

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

**TUESDAY ~ MARCH 6, 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 Pastor John Earnhart of Central Baptist Church, 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 February 21, 2012 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.

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.

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 consisted of the following items regarding the Automated Refuse Collection Program:

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- A. Resolution directing staff to reinstitute manual collection of residential solid waste from the alleyways of the Park Hill East Neighborhood; and for other purposes ~ *Requested at the February 28, 2012 study session* ~
  
- B. Resolution reaffirming the city-wide expansion of automated collection of residential solid waste, and for other purposes ~ *Requested at the February 28, 2012 study session* ~

The following individuals addressed the Board and spoke in favor of Item No. 1A citing streets are too narrow for curbside pickup and the automated containers are difficult to maneuver and unsightly.

- J. P. Bell  
Fort Smith, Arkansas
  
- Carolyn Plank  
Fort Smith, Arkansas
  
- John McIntosh  
Fort Smith, Arkansas
  
- Candy Bell  
Fort Smith, Arkansas
  
- Tom Raymond  
Fort Smith, Arkansas
  
- Anna Raymond  
Fort Smith, Arkansas
  
- William M. Smith  
Fort Smith, Arkansas

The following individuals addressed the Board and spoke in favor of Item No. 1B. Concern was expressed with the potential for rate increase for all residents if the Board opts to return to manual collection, as well as potential loss of automated service for neighborhoods currently receiving automated collection.

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- Walton Maurras  
Fort Smith, Arkansas
- Joel Culberson  
Fort Smith, Arkansas

Director Catsavis inquired if other neighborhoods would lose their current automated collection service if the Park Hill East neighborhood is reverted back to manual pickup.

Director of Sanitation Baridi Nkokheli advised that a reevaluation of current routes would have to be done to ensure routes are run efficiently. Such could lead to some neighborhoods losing their current automated service.

Director Good thanked citizens involved on both sides of the issue for their input and evident devotion to their city; however, he conveyed that citywide conversion to automated collection will provide a cost savings to the city, as well as increase efficiency.

Director Settle expressed the Board of Directors have to make hard decisions being mindful of long term goals for the betterment of the city as a whole as well as budget feasibility. He attributed stagnant rates to the implementation of automated service, despite the increased gas prices over the past several years. He requested City Attorney Jerry Canfield provide an opinion of potential legal implications if the Board opts to keep the automated curbside collection service.

Mr. Canfield advised anything is possible; however, such is a policy decision, which is not typically referred to public vote.

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Director Merry indicated he is in favor of providing both manual and automated service, and is hopeful the Sanitation Department can find it financially feasible to do so.

Director Good reiterated the Board has to keep in mind this action affects the city as a whole and there are unknown repercussions to decision to revert to manual collection. Although Director Merry is hopeful both options are financially feasible, the only known facts prove that automated collection is more cost effective.

Director Weber commended the neighborhood coalition for their efforts. She also indicated that promises were made to citizens; therefore, she insisted promises need to be upheld.

Director Good advised he was unaware of promises being made and if such was done, it was out of turn because it is the Board of Directors who is ultimately accountable.

Tyler, seconded by Catsavis, moved adoption of Item No. 1A. Prior to the vote, Director Good offered a substitute motion to adopt Item No. 1B. The motion was seconded by Director Settle. The members voted as follows: ayes – Good, Hutchings and Settle; nays – Tyler, Catsavis, Weber and Merry. The Mayor declared the motion defeated.

The original motion remaining on the floor to adopt Item No. 1A, the members voted as follows: ayes – Tyler, Catsavis, Weber and Merry; nays – Good, Hutchings and Settle. The Mayor declared the motion carried and the resolution was adopted and given number R-44-12.

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Administrator Gosack advised staff would prepare notice of the conversion date and estimated two or three weeks. Such will allow adequate time for notification to residents.

