

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

**TUESDAY ~ AUGUST 16, 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 urged all those who wish to address the Board of Directors during the meeting to promptly complete a speaker's card and submit to the City Clerk.

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.

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 August 2, 2011 regular meeting were presented for approval; however, Mayor Sanders advised the minutes had been revised to correct minor typographical errors. Settle, seconded by Hutchings, moved approval of the minutes as revised. The members all voting aye, the Mayor declared the motion carried.

Mr. Eric Arthur approached the podium citing viewers cannot hear the live broadcast on their televisions and requested the sound be checked before proceeding with the meeting.

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Mayor Sanders advised Mr. Arthur that he was out of order, not recognized and requested he take a seat. After brief verbal exchange and the presence of Police Chief Kevin Lindsey, Mr. Arthur left the podium.

The Mayor noted that City Administrator Ray Gosack was on vacation and welcomed Deputy City Administrator Jeff Dingman.

Item No. 1 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, 6706, 6404, 6504; 6637 Old Harrison Lane; and, 12417 and 12525 Highway 71 South*) ~ *Appeal of Planning Commission denial / Tabled at February 3 and March 1, 2011 regular meetings / Tabled for 4 months at the April 5, 2011 regular meeting / Tabled for 2 weeks at the August 2, 2011 regular meeting ~*

Director of Development Services Wally Bailey briefed the Board on the item advising such is per the request of the Southridge Industrial Park property owners. The purpose of the request is to match the development of the area. This matter was tabled for two (2) weeks at the August 2, 2011 regular meeting; therefore, he reiterated the August 2<sup>nd</sup> briefing citing the Planning Commission held a public hearing on January 11, 2011 and denied the request by a vote of four (4) in favor, two (2) opposed, and one (1) abstention. The applicant appealed the denial to the Board of Directors whereby such has been tabled on four (4) occasions and discussed at one (1) study session. A motion to accept the applicants offer to annex the subject property was denied by the Board at the August 2, 2011 regular meeting; therefore, at the request of the Riley Farm

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property owners, the original rezoning was tabled for two (2) weeks and is again presented for Board consideration.

The following individuals were present to address the Board:

- Drew Harmon, agent  
Fort Smith, AR

Re: Advised the proposed is a corrective rezoning and noted the subject property has been utilized as light industrial for many years. Some of the initial concerns have already been addressed; however, the major point of concern is now drainage. He alleged such has been caused by several of the Riley Farm property owners extending fences into the area designated as a buffer zone, which was intended to be utilized as a natural drainage area. Although the applicant will not financially resolve the matter, they have agreed to allow up to five (5) feet on their side for the Riley Farm property owners to create a ditch or other option to address the drainage issue.

- Greg Smith  
Fort Smith, AR

Re: Requested the current zoning remain "as is", as was recommended by the Planning Commission, and conveyed disagreement that the natural buffer area was intended for drainage. Upon approval, much concern was expressed that property values will decrease; therefore, he spoke in opposition to the proposed ordinance and urged the Board to allow the current zoning to remain.

- Doug Morris  
Fort Smith, AR

Re: Also spoke in opposition to the proposed rezoning and urged the Board to allow the current zoning to remain "as is". He recommended annexation be revisited in the near future as he feels such would be the most beneficial option for both parties.

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- Jerry Boyd  
Fort Smith, AR

Re: Advised the alleged buffer area was never intended to be used as a natural drainage area and he, too, urged the Board to allow the current zoning to remain "as is".

- Dennis Shaeffer  
Fort Smith, AR

Re: Merely reiterated the previous comments and urged the Board to allow the current zoning to remain.

Since the subject property is located within the extra-territorial jurisdiction area, Director Settle requested confirmation that the City maintains no authority over certain issues such as building codes, lighting, noise, etc.

Mr. Bailey clarified the City maintains the right to ensure compliance regarding land uses and the plumbing code; however, he confirmed the City currently maintains no authority over issues relative to lighting, noise, etc.

Good, seconded by Tyler, 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 "no", the Mayor declared the motion defeated.

Item No. 2 consisted of the following items regarding a Water and Sewer Operations Efficiency Study:

- A. Ordinance amending the 2011 Budget

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- B. Resolution authorizing a contract for a Water and Sewer Operations Efficiency Study (Not to exceed \$114,180.00 / Utility Department / Not Budgeted - Water and Sewer Fund)
- C. Resolution establishing citizens advisory committee for the Water and Sewer Efficiency Study

Director Settle moved adoption of Items No. 2A, 2B, and 2C; however, prior to obtaining a second, Director Merry questioned if the Board may request updates or offer questions relative to the proposed study prior to its completion.

Internal Auditor Mitzi Kimbrough advised such was requested during the recent study session whereby an update/review has been scheduled midway through the project. If questions arise prior to said review, such may be submitted at any time.

