

MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ FEBRUARY 16, 2016 ~ 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 Billy McDaniel, Eastside Baptist Church, followed by the Pledge of Allegiance.

On roll call, the following members of the Board were present: Directors Keith Lau, Andre' Good, George Catsavis, Tracy Pennartz, Kevin Settle, and Don Hutchings. Director Mike Lorenz arrived during presentation of Item No. 1. The Mayor declared a quorum present.

Mayor Sanders 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 2, 2016 regular meeting were presented for approval. Catsavis, seconded by Pennartz, moved approval of the minutes as written. The members present all voting aye, the Mayor declared the motion carried.

Item No. 1 was a presentation by the Girl Scout Diamonds of Arkansas, Oklahoma, and Texas. Girl Scout Troop 4383 Leader Linda Kaelin and Girl Scout Cadet Kathryn Kaelin addressed the Board advising cookie sales began February 13 and will conclude March 6, 2015. Cookie orders are due to arrive by the end of March. There are 8 different varieties including a gluten-free cookie. Cookies are \$4 per box and \$5 per box for the gluten-free cookies.

Girl Scout Jordan Geoates of Troop 4383 addressed the Board advising how funds will be utilized while Girl Scout Troop Leader Aimee Edens, Heidi West, Allie Reed, Louisa Perryman, and Allison Edens of Troop 4291 presented boxes of cookies

February 16, 2016 Regular Meeting

to the Mayor, each member of the Board and Administration, and served cookies to all those in attendance.

Item No. 2 was a resolution authorizing participation by the City of Fort Smith ("City") in the Municipal Property and Municipal Vehicle Programs sponsored by the Arkansas Municipal League ("AML") and authorizing the execution of a memorandum of understanding between the City and the AML as it relates to those programs ~ *Settle/Pennartz placed on the agenda at the February 9, 2016 study session ~*

Acting City Administrator Jeff Dingman briefed the Board on the item advising such is presented per the request of the Board at the February 9, 2016 study session. The memorandum of understanding's intent is to document the relationship between the City and AML as it relates to the City's participation in the programs. The framework for the memorandum of understanding was obtained from the published materials outlining AML programs as well as with the assistance of the City Attorney Jerry Canfield, Mr. Scott Clark from Brown Hiller & Clark, and AML. Approval of the presented item would adopt the self-funded property and vehicle programs offered by the AML.

The following individuals were present to address the Board:

- Don Zimmerman, Executive Director of the Arkansas Municipal League North Little Rock, AR

Re: Spoke in favor of the item, alleging the coverage would be broader and would result in a cost savings on the premium. He further advised that AML has served all 500 cities in the state and would like the opportunity to better serve the City of Fort Smith. He commended the inclusion of the memorandum of understanding that allows any ambiguities to be clarified and encouraged support of the item.

- Bob Honea
Fort Smith, AR

Re: Spoke in opposition of the item, alleging a vast difference in the coverages the City has with Travelers Insurance

February 16, 2016 Regular Meeting

compared to the coverages AML has offered. He has no preference who the City uses as an insurance provider, however, he does want the City to have coverage that is comparable to the coverage they already enjoy. He advised the cost difference on premiums are recognized because AML programs do not provide full coverage whereas the City's current plan does provide full coverage. He warned adoption of the AML plan will open the City of Fort Smith up to risks. Noting the City would have uninsured losses if we experience another event such as the tornado of 1996 or the hail storm of 2008. Indicated that the memorandum of understanding with AML is only valid on claims up to \$100,000.00. If the claim exceeds \$100,000.00, it is covered by the reinsurance agencies, who are not bound by the memorandum of understanding. He also questions why such was not opened up to competitive bidding and urged the Board to consider the risk of adoption of such plan.

- Philip Merry
Fort Smith, AR

Re: Expressed concern and his desire for the City to be taken care of properly. He advised the Board to inquire if all 13 reinsurance companies were aware of the provisions of the memorandum of understanding and if they would abide by them. He questioned if the reinsurance agencies offer actual cash value or replacement cost. If only actual cash value is provided, such would be devastating to AML as well as to the City in a catastrophic event. He alleged AML is a non-admitted carrier that the State of Arkansas does not support.

Settle, seconded by Pennartz, moved adoption of the resolution.

Director Catsavis requested Mr. Scott Clark, of Brown Hiller & Clark, share his position on the issue. Mr. Clark echoed the above-stated concerns in regard to the reinsurance subsidiaries. He read verbatim the legal dictionary definitions of reinsurance, which states reinsurance only covers what is in the original policy. The memorandum of understanding alters the original policy, therefore, can be considered null and void as it pertains to the reinsurance subsidiaries.