Mayor Sanders recognized Boy Scout John Spradling, Troop 380, who was in attendance to earn his Communication Badge.

Item No. 2 was an ordinance amending the 2009 Unified Development Ordinance of the City of Fort Smith (*signage in ETJ area and Phoenix Avenue Extension*)

Director of Development Services Wally Bailey briefed the Board on the item as presented at the February 28, 2012 study session. The amendments affect the sign regulations in the Extraterritorial Jurisdiction (ETJ) and the Phoenix Avenue corridor. Due to concerns expressed at and after the February 28, 2012 study session in regard to the portion of the amendment related to billboard signs in the ETJ and with Phoenix Avenue signs, Mr. Bailey advised it has been requested that Item No. 2 be amended to include consideration of only the regulations relative to business signs in the ETJ area allowing the above stated portions to go back to the Planning Commission for further study.

Director Catsavis requested that notification in relation to the Phoenix Avenue signage amendment require notification to all property owners on Phoenix Avenue rather than just the adjacent property owner.

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Weber, seconded by Hutchings, moved to amend the ordinance to include only business signs in the ETJ and refer issues regarding billboard signs in the ETJ and Phoenix Avenue signs back to the planning Commission for further review.

Prior to the vote, Mr. Bailey requested the Board's direction on future amendments in relation to billboards.

Directors Tyler and Hutchings recommended staff review regulations of other cities for comparison whereby Director Settle requested staff review Frisco, Texas.

The motion remaining on the floor to amend Item No. 2, and the members all voting affirmatively, the Mayor declared the motion carried.

Hutchings, seconded by Good, moved adoption of the ordinance as amended. 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. Settle, seconded by Merry, 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. 19-12.

Item No. 3 was an ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan from General Commercial to Office, Research and Light Industrial for property located at 1000 Dodson Avenue, 1300, 1305, 1315, 1400, 1406, 1408 South 11<sup>th</sup> Street and 1101 South "N" Street; Rezoning from Transitional (T) to Industrial Light (I-1) by*

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*extension for property located at 1300, 1305, 1315, 1400, 1406, 1408 South 11<sup>th</sup> Street and 1101 South "N" Street)*

Mr. Bailey briefed the Board on the item advising such is per the application of August Khilling and Bobby Becker. The proposed rezoning and Master Land Use Plan amendments are merely corrective in nature to reflect the industrial development of the area. Such will also eliminate existing non-conforming land use issues. A neighborhood meeting was held on February 9, 2012 with no neighboring property owners in attendance. The Planning Commission held a public hearing on February 14, 2012 with no individual present to speak in opposition. The Planning Commission approved both the rezoning and Master Land Use Plan amendment by a vote of nine (9) in favor and zero (0) opposed.

Merry, seconded by Settle, 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. 20-12.

Item No. 4 was an ordinance rezoning identified property and amending the zoning map *(from Industrial Light (I-1) to Residential Multi-Family High Density (RM-4) by extension for property located at 1501 and 1503 North 7<sup>th</sup> Street)*

Administrator Gosack briefed the Board on the item advising such is per the request of Eplurivus West. The purpose of the rezoning is to allow for a building permit to be issued on a single family home. The structure is located within the May Branch

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regulatory floodway portion of the floodplain, which makes development or redevelopment within a floodway highly restricted. The requested building permit will allow the owner to elevate the structure to meet current floodplain development regulations. The Planning Commission held a public hearing on February 14, 2012 with no individual present to speak in opposition. The Planning Commission approved the rezoning by a vote of nine (9) in favor and zero (0) opposed.

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. 21-12.

Item No. 5 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 (*4209 North "N" Street*)

Administrator Gosack briefed the Board on the item advising the structure has been determined to be unsafe and detrimental to the public welfare; therefore, he recommended approval.

Tyler, 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

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the motion carried. Settle, seconded by Good, 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. 22-12.