If an additional update/review is requested, Director Hutchings questioned if such will increase the contract amount whereby Ms. Kimbrough responded, "no, not unless additional work is requested."

The motion remaining on the floor, Director Hutchings seconded the motion. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance was given No. 63-11 and the resolutions numbered R-149-11 and R-150-11 respectively.

Item No. 3 was a resolution endorsing the implementation of a one-percent (1%) tax of the gross receipts or gross proceeds from the sale of prepared food and beverages in the city of Fort Smith.

Mr. Dingman briefed the Board on the item advising such merely indicates the Board's endorsement of the prepared food tax and affords the Board, Mayor and City staff the ability to state the City's official position on the matter before the voters.

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The following individual was present to address the Board:

- Eric Arthur  
Fort Smith, AR

Re: Alleged the facility is a “civic center” and not a “convention center”; therefore, he spoke in opposition to the proposed 1% prepared food tax.

Director Settle advised of numerous recent events held at the convention center. The Lake Fort Smith water supply project also met much opposition; however, such has proven to be the right decision and a valuable asset to the City of Fort Smith. He further clarified that, upon approval of the 1% prepared food tax, the facility will be overseen by the Advertising and Promotion Commission, not the City of Fort Smith.

During the above noted comments, Mr. Eric Arthur interrupted Director Settle whereby Mayor Sanders advised Mr. Arthur he was, again, out of order and insisted another outburst would result in his removal from the meeting.

Director Hutchings spoke in favor of the item stating many cities would love to have the convention center citing such is a valued asset to the city, which provides an approximate \$20 million economic impact to the city.

Director Merry spoke in favor of the 1% prepared food tax and advised that youth and young professionals have shown interest in the issue, and “are watching” closely.

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Mayor Sanders clarified the Advertising and Promotion Commission will employ a professional manager to ensure the facility is run in the most beneficial manner. He also stated that convention centers are not designed for profit, but to bring revenue into the municipalities.

Weber, seconded by Merry, moved adoption of the resolution. The members voted as follows: ayes - Directors Tyler, Good, Hutchings, Weber, Settle and Merry; nays - Catsavis. The Mayor declared the motion carried and the resolution was adopted and given No. R-151-11.

The Consent Agenda (Item No. 4) was introduced for consideration, the items being as follows:

- A. Resolution authorizing a time extension for the construction of Street Overlays/Reconstruction, Project No. 10-03-B
- B. Resolution accepting completion of and authorizing final payment for the construction of Street Overlays/Reconstruction, Project No. 10-03-B (\$24,905.93 / Engineering Department / Budgeted - Street Sales Tax Fund)
- C. Resolution authorizing the offering of water and sewer revenue bonds to refund outstanding bonds; and prescribing other matters relating thereto
- D. Resolution authorizing the Mayor to enter into a facility use agreement with Joe Hartgraves for the operation of a private park
- E. Resolution authorizing the acquisition of real property known as the McClure Amphitheater at Chaffee Crossing, authorizing a maintenance agreement with Forth Chaffee Redevelopment Authority for the acquired property, authorizing a lease agreement with Sebastian County for property located adjacent to the acquired property, and establishing a usage fee for the McClure Amphitheater (Parks Department / Not Budgeted - Property Donation to City of Fort Smith)
- F. Ordinance authorizing the purchase of two (2) Dodge Ram 1500 pickup trucks and related equipment for use by the Fort Smith Police Department Animal Control Unit (\$57,818.00 / Police Department / Not Budgeted - Federal Asset Forfeiture Fund)

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- G. Ordinance authorizing the purchase of a 911 communications recording system for use by the Fort Smith Police Department (\$79,564.00 / Police Department / Not Budgeted - \$75,000.00 Justice Assistance Grant (JAG) and \$4,564 Federal Asset Forfeiture Fund)
- H. Resolution adopting the Sebastian County Hazard Mitigation Plan updates (v2) for the City of Fort Smith, Arkansas
- I. Resolution allowing the sale of surplus vehicles and equipment at public auction
- J. Resolution accepting bids for the purchase of water and wastewater chemicals for 2011-2012 (Annual bid / Utilities Department / Budgeted - Water & Sewer Operating Fund)
- K. Resolution accepting bids for the purchase of trucks (\$58,149.25 / Utilities Department / Budgeted - Line Items 301 and 302; and, \$21,575.00 / Street Department / Budgeted - Sinking Fund)
- L. Resolution authorizing the filing of action to foreclose cleanup liens on real property in the City of Fort Smith located at 9917 Jenny Lind Avenue
- M. Resolution authorizing Change Order Number One with Blake Construction, Inc. for the Rye Hill Sewer Outfall Phase III (\$27,323.20 decrease / Utility Department / Budgeted - 2008 Revenue Bonds)
- N. Resolution accepting the project as complete and authorizing final payment to Blake Construction, Inc. for construction of the Rye Hill Sewer Outfall Phase III (\$130,570.18 / Utility Department / Budgeted - 2008 Revenue Bonds)
- O. Resolution authorizing Change Order Number Two with KAJACS Contractors, Inc. for the Zero Street Outfall Sewer Improvements Phase 1 (-\$72,718.88 / Utility Department / Budgeted - 2009 Sales Tax Bonds)
- P. Resolution accepting the project as complete and authorizing final payment to KAJACS Contractors, Inc. for construction of the Zero Street Outfall Sewer Improvements Phase I (\$120,549.03 / Utility Department / Budgeted - 2009 Sales Tax Bonds)