February 16, 2016 Regular Meeting

Director Lau asked Mr. Zimmerman if the memorandum of understanding is binding to the reinsurance subsidiaries and inquired if the City's legal counsel had reviewed the reinsurance contract.

Mr. Zimmerman advised the memorandum of understanding is not binding to the reinsurance subsidiaries. The reinsurance subsidiaries cover up to \$500 million and are all major, A-rated companies.

Colby Roe, attorney with Daily & Woods, P.L.L.C., confirmed that the reinsurance subsidiaries are not bound to the stipulations of the memorandum of understanding. Advising legal had requested the reinsurance policy from Mr. Alie Bahsoon, purchasing manager for the City, and was advised such had not been provided to the City. He further recommends review of such before entering into an agreement.

Mr. Zimmerman noted the reinsurance policy had been provided to the City and Board at the January 26, 2016 study session.

Director Pennartz clarified the necessity for assuring the enumeration schedule is accurate and up-to-date with AML programs and inquired if replacement cost is provided.

Mr. Zimmerman confirmed the benefit of the enumeration schedule being accurate and up-to-date and advised AML can assist with such update. He further advised that replacement cost is provided and noted the comparison that was provided to the Board before the meeting convened.

Director Hutchings requested the cost saving figures of switching to AML programs from Mr. Dingman, Mr. Zimmerman, and Mr. Bahsoon.

February 16, 2016 Regular Meeting

Mr. Dingman and Mr. Bahsoon advised cost saving is around \$200,000 and Mr. Zimmerman advised the cost savings will be \$200,000 at minimum due to the lower deductibles they offer as well.

The motion remaining on the floor, the members voted as follows: ayes – Good, Lorenz, Pennartz, Settle, Hutchings; nays – Lau and Catsavis. The Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-13-16.

The Consent Agenda (Item No. 3) was introduced for consideration, the items being as follows: *(Any member of the Board may offer a motion, without necessity of a second or vote, to remove an item from the consent agenda for separate consideration.)*

- A. Resolution to accept the bid and authorize a contract for the construction of the Jenny Lind Road & Ingersoll Avenue Widening, Project No. 07-01-A (\$28,830,649.66 / *Engineering Department / Budgeted – Sales Tax Program Fund*) ♦
- B. Resolution to accept the bid and authorize a contract for the 2015 Drainage Improvements Phase B, Project No. 15-06-B (\$1,329,822.35 / *Engineering Department / Budgeted – Sales Tax Program Fund*) ♦
- C. Resolution determining default and termination of contract with Dixon Construction, Inc. for the construction of the Greg Smith Riverwalk (West River Front Trail) and authorizing the City Administrator to investigate necessary action to secure the completion of the subject project
- D. Resolution accepting the bid and authorizing the Mayor to execute a contract with Ace Surfaces North America, Inc. for construction of the Creekmore Park and Tilles Park Tennis Court Resurfacing Project (\$286,316.47 / *Parks and Recreation Department / Budgeted – 1/8 cent sales tax*)
- E. Resolution accepting the project as complete and authorizing final payment to KBM Industrial Services, Inc. for the Lee Creek Water Treatment Plant Trash Rake Access Platforms (\$39,971.61 / *Utility Department / Budgeted – 2015 Operations Budget*)
- F. Resolution authorizing Change Order No. 1 with Goodwin & Goodwin, Inc. for the Massard Wastewater Treatment Plant Sewer Repair (\$7,359.00 / *Utility Department / Budgeted – 2014 Sales and Use Tax Bonds*)

February 16, 2016 Regular Meeting

- G. Resolution accepting the project as complete and authorizing final payment to Goodwin & Goodwin, Inc. for the Massard Wastewater Treatment Plant Sewer Repair (\$37,375.06 / *Utility Department / Budgeted – 2014 Sales and Use Tax Bonds*)
- H. Resolution authorizing the Mayor to execute Amendment No. 2 to the agreement with Mickle Wagner Coleman, Inc. for the Lake Fort Smith Water Transmission Line – Phase I (\$147,191.00 / *Utility Department / Budgeted – 2014 Sales and Use Tax Bonds*)
- I. Resolution authorizing the Mayor to execute an agreement and Authorization No. 1 with CDM Smith, Inc. for Consent Decree Program Management Services (\$8,514,088.00 / *Utility Department / Budgeted – Water and Sewer Operating Revenue Funds*) ♦
- J. Resolution authorizing the Mayor to execute an agreement with RJN Group, Inc. for providing engineering services for the Collection System Defect Remediation Year 2016 Sewer System Assessments (\$1,647,804.41 / *Utility Department / Budgeted – 2015 Revenue Bonds*) ♦
- K. Resolution authorizing the Mayor to execute an easement with the City of Mountainburg
- L. Resolution authorizing the Mayor to execute an agreement and Authorization No. 1 with Hawkins-Weir Engineers, Inc. for engineering services associated with Sub-Basins P002 and P003 Capacity Improvements (\$648,440.00 / *Utility Department / Budgeted – 2015 Revenue Bonds*) ♦
- M. Resolution authorizing the City Administrator to accept offers made by property owners for the acquisition of real property interests for the Lake Fort Smith Water Project (\$492,000.00 / *Utility Department / Budgeted – Water and Sewer Capital Improvement Fund*)
- N. Resolution authorizing the Mayor to execute an agreement with Shannon & Wilson for engineering services associated with the Lake Fort Smith Water Project Landslide Remediation Design (\$106,300.00 / *Utility Department / Not Budgeted – Water and Sewer Capital Improvement Fund*)