Item No. 6 was an ordinance amending Chapter 4, Article I of the Fort Smith Municipal Code regarding the Animal Services Advisory Board ~ *Requested at the February 21, 2012 regular meeting ~*

Police Chief Kevin Lindsey briefed the Board on the item advising such was requested at the February 21, 2012 regular meeting. The proposed ordinance merely reduces the number of members on the Animal Services Advisory Board from nine (9) to seven (7) members, decreasing by one (1) veterinarian and one (1) non-profit animal interest group.

Regarding Item No. 6 the following individual was present to address the Board.

- Joel Culberson  
Fort Smith, Arkansas

Re: He clarified the purpose of the requested amendment was originally due to lack of applicants; however, he requested the item be tabled until after the March 15, 2012 special study session.

Police Chief Lindsey advised a typographical error was discovered within the proposed ordinance; therefore, a revised ordinance was distributed to each member of the Board prior to the meeting.

Director Settle advised of his intent to vote 'no' on the item citing his belief that the nine (9) member panel is appropriate, as originally recommended by the Animal Services

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Task Force. He further noted an additional veterinarian has now expressed interest in serving on the Animal Services Advisory Board; therefore, he urged the Board to defeat the measure.

After brief discussion, Director Tyler moved to table the item until after the March 15, 2012 special study session. There being no second offered, the Mayor declared the motion defeated for lack of a second.

Merry, seconded by Weber, moved adoption of the ordinance, 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 voted as follows: ayes – Weber and Merry; nays – Tyler, Good, Hutchings, Catsavis and Settle. The Mayor declared the motion defeated.

Item No. 7 was a resolution expressing appreciation and accepting the report of the Animal Services Task Force ~ *Requested at the February 28, 2012 study session* ~

Police Chief Lindsey briefed the Board on the item advising the proposed resolution was requested at the February 28, 2012 study session.

The following individuals were present to address the Board.

- EA Mayo  
Fort Smith, Arkansas

Re: Expressed uncertainty of the Animal Services Advisory Board's original purpose and efficiency; therefore, she urged more public education regarding the matter.

Director Settle expressed appreciation to the Animal Services Task Force for a job well done and offered an apology citing such is overdue.

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Director Good also expressed appreciation to the Police Department for their time to bring the issues before the Board.

Director Merry reiterated the comments of Director Settle and further advised the Board should express more gratitude toward all citizens serving on any board or commission.

Mayor Sanders advised that, upon term expiration, a letter of gratitude is forwarded to all individuals serving on any board or commission.

Settle, seconded by Hutchings, moved adoption of the resolution. The members all voting affirmatively, the Mayor declared the motion carried the resolution was adopted and given No. R-45-12.

Director Settle moved to place an item on the March 15, 2012 special study session to review and prioritize the recommendations previously submitted by the Animal Services Task Force. Agenda placement requires two (2) directors; therefore, Director Hutchings seconded the motion.

Item No. 8 was an ordinance amending Ordinance No. 15-12 to correct the boundary description of Ward 4.

Administrator Gosack briefed the Board on the item advising such is merely to correct a technical error in the ward boundary description originally included within Ordinance No. 15-12.

Hutchings, seconded by Settle, 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

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ordinance for its readings and the members all voting affirmatively, the Mayor declared the motion carried. Settle, seconded by Good, moved adoption of Section 4 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. 23-12.

Item No. 9 was a resolution opposing the initiative known as the Natural Gas Severance Tax Act of 2012 ~ *Requested at the February 28, 2012 study session* ~

Administrator Gosack briefed the Board on the item advising such was requested at the February 28, 2012 study session. Upon approval, the resolution merely conveys the City's opposition to the proposed initiative.

Director Tyler noted the State of Arkansas is experiencing a shortfall in funding to repair major highways and advised the legislature will soon be considering House Joint Resolution No. 1001, which levies a one-half percent (0.5%) sales tax for necessary repairs. Upon approval of the measure by the legislature, the issue will be included on the 2012 General Election ballot. He urged the Board to support the proposed state measure.