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Q. Resolution authorizing the Mayor to execute an agreement with Mickle Wagner Coleman, Inc. for design of the Highway 71 Interchange 12-Inch Water Line Relocation (\$43,596.00 / Utility Department / Not Budgeted - Capital Improvement Program Fund / 100% Reimbursed by AHTD)

Regarding Item No. 4C, Director Catsavis merely requested confirmation that the proposed refunding will result in a \$1.3 million net savings and questioned if such will affect the City's current bond rating.

Mr. Dingman confirmed the \$1.3 million dollar savings and advised such will not affect the City's bond rating.

Hutchings, seconded by Settle, moved adoption 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 64-11 and 65-11, and the resolutions numbered R-152-11 through R-166-11 respectively.

Item No. 5 was discussion regarding emergency demolition of the former Mallalieu Church building located at 800 North 9<sup>th</sup> Street.

Mr. Bailey briefed the Board on the item advising the City has owned the structure since 2001. The property was originally intended for use as a multi-cultural center; however, the plan never materialized. The structure was in such disrepair that staff requested its demolition; however, citizens urged renovation whereby Mr. Scott Hathaway and Monte Wilson presented a plan to stabilize and renovate the structure. The City ultimately approved and executed an agreement for such thereby allowing time for monies to be raised to accomplish such. Said agreement has been extended over many years; however, a new plan was presented to the Board at the May 24, 2011

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study session for a student academic center. The plan included a presentation by University of Arkansas Fort Smith Chancellor Paul Beran, Mr. Wilson and Mr. Hathaway; however, the matter was tabled to the August 23, 2011 study session. During the interim, staff was directed to confirm the costs for demolition and shoring of the facades to remain as part of the proposal. Unfortunately, the building has recently experienced very significant structural changes, which has prompted great concern that collapse is imminent. Uncertainty exists with regard to how such will occur, inward or outward; therefore, streets and sidewalks have been closed adjacent to the structure. Due to the urgency, staff recommends immediate demolition; however, Mr. Wilson and Mr. Hathaway have requested that their previous request be considered to preserve part of the building with any demolition that occurs. If the Board so desires to proceed with such, the following ordinance has been prepared for Board consideration:

- Ordinance declaring an exceptional situation waiving the requirements of competitive bidding, authorizing a contract with Controlled Environmental Solutions, Inc. for emergency demolition of the building at 800 North 9<sup>th</sup> Street, and appropriating funds (\$189,816.00)

Staff requests direction from the Board as to which option is preferred with regard to demolition of the structure. Option 1 is to demolish the structure in its entirety or Option 2 is to demolish and structurally shore or support the facade that will remain as part of the proposed future development. If the Board opts for Option 2, such will increase the total cost to approximately \$335,000 and require an additional contract; therefore, a special meeting may be requested in the near future to consider such.

The following individuals were present to address the Board:

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- George McGill  
Fort Smith, AR

Re: Spoke in support of any necessary action to ensure the preservation of either all or part of the structure. He alleged the proposed plan will revitalize the area, create jobs, as well as address the educational needs of countless students.

- Reverend Ulysses C. Washington  
Mission United Methodist Church  
Fort Smith, AR

Re: Concurred with the comments of Mr. McGill; however, he conceded the state of deterioration is a “great danger”, but urged either option be initiated swiftly.

- Pastor Lorenzo Lee  
Fort Smith, AR

Re: Questioned if the City will consider the proposed plan by the University of Arkansas Fort Smith.

- Paul Beran, Chancellor of UAFS  
Fort Smith, AR

Re: Regardless of the City’s action to either demolish in its entirety or opt to preserve a portion of the structure, he conveyed the University’s commitment to the proposed project for an academic facility on the site. If total demolition is pursued, he recommended a portion of the bricks be salvaged in order to eventually utilize such to construct a memorial on the site of the proposed academic center.

- Scott Hathaway  
Fort Smith, AR

Re: Urged preservation of the facade; however, if total demolition is necessary to ensure safety, he reiterated Chancellor Beran’s request that bricks be saved so such may be utilized within future development.

