

**MINUTES OF BOARD OF DIRECTORS REGULAR MEETING**

**TUESDAY ~ JANUARY 3, 2012 ~ 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 Philip 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 December 20, 2011 regular meeting was presented for approval. Settle, seconded by Merry, moved approval of the minutes as written. The members all voting aye, the Mayor declared the motion carried.

Item No. 1 was a presentation from by Mr. Nathan Rutledge and Mr. Bob Wright of Crews and Associates, who announced the City of Fort Smith received an honorable mention for the "*Arkansas Business City of Distinction Award*" for Main Street Preservation.

Mr. Rutledge and Mr. Wright presented a framed article from an Arkansas Business publication declaring the aforementioned recognition to the Mayor and Board.

Mayor Sanders, in turn, presented the framed article to Downtown Development Coordinator Jayne Hughes, who was instrumental in the projects which prompted the recognition.

With regard to the time limit policy for persons wishing to address the Board, the

**January 3, 2012 Regular Meeting**

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.

Mayor Sanders recognized Boy Scout Evan Simpson, Troop 316, who was in attendance to earn his communication badge.

Item No. 2 consisted of the following items regarding a special election:

- A. Ordinance calling a special election in the City of Fort Smith, Arkansas on the questions of issuing bonds under Amendment No. 62 to the Constitution of the State of Arkansas for the purpose refinancing and financing the cost of capital improvements; levying a three-fourths of one percent (0.75%) sales and use tax for the purpose of retiring such bonds; and prescribing other matters pertaining thereto
- B. Ordinance providing for the levy of a one-fourth of one percent (0.25%) sales and use tax within the City of Fort Smith, Arkansas for a period of ten (10) years; and prescribing other matters pertaining thereto
- C. Ordinance calling a special election in the City of Fort Smith, Arkansas on the question of levying a one-fourth of a one percent (0.25%) sales and use tax within the City of Fort Smith, Arkansas for a period of ten (10) years; and prescribing other matters pertaining thereto

City Administrator Ray Gosack briefed the Board advising Item No. 2A has been revised to reflect the direction provided at the special study session held at Noon earlier in the day. Such revision includes the aquatic center at Ben Geren as a project to be financed with sales tax bonds.

The proposed ordinances include a total of six (6) ballot questions and rely on an existing 1% sales tax, which is separated into two (2) parts. One for 3/4% sales tax for refinancing existing sales bonds and the issuance of new bonds for various projects. The

**January 3, 2012 Regular Meeting**

remaining 1/4% sales tax is to be used equally for the Fire and Parks and Recreation Departments.

Item No. 2A calls a special election for March 13, 2012 on the question of issuing sales tax bonds for five (5) separate ballot questions, which would be supported by the aforementioned 3/4% sales tax. The projects are noted as follows:

1.	Refinancing of existing sales tax bonds	\$ 55,380,000
2.	Fire service improvements	9,110,000
3.	Wet weather sanitary sewer improvements	71,070,000
4.	Water transmission system improvements	28,120,000
5.	Aquatic center at Ben Geren	<u>4,260,000</u>
		\$167,940,000

The first ballot question (refinancing of existing sales tax bonds) must be approved in order for any of the other items to go forward, even if the other items are approved by the voters.

Item No. 2B levies a 1/4% sales tax to be used equally for the Fire Department and the Parks and Recreation Department, subject to voter approval. If the measure is approved by the voters, the tax would become effective October 1, 2012 and continue for ten (10) years.

Item No. 2C merely refers the 1/4% sales tax ordinance (Item No. 2B) to the voters as the sixth (6<sup>th</sup>) ballot question at the special election on March 13, 2012.

The following individual was present to address the Board:

- David Harris  
Fort Smith, Arkansas

Re: 1. Upon approval of the aquatic center, he inquired if the center will be provided "free water" from the City of Fort Smith.

**January 3, 2012 Regular Meeting**

Administrator Gosack simply responded "no".

2. If the refinancing of the existing sales tax bonds is not approved by the voters (3/4%), but the 1/4% tax is approved, the sales tax rate will increase by 1/4%. He advised the State of Arkansas limits the sales tax rate to 2%; therefore, he expressed concern that the aforementioned scenario would cause the City of Fort Smith to have a sales tax rate of 2.25%, which exceeds the state limit.

Administrator Gosack advised the 2% limit for sales tax is no longer in effect. He explained that if the refinancing of existing sales tax bonds is not approved by the voters (3/4%), but the 1/4% sales tax is approved, the current sales tax rate would increase by 1/4%. This is because the existing 1% sales tax would be pledged to pay the existing bonds until they're retired in 2014.