Regarding Item No. 3A the following individual was present to address the Board:

- David Armbruster
Fort Smith, AR

Re: Inquired why sidewalks are included on both sides of Ingersoll Avenue within the project when there are hazardous streets in and around schools that lack sidewalks.

February 16, 2016 Regular Meeting

Regarding Item No. 3C the following individuals were present to address the Board:

- Morlin Dixon, Dixon Contracting Inc.
Fort Smith, AR

Re: Spoke in opposition of the item advising he was in receipt of a letter from the Parks Director, Doug Reinert noting desire to terminate the contract. He expressed his desire to complete the project and indicated they are within 30 days of completion. He addressed pending issues due to damage from the December flooding. Expressed expense to repair flood-damaged portion is the City's liability, and he would like compensation to repair such damage.

- Matt Ketcham
Fort Smith, AR

Re: Spoke in opposition of the item and advised he serves as legal counsel for Dixon Contracting, Inc. He provided background information regarding history with the project and urged the Board to allow Dixon Contracting to complete the project.

Mayor Sanders requested Mr. Reinert brief the Board on the item.

Mr. Reinert provided details relating to the decision to terminate, advising much effort was exerted to resolve the disputes before the decision to terminate was made.

Hutchings, seconded by Pennartz, moved adoption of all consent agenda items.

Regarding Item No. 3A Director Settle requested Director of Engineering, Stan Snodgrass communicate to Mr. Armbruster what the common practice is of such projects and inquired of the completion date for the project.

Mr. Snodgrass advised the inclusion of sidewalks on both sides of a major street project is common practice and in line with the Master Street Plan specifications. He noted the Sidewalk Program provided by the Street Department is appropriate to address Mr. Armbruster's concerns. He further explained he's been advised the Street Department's focus is to first repair damaged sidewalks and then to concentrate on the

February 16, 2016 Regular Meeting

installation of new sidewalks in close proximity to schools. He also noted past research revealed potential issues due to steep grades and condemnation issues in and around some schools that will have to be addressed.

In regard to the completion date of the project, Mr. Snodgrass advised the contract allows 720 days and estimated the start date to be mid-April 2016; therefore, the completion date should be around the end of March 2018.

Mayor Sanders advised the Sidewalk Program has been able to expand their efforts over the past couple of years due to the increased funding from the state half-cent sales tax on gasoline.

Regarding Item No. 3C Director Catsavis inquired if Dixon Contracting could assure they would be complete in 30 days.

Mr. Ketcham stated that his client reassures he can complete the project in 30 days and they are not aware of any unresolvable disputes that Mr. Reinert referred to.

Catsavis moved to remove Item No. 3C from the consent agenda and for it to be voted on separately.

Mayor noted such is a proper motion and Item No. 3C will be discussed following action on the consent agenda.

Regarding Item No. 3I, Director Pennartz expressed the necessity of consulting the City's Information Technology (IT) department regarding the computer software/hardware, noting concern with integration capabilities.

Director of Utilities, Steve Parke advised the gaps have been identified and plans to work toward filling those gaps with the IT department.

February 16, 2016 Regular Meeting

Director of IT Department, Russell Gibson advised it is prudent to involve the IT Department at the outset of the project and moving forward to ensure the appropriate questions are asked and addressed.

Director Settle expressed discontent regarding the information not being provided to the Board prior to its release in the board packet. He feels the Board should be allowed ample time to review items of such magnitude.

Mr. Parke advised that because the nature of the process, the documents were not available for distribution prior to it being distributed in the board packet.

Settle, seconded by Lau, moved to table Item No. 3I for two (2) weeks to allow the Board ample time to make an informed decision. The members all voting affirmatively, the Mayor declared the motion carried.

Director Pennartz and Lau requested the IT and Finance Department thoroughly review Section 7 of the agreement as it pertains to additional software, licensing fees, and implementation efforts to ensure integration with the current and future enterprise systems are feasible.

Regarding Item No. 3N, Director Lau requested Mr. Parke brief the board on the item and inquired an estimated cost of the remediation.