Director Weber advised she and her husband are natural gas royalty owners; therefore, she obtained a legal opinion as to whether a conflict of interest would exist if she voted on the item. It was determined that no conflict of interest exists; however, she requested Mr. Canfield provide a brief explanation.

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Mr. Canfield provided the requested explanation and confirmed that, since the matter is a statewide political issue, no conflict of interest exists and any Board member is permitted to vote on the item.

Merry, seconded by Weber, moved adoption of the resolution. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-46-12

The Consent Agenda (Item No. 10) was introduced for consideration, the items being as follows:

- A. Resolution granting a temporary revocable license for the placement of a sign and landscaping within a public right-of-way and authorizing the Mayor to execute agreement *(1400 Fianna Way - Fianna Property Owners Association)*
- B. Resolution authorizing the acquisition of real property interests for Jenny Lind Road and Ingersoll Avenue Widening, Project No. 07-01-A, AHTD Job No. 040471 *(\$167,000.00 / Engineering Department / Budgeted – Sales Tax Program Fund)*
- C. Resolution approving agreement for property and automotive insurance on city owned automobiles and property
- D. Ordinance declaring an exceptional situation and waiving the requirements of competitive bidding and approving an agreement with Sebastian County for the District Court computer system *(\$90,000 / District Court / Budgeted – Transfer from Police Department)*
- E. Resolution authorizing the execution of a non-residential solid waste collection and disposal permit and agreement with Deffenbaugh of Arkansas, LLC

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- F. Resolution authorizing Contract Amendment No. 2 with Crawford Construction Company for the renovation and additions to the transit facilities located at 6821 Jenny Lind Road, Project No. 10-02 (\$41,238.00 / Transit Department / Budgeted – Encumbered from 2010 Budget – 100% funded by American Recovery Reinvestment Act of 2009)
- G. Resolution accepting completion of and authorizing final payment for the renovation and additions to the transit facilities located at 6821 Jenny Lind Road, Project No. 10-02 (\$118,915.57 / Transit Department / Budgeted – Encumbered from 2010 Budget – 100% funded by American Recovery Reinvestment Act of 2009)
- H. Resolution authorizing the Mayor to execute Amendment No. 1 to Authorization No. 2 with Morrison-ShIPLEY Engineers, Inc. for engineering services for Zero Street Outfall Sewer Improvements Phase II (\$10,590.00 / Utility Department / Budgeted - 2009 Sales Tax Bonds)
- I. Resolution accepting construction as complete and authorizing final payment to Forsgren, Inc. for the Zero Street Outfall Sewer Improvements Phase II (\$173,148.05 / Utility Department / Budgeted - 2009 Sales Tax Bonds)
- J. Resolution authorizing the Mayor to execute a joint use agreement with Arkansas Valley Electric Company in connection with city sewer lines at Chaffee Crossing
- K. Resolution authorizing the Mayor to execute a deed and access easement with property owner on the Lake Fort Smith Water Treatment Plant property
- L. Resolution authorizing the Mayor to execute Authorization No. 4 with CDM Smith, Inc. for providing engineering services associated with the Mill Creek Wastewater Pump Station Wet Weather Improvements (\$624,639.00 / Utility Department / Budgeted - 2009 Sales Tax Bond)

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- M. Resolution authorizing Change Order No. 7 with Crossland Heavy Contractors, Inc. for construction of the Lake Fort Smith Water Treatment Plant – Contract 3 (\$47,029.00 / Utility Department / Budgeted – 2008 Revenue Bonds)
- N. Resolution authorizing the Mayor to execute Amendment No. 1 to the agreement with Mickle Wagner Coleman, Inc. providing engineering services associated with the Lake Fort Smith Water Transmission Line Corridor (\$1,195,800.00 / Utility Department / Budgeted – 2008 Revenue Bonds)
- O. Resolution authorizing the Mayor to execute Amendment No. 1 to Authorization No. 1 with RJN Group, Inc. for providing engineering services associated with the Basin 11-1 Sewer Improvements (\$28,462.00 / Utility Department / Budgeted – 2009 Sales Tax Bond)
- P. Ordinance declaring an exceptional situation and waiving the requirements for competitive bidding for the lease purchase of radio communication equipment and authorizing the Mayor and City Administrator to negotiate and execute all necessary lease documents regarding said agreement

