

MINUTES OF BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ FEBRUARY 7, 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.

Mayor Sanders recognized the following Boy Scouts from Troops 316 and 110, who were in attendance to earn either their Communication or Citizenship & Community Badge:

Troop 316

- ▶ Hudson Ennis
- ▶ Grant Ennis
- ▶ Cole Custer
- ▶ Grant Custer
- ▶ Joseph Schneider
- ▶ Carl Schneider, Leader

Troop 110

- ▶ Alec Ulmschneider
- ▶ Luke Smith

The Mayor also recognized mothers, Ms. Georgia Custer and Ms. Laura Ennis, who were also in attendance.

The Mayor inquired if any Board member had any item of business to present that was not already on the agenda. None was presented; however, Director Weber requested a brief update on the proposed development of the former Mallalieu Church site.

Director of Development Services Wally Bailey advised no definitive information has been submitted with regard to future development on the site. A change order and final payment for restoration and stabilization of the structure is tentatively scheduled for the next regular meeting; therefore, additional information may be available at that time.

February 7, 2012 Regular Meeting

The minutes of the January 17, 2012 regular meeting was 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.

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.

Mayor Sanders announced this was the time and place set for a public hearing to close and vacate and abandon alley and street rights-of-way located in conjunction with Lots 14, 15, 16, 19, 20, 21 and 22 of Newlon's Subdivision. Notice of the public hearing was duly published as required by law. Following the public hearing, consideration of an ordinance authorizing same would be given (Item No. 1).

The proposed alley and street right-of-way closing is per the application of Mitchell Minnick of the Fort Smith Housing Authority, agent for the property owners, multiple members of the Baker family. The abandonment includes portions of a twenty (20) ft. alley, forty (40) ft. street right-of-way, and fifty (50) ft. street right-of-way on the Baker family property located west of the intersection of Spring Street and North 31st Street. The property owners request the abandonment of the undeveloped alley and street rights-of-way so their land will be unencumbered. The Baker family requests the City waive the requirement that they execute a Memorandum of Understanding (MOU). The MOU stipulates the applicant or its assigns will not make any claims for compensation in the event the city exercises the power of eminent domain to reclaim the abandoned right-of-way. In lieu of the MOU, the Baker family has executed an easement conveying a forty

February 7, 2012 Regular Meeting

(40) ft. sewer utility easement to the City (30 ft. permanent and 10 ft. temporary) for a future public sewer line that will be constructed in the street right-of-way proposed for abandonment. All franchise utilities and appropriate city departments have been notified of the proposed right-of-way closures. The City's utility department requires the forty (40) ft. sewer utility easement, which the Bakers have executed; however, no other concerns or objections were conveyed.

There being no individual present to address the Board, the Mayor closed the public hearing.

Hutchings, seconded 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. Weber, seconded by Good, 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. 11-12.

Item No. 2 was an ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan - Mixed Use Residential to General Commercial; Rezoning - Residential Multi-Family Medium Density (RM-3) to Commercial Heavy (C-5) by classification located at 6300 Massard Road*)

Mr. Bailey briefed the Board on the item advising such is per the application of Damon Wright, agent for ERC Land Development Group. The purpose of the request is to facilitate the development of five (5) mini-storage structures containing a total of 209

February 7, 2012 Regular Meeting

units along with an office building, which would contain a manager's apartment, an office and 25 storage units. The Planning Commission held a public hearing on January 10, 2012 with no individual present to speak in opposition. The Planning Commission unanimously amended both the Master Land Use Plan map and rezoning request to make approvals subject to the submitted and approved development plan. The Planning Commission approved the amended Master Land Use Plan map and rezoning by a vote of five (5) in favor and zero (0) opposed.

If the applicant amends the submitted development plan, Director Settle questioned if the Planning Commission must approve said amendments before construction could proceed whereby Mr. Bailey responded "yes".

Merry, 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. 12-12.