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There was very lengthy discussion whereby several members of the Board indicated their preference to expend the extra dollars to preserve the facade.

If the Board chooses Option 2 (demolition with preservation of the façade), Mr. Bailey urged adoption of the presented ordinance to allow the demolition to proceed immediately and advise of the intent to preserve the façade. An ordinance to authorize a contract and appropriate the additional funds necessary to preserve the façade will then be prepared and presented for consideration in the very near future; therefore, he reiterated the potential need for a special meeting to accomplish such.

Hutchings, seconded by Catsavis, moved adoption of the ordinance as presented, which would authorize total demolition of the structure. Prior to the vote, Good, seconded by Merry, offered a substitute motion to adopt the ordinance with a provision that every effort be made to preserve the façade. The members voted as follows: ayes - Tyler, Good, Hutchings, Catsavis, Weber and Merry; nays - Settle. The Mayor declared the motion carried and the ordinance was adopted and given No. 66-11.

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

➤ **Mayor Sanders**

Re: Extended congratulations to Director Weber for the recent arrival of her new grand-daughter.

➤ **Director Merry**

Re: 1. Recognized TAC Air of Fort Smith, who was recently named the "No. 1 Large Fixed Base Operator (FBO) chain for 2011 by the *Professional Pilot* magazine.

2. At the request of Director Merry, a moment of silence was held in honor of Mr. Sam Sicard.

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➤ Director Weber

- Re: 1. Extended congratulations to all involved with hosting the recent Regional Alliance meeting with various state and local elected officials in attendance.
2. Conveyed condolences to the family of Mr. Sam Sicard.

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

**AIRPORT COMMISSION**

Mac McGhee

*(to fill the unexpired term of Marcia Melvin who resigned)*

Term expires June 30, 2013

**ANIMAL SERVICES TASK FORCE**

Tammy Trouillon

Joel Culberson

Patrick Jacobs

Mike Thames

Daniel K. Jones

Jon Remer

Ken Kupchick

*(No terms - Ad Hoc Committee only)*

Tyler, seconded by Good, moved acceptance of all appointment nominations.

The members all voting aye, the Mayor declared the motion carried.

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

- Eric Arthur  
Fort Smith, AR

Re: Alleged the City's website is not updated and reiterated his previous comment that the audio level needs to be increased for live broadcast of the Board meetings.

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- Jerry Hamel  
Fort Smith, AR  
  
Re: Expressed discontent with the extended discussion regarding Item No. 5.
  
- Elizabeth Mayo  
Fort Smith, AR  
  
Re: Read an article from the *Rural Arkansas* magazine regarding white elephants and read a listing of various taxes in the State of Arkansas.
  
- Robert Morgan  
Fort Smith, AR  
  
Re: Advised he recently witnessed a City of Fort Smith Street Department employee assist a woman who was having car trouble, and extended much appreciation for the employee's assistance.
  
- The following residents extended much discontent with a recent street reconstruction project on South 67<sup>th</sup> Lane:
  - Billy Huie
  - Jane Hartmeier
  - Johna Autry
  
- Lea Taylor  
Fort Smith, AR  
  
Re: Extended much appreciation to all Fort Smith firefighters and Fire Department staff.
  
- Jeff Smith  
Fort Smith, AR  
  
Re: Commented on several large events held at the convention center citing the economic impact to Fort Smith. He further noted that the Cattlemen's Association was so impressed with Fort Smith, they have already scheduled dates to utilize the facility in 2012.

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- The following individuals addressed the Board citing much opposition to and conveying detrimental effects of the fluoridation of the City's water supply:

Melinda Justice  
Fort Smith, AR

Daniel Renyolds  
Fort Smith, AR

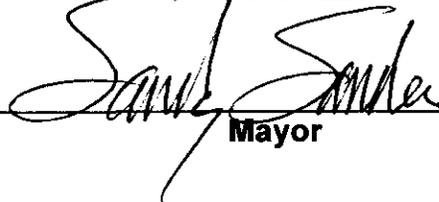
Glenda Justice  
Pocola, OK

- Whitney Yoder  
Fort Smith, AR

Re: Even during the recent extreme heat, the City of Fort Smith is able to maintain a more than adequate water supply. Such would not be the case if it had not been for the foresight of City leaders to initiate the Lake Fort Smith Water Supply Project. Due to such, she conveyed much appreciation to the Mayor, Board and City staff for ensuring the residents of Fort Smith have access to this very basic need.

There being no further business to come before the Board, Settle moved that the meeting adjourn. The motion was seconded by Good, and the members all voting aye, the Mayor declared the motion carried and the meeting stood adjourned at 8:37 p.m.

**APPROVED:**

  
\_\_\_\_\_  
Mayor

**ATTEST:**

  
\_\_\_\_\_  
City Clerk