Mr. Parke advised the landslide has resulted in an unstable earth mass slightly larger than one-half acre. The landslide on the east side of the dam created a scarp about 250 feet in length, with the earth and trees stopping about 30 feet above the outlet works service road. It also damaged 50 feet of the water line servicing the intake tower requiring temporary repair. There are 500 feet of the waterline that will need to be relocated, removal of the slide material will be required, and measures to buttress the remaining hillside will need to be put in place. The landslide on the west side of the

February 16, 2016 Regular Meeting

dam is located about 850 feet north of the dam centerline, above the entrance to the auxiliary spillway, and about 400 feet north of the scenic overlook of the lake on Highway 71. If the unstable landslide area continues to move, it could cause the water line servicing Chester, Winslow, and Lake Fort Smith State Park to fail and potentially threaten the Highway 71 pavement. Remedial measures are required to support the area and prevent further movement. He further advised due to the amount of rainfall Crawford County has been given a disaster declaration and relief can be applied for. If relief is approved, the City would only be responsible for 12.5% of the remediation cost. A ball park estimate would be in the hundreds of thousands of dollars and would come from the operating budget.

Hutchings, seconded by Pennartz, moved adoption of all consent agenda items with the exception of Item No. 3C that was removed from the consent agenda for separate consideration and Item No. 3I that was tabled for two (2) weeks. The members all voting affirmatively, with the exception of Director Settle voting "No" on Item 3J, the Mayor declared the motion carried and the resolutions were adopted and numbered R-14-16 through R-26-16 respectively.

Catsavis, seconded by Lorenz, moved adoption of Item No. 3C.

There was very lengthy discussion with multiple directors offering various inquiries regarding compensation for flood-damaged work already provided, insurance coverages, the details relating to the decision to terminate, and how the contract will get completed if the contract is terminated.

A response was provided for each of the inquiries whereby it was clarified the flooding resulted in the loss of the topsoil, seed, and sod, and the flood insurance only covered the structures, not the grounds. Extensive detail was offered regarding a

February 16, 2016 Regular Meeting

multitude of issues and extensive efforts to resolve said issues, as well as the process that lead to the decision to terminate. A settlement agreement has been unsuccessful to date but negotiations continue and if terminated, the bonding company will be notified and will have the option to complete the project.

Director Pennartz called the question, and the motion remaining on the floor, the members voted as follows: ayes – Lau, Lorenz, Pennartz, Settle, and Hutchings; nays – Good and Catsavis. The Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-16-16.

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

➤ Mayor Sanders

- Re:
1. Thanked all who participated in the Fort Smith Marathon and made it a success.
 2. Announced early voting started today February 16, 2016 and urged citizens to vote.
 3. Advised of the necessity to call a special meeting so the Board can review the applicant resumes for the position of City Administrator as well as discuss the interview schedule after the finalists are selected.

Pennartz, Lau, Settle and Hutchings moved to call a special meeting on February 18, 2016 at 6:30 p.m. at the River Park Events Building, West Room. The Mayor declared the motion carried.

➤ Director Settle

- Re: Congratulated Coach Louis Whorton on his announcement of plans to retire from UAFS and encouraged citizens to attend sports events at UAFS and support the local community.

The Board entered into executive session at approximately 8:09 p.m. and after reconvening, the Mayor announced the following appointment nominations:

February 16, 2016 Regular Meeting

ADVERTISING & PROMOTIONS COMMISSION

Storm Nolan (reappointment)
Term expires December 31, 2019

ELECTRIC CODE APPEALS BOARD

Frank Glidewell (reappointment)
Terry Buzbee
Terms expire March 31, 2021

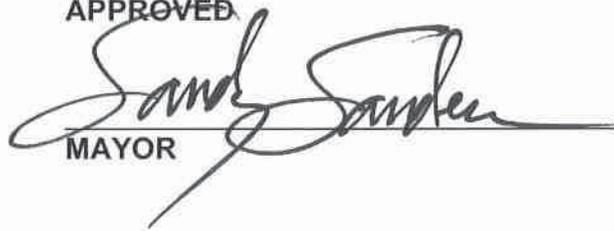
PLUMBING ADVISORY BOARD

Charles Shank (reappointment)
Matthew Blaylock (reappointment)
James Dempsey
Terms expire February 28, 2020

Hutchings, seconded by Pennartz, moved acceptance of the above-named nominations. The members all voting affirmatively, the Mayor declared the motion carried.

There being no further business to come before the Board, Settle moved that the meeting adjourn. The motion was seconded by Catsavis, and the members present all voting aye, the Mayor declared the motion carried and the meeting stood adjourned at 8:14 p.m.

APPROVED



MAYOR

ATTEST



CITY CLERK