The Mayor advised that Item No. 10C had been withdrawn from consideration.

Hutchings, seconded by Good, moved adoption of all consent agenda items, with the exception of Item No. 10C, which was withdrawn. The members all voting affirmatively, the Mayor declared the motion carried and the ordinances and resolutions were adopted with the ordinances given No. 24-12 and 25-12 and the resolutions numbered R-47-12 through R-59-12 respectively.

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

- ♦ Mayor Sanders

Re: Regarding the upcoming special election on March 13, he announced that early voting has started and will continue through March 12. He encouraged

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citizens to vote for all ballot issues and reminded such not a tax increase, but merely the continuance of an existing tax.

♦ Director Settle

Re: Due to repeated calls regarding residents continually leaving their trash cans on the street before and after sanitation pickup, he moved discussion relative to all aspects of the existing 'trash can policy' be placed on an upcoming study session agenda. Such requires two (2) directors for agenda placement; therefore, Director Weber seconded the motion.

♦ Director Good

Re: 1. Expressed appreciation to Fire Chief Mike Richard, Director of Engineering Stan Snodgrass, Director of Parks and Recreation Mike Alsup, Administrator Ray Gosack, Director of Utilities Steve Parke, Director Merry, Director Weber, Director Settle and Director Tyler for attending the Ward 2 meeting on March 1, 2012.

2. Announced the City of Fort Smith was recently named a "Tree City USA" for the sixth consecutive year and received the "Tree City Growth Award" from the Arbor Day Foundation. Due to such, he expressed much appreciation to the Parks Department for demonstrating progress in the community forestry program.

♦ Director Merry

Re: Expressed appreciation to Police Chief Lindsey for providing a brochure designed to educate the community on the tethering ordinance.

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.

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

- ♦ EA Mayo  
Fort Smith, Arkansas

Re: Expressed discontent with the manner in which the Mayor addresses citizens when they address the Board alleging his is *“rude, arrogant, disrespectful and pompous.”*

Mayor Sanders discounted the allegation and advised of his duty to ensure all citizens adhere to meeting rules when addressing members of the Board.

- ♦ Joel Culberson  
Fort Smith, Arkansas

Re: 1. Conveyed much disappointment with adoption of Item No. 1A to reinstate manual sanitation collection in the Park Hill East neighborhood and questioned the petition process the residents utilized to request such.

2. As a member of the Animal Services Task Force (ASTF), he expressed much appreciation to the Board that the ASTF recommendations will now be thoroughly reviewed at the March 15, 2012 special study session.

- ♦ Carolyn Plank  
Fort Smith, Arkansas

Re: Advised the Fort Smith Neighborhood Coalition will meet on March 19, 2012 to discuss participation in the Great Arkansas Cleanup, with the Fort Smith cleanup scheduled for April 21. She challenged all citizens to get involved and plan to pick up litter in their neighborhoods on said date.

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Mayor Sanders advised more information regarding Fort Smith's participation in the Great Arkansas Cleanup will be forthcoming. He further noted that Van Buren has planned participation in the event on April 21 as well.

There being no further business to come before the Board, Good moved that the meeting adjourn. The motion was seconded by Hutchings, and the members all voting aye, the Mayor declared the motion carried and the meeting stood adjourned at 7:35 p.m.

**APPROVED:**

  
\_\_\_\_\_  
Mayor

**ATTEST:**

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