Mayor Sanders clarified that if all ballot questions are approved by the voters, such will result in no increase in the existing sales tax rate.

Weber, seconded by Good, moved adoption of Item No. 2A as revised. 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. 1-12.

Settle, seconded by Merry, moved adoption of Item No. 2B. 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. 2-12.

### **January 3, 2012 Regular Meeting**

Settle, seconded by Hutchings, moved adoption of Item No. 2C. 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. 1-12.

Items No. 3 and 4 were presented collectively, the items being as follows:

3. Ordinance amending Chapter 4, Article I of the Fort Smith Municipal Code regulating animals, establishing mandatory registration, spay and neuter regulations, and a hobbyist permit for dogs and cats ~ *First reading at the March 15, 2011 regular meeting / Tabled for 6 months at the April 5, 2011 regular meeting / Tabled for 90 days at the October 4, 2011 regular meeting* ~ \*\* Second reading \*\*
  
4. 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 / Tabled for 6 months at the April 5, 2011 regular meeting / Tabled for 90 days at the October 4, 2011 regular meeting* ~ \*\* Second reading \*\*

Police Chief Kevin Lindsey briefed the Board advising the ordinances were first presented for consideration and approved on March 15, 2011; however, neither ordinance received the required five (5) affirmative votes for passage on their first reading. The second readings were scheduled for April 5, 2011 and was tabled for six (6) months. At the October 4, 2011 regular meeting, the second readings were tabled for ninety (90) days to allow the Animal Services Task Force to complete their work and present recommendations.

Item No. 3 establishes mandatory registration, spay and neuter regulations, and hobbyist permits for dogs and cats. Item No. 4 merely amends the existing definitions to

**January 3, 2012 Regular Meeting**

accomplish regulations adopted in Item No. 3. The Board maintains the following options with regard to the proposed ordinances:

- ▶ Merely allow the second reading.
- ▶ Table the ordinances for a designated period of time to retain them for future consideration.
- ▶ Table the ordinances indefinitely to withdraw consideration.
- ▶ Vote on the ordinances again in an attempt to obtain the required five (5) affirmative votes for passage.

Settle, seconded by Hutchings, moved to table Items No. 3 and 4 indefinitely. Prior to the vote, Director Merry spoke in favor of the proposed ordinances, requested consideration of such, and urged defeat of the offered motion.

Mayor Sanders reminded all that the Animal Services Advisory Board is being established (Item No. 5) to review the recommendations promulgated by the Animal Services Task Force and to provide recommendations to the Board of Directors.

Due to such, Director Tyler recommended Items No. 3 and 4 be tabled until the newly created Animal Services Advisory Board presents its recommendation.

Director Merry called the question; therefore, the Mayor requested a vote on such and the members all voting affirmatively, the Mayor declared the motion carried and debate ceased on the issue.

The original motion to table Items No. 3 and 4 indefinitely remaining on the floor, the members voted as follows: ayes - Hutchings, Catsavis and Settle; nays - Tyler, Good, Weber and Merry. The Mayor declared the motion defeated.

Tyler, seconded by Catsavis, moved to table Items No. 3 and 4 for nine (9) months.

***January 3, 2012 Regular Meeting***

Prior to the vote, Director Good requested confirmation that the issue may be addressed prior to nine (9) months if requested whereby Mayor Sanders confirmed.

There was brief discussion regarding the matter; however, the motion remaining on the floor, the members voted as follows: ayes - Tyler, Good, Hutchings, Catsavis and Settle; nays - Weber and Merry. The Mayor declared the motion carried.

Item No. 5 was an ordinance amending Chapter 4, Article I of the Fort Smith Municipal Code to establish an Animal Services Advisory Board ~ *Requested at the December 20, 2011 study session* ~

Administrator Gosack briefed the Board on the item advising such is a recommendation from the Animal Services Task Force. The proposed amendments specifically address the composition of the Animal Services Advisory Board and removes language establishing the facilitation of requests for financial assistance for low cost spaying and neutering, which is no longer necessary since mandatory spay/neuter is not yet in place.

Settle, 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 affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given No. 4-12.

Item No. 6 was an ordinance authorizing the Mayor to execute agreements for certain services for inhabitants of the city of Fort Smith.

