, the Board may then refer the newly adopted ordinance to a vote of the people. A draft ordinance has been prepared to accomplish such, which includes the following, aforementioned provisions:

1. Repeal Ordinance No. 14-11 adopted on February 24, 2011 which levied the 1% prepared food tax.
2. Re-adopts the 1% prepared food tax as originally approved per Ordinance No. 14-11, adopted February 24, 2011.
3. Refers the newly adopted ordinance to the voters to either accept or reject the ordinance to levy the 1% prepared food tax.

In order to refer an ordinance to the electorate, state law requires the ordinance calling a special election be adopted by two-thirds (2/3) vote of the governing body. In Fort Smith, such will require five (5) affirmative votes. A copy of the draft ordinance was provided to the citizens for Responsible Taxation (CRT) legal counsel for review. Upon approval of the ordinance, the CRT has conveyed their intent to dismiss the current litigation against the City.

Mayor Sanders inquired of Judge Fitzhugh's willingness to accept the proposed action.

Mr. Canfield advised his intent to acquire a written agreement between both parties in litigation; however, if the proposed action is taken and the board repeals

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Ordinance 14-11, the referendum process ceases to exist because Ordinance 14-11 is declared null and void.

Director Settle questioned the necessity of re-adoption of the 1% prepared food tax and conveyed his desire to merely repeal Ordinance 14-11 and refer the matter to a vote of the people.

Mr. Canfield advised re-adoption is not a necessity, but purely an option. The Board can repeal Ordinance No. 14-11 and refer the 'issue' to the electorate.

Director Catsavis inquired as to why the ballot title noted within the draft ordinance does not indicate prepared food tax revenues are to support convention center operations.

Mr. Canfield noted that state law permits the organization collecting the revenues to designate how funds are to be allocated. The lease agreement between the City of Fort Smith and the Advertising and Promotion Commission (A & P) is what legally obligates the A & P to utilize funds from the prepared food tax for convention center operations.

Mayor Sanders reiterated such citing the City and the A & P Commission are in agreement that allocation of revenues will be utilized for convention center operation.

Director Merry questioned if someone other than the City may request an appeal of the Circuit Court ruling and if said ruling sets any legal precedent for future referendums.

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Mr. Canfield advised that only the Board of Directors or the City Clerk, parties named in the lawsuit, may file an appeal of the Circuit Court ruling. With regard to legal precedent, he conveyed little concern with such noting legal precedent can only come from a decision of the Arkansas Supreme Court. The only precedent would be in the minds of the citizens of Fort Smith.

The following individual was present to address the Board:

- Elizabeth Mayo
Fort Smith, Arkansas

Re: Expressed discontent with the Board of Directors for passing the ordinance without referring to the electorate.

Director Tyler expressed the importance of the Board to re-adopt the 1% prepared food tax citing such will publicly convey the Board's position on the issue.

Director Weber reiterated the fact that currently the City is utilizing savings to fund convention center operations.

The Board concurred to place the draft ordinance on the August 2, 2011 regular meeting calling a special election to be held in November regarding the matter.

Item No. 3 was a discussion of city-wide goals for 2012 Budget.

Administrator Gosack advised the item was originally included on the July 12, 2011 study session agenda; however, such was deferred for a later date as time did not allow for discussion. Regardless, the budget process has begun; therefore, he presented a compiled list of recommended city-wide goals to be included within the 2012 Budget.

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The Board concurred and conveyed acceptance of the proposed city-wide goals as presented; however, Director Settle simply requested "softball" be removed to ensure use of the fields will be for multiple recreational activities.

Director Merry questioned if the proposed budget will include an alternative plan if the 1% prepared food tax is not approved by the voters in November whereby Administrator Gosack confirmed such.

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

▶ Director Settle

Re: Extended congratulations to the University of Arkansas Fort Smith for its recent achievement in receiving active NCAA Division II membership status. Such identifies the dedication of several individuals, as well as supports growth of the city of Fort Smith.

▶ Director Merry

Re: Expressed his desire for more public forums to facilitate increased communication between elected officials and citizens of Fort Smith.

▶ Administrator Gosack

Re: 1. Advised applications for the Animal Services Task Force will continue to be accepted through July 29, 2011. Appointments are scheduled for consideration at the August 16, 2011 regular meeting.

2. Expressed gratitude to the World Changers Organization who will have 150 volunteers in Fort Smith the week of July 25 through July 30 for Good Neighbor Week. The volunteers will be making repairs on approximately 16 homes for low income families who would not otherwise be able to make the necessary repairs.

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An executive session was held and after reconvening, Mayor Sanders announced the following appointment nominations:

ADVERTISING & PROMOTION COMMISSION
(Appointment by A & P Commission confirmed Board of Directors)
Scott Meyers
Term Expires December 31, 2014

MECHANICAL BOARD OF ADJUSTMENTS & APPEALS
(Appointment by Board of Directors)
Ron B. Smith
Greg Williams
Term Expires July 31, 2013

PARKS & RECREATION COMMISSION
(Appointment by Board of Directors)
Billy Bob Williams
Bryan Merry
Term Expires August 31, 2016

Hutchings, seconded by Settle, moved acceptance of all appointment nominations. The members all voting aye, with the exception to Director Merry who abstained on the Parks and Recreation Commission, the Mayor declared the motion carried.

The Mayor also conveyed the Board of Directors satisfaction and approval of City Administrator Ray Gosack's job performance and advised an annual performance evaluation will be scheduled at the end of the year.

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

- ◆ Britt Mounce
Fort Smith, Arkansas

Re: Presented and read a prepared statement to the Board of

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Directors conveying discontent with the Western Arkansas Tennis Association (WATA) management of the Creekmore Park tennis courts. He alleged multiple public tennis courts are being reserved thereby disallowing use by the public; therefore, he requested the matter be addressed.

Administrator Gosack confirmed that the City of Fort Smith maintains an agreement with WATA to manage the tennis courts. The matter will be referred to the Parks and Recreation Commission to determine if any adjustments need to be made to the agreement to assure increased public access to the tennis courts. He further conveyed much assurance the complaint will be reviewed and addressed accordingly.

- ♦ Elizabeth Mayo
Fort Smith, Arkansas

Re: Expressed discontent with the Board of Directors passage of Ordinance 14-11 in February in lieu of sending it to a vote.

Director Good clarified that the Board of Directors did speak to constituents to gather public opinion on the prepared food tax issue and advised there are groups of constituents who support the food tax.

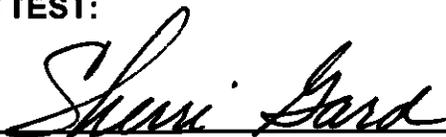
There being no further business to come before the Board, Settle moved that the meeting adjourn. The motion was seconded by Weber and the members all voting affirmatively, the Mayor declared the motion carried and the meeting stood adjourned at 8:26 p.m.

APPROVED:



Mayor

ATTEST:



City Clerk