Item No. 3 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 10017 Dixon Lane)*

Administrator Gosack briefed the Board on the item advising such is per the request of Gary Batton, agent for the Choctaw Nation of Oklahoma. The purpose of the rezoning is to facilitate a 321 parking space addition to an existing parking lot on Dixon Lane that services the Choctaw Casino. Although the casino is located in Oklahoma, the subject parking lot is located in Arkansas and within the extra-territorial jurisdiction area of the city.

February 7, 2012 Regular Meeting

The Planning Commission held a public hearing on January 10, 2012 with no individual present to speak in opposition. The Planning Commission unanimously amended the request to make approval subject to development plan approval. The Planning Commission approved the amended request by a vote of five (5) in favor and zero (0) opposed.

Settle, 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 voted as follows: ayes - Tyler, Good, Catsavis, Weber, Settle and Merry; nays - Hutchings. The Mayor declared the motion carried and the ordinance was adopted and given No. 13-12.

Item No. 4 was an ordinance amending Article III of Chapter 6 of the Fort Smith Code of Ordinances to make changes in the Fort Smith Electric Code.

Administrator Gosack briefed the Board on the item advising the Arkansas Board of Electrical Examiners, a division of the Arkansas Department of Labor, has adopted new regulations regarding electrical installations in the State of Arkansas. To ensure the Fort Smith Municipal Code is consistent with the newly adopted regulations, the proposed ordinance formally adopts the 2011 National Electrical Code (NEC). The Greater Fort Smith Association of Homebuilders and 131 locally licensed electricians were notified of the proposed amendments with no negative feedback received. The Fort Smith Electric Code Board of Appeals reviewed the newly adopted regulations on January 19, 2012 and unanimously recommend approval.

Director Catsavis questioned if the newly adopted regulations will create additional expense for electrical contractors, and if any opposition to such has been expressed.

February 7, 2012 Regular Meeting

Mr. Bailey confirmed such will cause an added expense of approximately \$300 for electrical contractors; however, the new regulations were presented to all interested parties and no negative feedback has been received.

Settle, 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. 14-12.

The Consent Agenda (Item No. 5) was introduced for consideration, the items being as follows:

- A. Resolution approving a settlement and release agreement with the Van Buren water and sewer commission regarding true up payments for 2006-2010
- B. Resolution granting a temporary revocable license for the placement of a concrete memorial paver sidewalk in a public right-of-way and utility easement and authorizing the Mayor to execute agreement (*223 South 14th Street, Immaculate Conception School*)
- C. Resolution authorizing the Mayor to execute a lease agreement for city offices and parking spaces
- D. Resolution authorizing the City Administrator to accept offer made by property owner for the acquisition of real property interests for the Lake Fort Smith Water Supply Project (*\$31,000.00 / Utility Department / Budgeted - Capital Improvement Program Fund*)
- E. Resolution authorizing Change Order Number One with Forsgren, Inc. for the Sanitary Sewer Rehabilitation South 28th Street (*\$10,445.00 / Utility Department / Budgeted - 2009 Sales Tax Bonds*)
- F. Resolution authorizing the execution of a non-residential solid waste collection and disposal permit and agreement with MSG Waste and Salvage, Inc.

February 7, 2012 Regular Meeting

- G. Resolution authorizing the execution of a non-residential solid waste collection and disposal permit and agreement with OK Foods, Inc.
- H. Resolution authorizing the execution of a non-residential solid waste collection and disposal permit and agreement with Circle S Waste and Salvage, Inc.
- I. Resolution authorizing the execution of a non-residential solid waste collection and disposal permit and agreement with Sandifer and Sons Salvage, LLC

Regarding Item No. 5A, the following individuals were present to address the Board:

- Edward McCurtain
Fort Smith, Arkansas

Re: Expressed discontent with the item and questioned if actions have been taken to ensure the City provides the required information to Van Buren in a timely manner whereby Director Merry and Administrator Gosack confirmed such.

- E. A. Mayo
Fort Smith, Arkansas

Re: Also expressed discontent with the item and conveyed multiple questions regarding the Van Buren water true-up.