Administrator Gosack briefed the Board on the item advising such represents the

***January 3, 2012 Regular Meeting***

outside agency funding recommendations by the Outside Agency Funds Review Panel. The funding allocations were included within the previously adopted 2012 Budget; therefore, the proposed ordinance merely authorizes execution of agreements with individual agencies.

Finance Department Administrative Coordinator Christy Deuster advised the only change from past years agreements is any agency who receives utility grants, the agency must first pay the utility expense and submit the paid receipt to the City. Upon receipt of such to the City, the City will then reimburse the agency for the utility cost.

Hutchings, seconded by Good, moved adoption of the ordinance. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given No. 5-12.

The Consent Agenda (Item No. 7) was introduced for consideration, the items being as follows:

- A. Resolution accepting the offer of and authorizing the special assignment of clean up liens to the Fort Smith Housing Authority for city liens encumbering 1013 North 6th Street, Fort Smith, Arkansas
- B. Resolution approving a settlement agreement with James Fork Water
- C. Resolution to accept the bids and authorize a contract for the construction of traffic signal improvements, Project No. 11-09-A (\$778,364.17 / *Engineering Department / Budgeted - Sales Tax Fund*)
- D. Resolution accepting bids for the purchase of real property and authorizing the Mayor to execute deeds conveying real property interests ~ 3751 Park Avenue ~ (\$20,501.00)
- E. Resolution authorizing an engineering services agreement for the design of a project in the 2012 Sales Tax Program (\$83,848.00 / *Engineering Department / Budgeted - Sales Tax Fund*)

**January 3, 2012 Regular Meeting**

- 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 Greenwood, Arkansas
- G. Resolution authorizing Change Order Number One with Forsgren Inc. for the Zero Street Outfall Sewer Improvements Phase II (\$31,012.50 / Utilities Department / Budgeted - Sales Tax Bonds)

Regarding Item No. 7D, Director Tyler questioned the type of structures allowed on the property and how many residential structures are anticipated.

Director of Engineering Stan Snodgrass advised the property was rezoned for single-family dwellings. Unless the property is replatted, he estimated that no more than four (4) residential structures could be constructed on the property.

Hutchings, seconded by Settle, 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-1-12 through R-7-12 respectively.

Item No. 8 was an item relating to the Van Buren Water True-Up ~ *Requested at the December 20, 2011 regular meeting* ~

Administrator Gosack briefed the Board on the item advising the second opinion from Mr. Mark Moll, attorney for Jones, Jackson and Moll law firm, opines that “...*non-compliance by Fort Smith results in a forfeiture of Fort Smith’s right to make an adjustment in the amount that Van Buren owes for water consumed...*” and that “...*Van Buren has no contractual obligation to pay an adjusted amount for water consumed in 2009.*” The matter was discussed at the special study session at Noon whereby the Board directed staff to prepare a settlement agreement for the 2006 through 2010 true-up amounts,

**January 3, 2012 Regular Meeting**

excluding 2009. Van Buren has agreed to make a substantial lump sum payment for the true-up amounts with the remainder to be paid in equal installments to ensure payment in full by the end of the year.

Due to a misconception that Van Buren has not paid their water bill, Director Settle clarified that Van Buren has paid their water billings. The only non-payment was for the true-up amounts due for years in which the true-up amounts were disputed.

At the request of Director Merry, Administrator Gosack provided an explanation of what prompted the Van Buren water true-up issue.

Settle, seconded by Hutchings, offered a motion to direct staff to proceed with preparation of a settlement agreement with Van Buren for the years 2006 through 2010, excluding 2009. The members all voting affirmatively, the Mayor declared the motion carried.

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

- ▶ Mayor Sanders  
Re: Extended congratulations to Director Hutchings for his 35<sup>th</sup> wedding anniversary.
- ▶ Director Merry  
Re: Regarding the recent Christmas Honors event, he encouraged residents to assist in the gathering of the wreaths at the National Cemetery on Sunday morning, January 8.
- ▶ Administrator Gosack  
Re: Advised the 2011 Key Accomplishments was previously provided to the Board and extended much appreciation to the Mayor and Board for their support for such.

**January 3, 2012 Regular Meeting**

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

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

- E. A. Mayo  
Fort Smith, Arkansas

Re: Expressed discontent with the Mayor's budget alleging such is excessive.

There being no further business to come before the Board, Tyler 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 7:00 p.m.

**APPROVED:**

  
\_\_\_\_\_  
MAYOR

**ATTEST:**

  
\_\_\_\_\_  
CITY CLERK