Administrator Gosack provided a detailed response to each inquiry as previously provided on multiple occasions.

Director Catsavis questioned if the proposed settlement agreement essentially waives the City's right to pursue the true-up amount for 2009.

There was brief discussion whereby City Attorney Jerry Canfield advised the proposed agreement represents a final settlement for true-up amounts for years 2006 through 2010. Upon approval, such will preclude both parties, the City of Fort Smith and the Van Buren Water and Sewer Commission, from pursuing legal action for true-up amounts for said years.

February 7, 2012 Regular Meeting

With regard to Items No. 5F through 5I, Director Settle requested a brief explanation.

Director of Sanitation Baridi Nkokheli advised of a recent discovery whereby four (4) commercial solid waste haulers were in violation of the Fort Smith Municipal Code. Each were operating without the required solid waste collection and disposal permit and associated agreement to collect and dispose of waste collected in the city limits of Fort Smith. All four (4) haulers have expressed their desire to obtain new permits and agreements in order to comply with the Fort Smith Municipal Code; therefore, he recommended approval of each item.

Director Weber inquired of the penalty for non-compliance if haulers do not dispose of waste collected in the city at the Fort Smith landfill.

Mr. Nkokheli advised their business license and permit would be revoked.

Administrator Gosack further noted that legal action could ensue, which could also result in court fines.

Tyler, seconded by Hutchings, moved adoption of all consent agenda items. The members all voted affirmatively, with the exception of Directors Catsavis and Merry voting “no” on Item No. 5A. The Mayor declared the motion carried and the resolutions were adopted and numbered R-24-12 through R-32-12 respectively.

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

► Mayor Sanders

Re: Announced a joint press conference with himself and Fayetteville Mayor Lionel Jordon will be held at 11:00 a.m., Wednesday, February 8 at the Fort Smith River Park Events Building.

February 7, 2012 Regular Meeting

▶ Director Settle

Re: Requested the City Administrator and City Clerk gather information as to how other cities conduct their meetings, specifically regarding citizen participation.

▶ Director Weber

Re: 1. Advised the recently formed beautification committee, Beautify Fort Smith, will meet at 12:00 Noon, February 22 at Creekmore Park.

2. In April, Beautify Fort Smith will participate in the Great Arkansas Cleanup, a statewide community improvement campaign sponsored by the Keep Arkansas Beautiful; therefore, she encouraged those interested in participating attend the aforementioned meeting.

▶ Director Merry

Re: Advised of a recent inquiry whereby there was confusion as to whether the ordinance prohibiting the tethering of dogs is in effect. He confirmed that such is in effect and will be enforced.

▶ Administrator Gosack

Re: Announced the University of Arkansas Fort Smith (UAFS) is hosting a Fort Smith night at the UAFS Lions basketball game on Thursday evening, February 16.

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 individuals present to address the Board:

- Rosemary Wingfield
Fort Smith, Arkansas

February 7, 2012 Regular Meeting

Re: Presented petitions from residents of Park Hill opposing automated sanitation service and requesting collection be returned to the alleyway.

- Joel Culberson
Fort Smith, Arkansas

Re: Advised he resides in Park Hill East and conveyed his desire to maintain the automated sanitation service citing such is more cost effective.

- E. A. Mayo
Fort Smith, Arkansas

- Re:
1. Expressed discontent with the City budget.
 2. Conveyed disregard for Director Settle's request for information from other cities regarding citizen participation at meetings.
 3. Regarding the Rose Society's efforts to raise money to hybridize a rose to be named after former mayor Ray Baker, she questioned the necessity of such citing financial feasibility.
 4. Requested reinstatement of televised meetings of the Board of Directors.

There being no further business to come before the Board, Merry moved that the meeting adjourn. The motion was seconded by Settle and the members all voting aye, the Mayor declared the motion carried, and the meeting stood adjourned at 6:44 p.m.

APPROVED:


MAYOR

ATTEST:


CITY CLERK