

MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ MAY 3, 2016 ~ 6:00 P.M.

FORT SMITH PUBLIC SCHOOLS SERVICE CENTER

The meeting was called to order by Vice-Mayor Kevin Settle, presiding. Invocation was given by City Attorney Jerry Canfield, followed by the Pledge of Allegiance.

On roll call the following members of the Board were present: Directors Andre' Good, Mike Lorenz, George Catsavis, Tracy Pennartz and Kevin Settle; absent Keith Lau and Don Hutchings. The Vice-Mayor declared a quorum present.

Vice-Mayor Settle announced that Mayor Sandy Sanders will not be in attendance; therefore, he will preside over the meeting. He further noted the absence of Director Lau, who is out of town, and Director Hutchings, who is recovering from a motorcycle accident. Due to the aforementioned, Vice-Mayor Settle extended a speedy recovery to Director Hutchings.

Vice-Mayor Settle 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 April 19, 2016 regular meeting was presented for approval.

Lorenz, seconded by Good, moved approval of the minutes as written. The members present all voting aye, the Mayor declared the motion carried.

With regard to the time limit policy for persons wishing to address the Board, the Vice-Mayor communicated that five (5) minutes per side would be granted for controversial items with three (3) minutes for rebuttal per side, and two (2) minutes for comments only.

Vice-Mayor Settle announced that Item No. 1 is an update regarding the Darby Legacy Project; however, such has been postponed and moved to the May 17, 2016 regular meeting.

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The Vice-Mayor announced that this was the time and place set for a public hearing regarding the Five-Year Consolidated Plan for Program Years 2016-2020 for the City of Fort Smith, Arkansas and authorizing its submission to the United States Department of Housing and Urban Development (HUD) ♦ *Future Fort Smith Item*. Notice of the public hearing had been duly published as required by law. Following the public hearing, consideration of a resolution authorizing same would be given (Item No. 2).

Director of Community Development Matt Jennings briefed the Board on the item as discussed at the March 8, 2016 study session. The Community Development Advisory Committee (CDAC) has reviewed the proposed Five-Year Consolidated Plan and recommend its approval.

There being no individual present to speak on the item, Vice-Mayor Settle closed the public hearing.

Pennartz, seconded by Good, moved adoption of the resolution. Prior to the vote, Director Good acknowledged the process requires the opportunity of public input via public hearings; therefore, he questioned the level of citizen participation.

Mr. Jennings noted the opportunity for public input was publicized via newspaper advertisements, public notices emailed to the media, and notices mailed to those included on a mailing list that the Community Development Department maintains; however and unfortunately, although the opportunity for public input was adequately provided, citizen participation was minimal.

Director Pennartz inquired where the public hearings were held citing the location (Elm Grove Community Center) could possibly be the issue for minimal citizen participation. Regarding the consultant cost-sharing agreement, she questioned why the

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cost has almost doubled for Fort Smith. The State of Arkansas provides some allowance for adjustment in percentages per category; therefore, she inquired if the CDAC has discussed possible re-prioritization of said percentages.

Mr. Jennings noted the cost-sharing amount for the Consolidated Plan (2011-2015) was \$20,358.28; however, the cost-sharing amount for the proposed Consolidated Plan (2016-2020) is \$14,625.00. He clarified the cost-sharing amount for the Consolidated Plan (2011-2015) was in an increase from previous years due no other entities wishing to participate in the analysis for Impediments to Fair Housing, which increased the City of Fort Smith's share. With regard to allocated percentages, the matter has not been considered or discussed by the CDAC.

Vice-Mayor Settle extended much appreciation to City staff and the CDAC for their time and service associated with the item.

The motion remaining on the floor and the members present all voting affirmatively, the Vice-Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-59-16.

Item No. 3 was an ordinance rezoning identified property and amending the zoning map (*from Not Zoned to Residential Single Family Medium/High Density (RS-3) by classification located at 8501 McClure Drive*).

Director of Development Services Wally Bailey briefed the Board on the item advising such is per the request of Crafton Tull, agent for Fort Chaffee Redevelopment Authority and the developer, ERC Properties. The purpose of the rezoning is to allow for the development of a 10.78 acre tract into a thirty (30) lot, single-family subdivision. The Planning Commission held a public hearing on April 12, 2016 with no individual present to

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speaking in opposition. The Planning Commission approved the request by a vote of five (5) in favor and two (2) abstentions (Cooper and Keesee).

Good, seconded by Lorenz, 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. There being no discussion among the Board and the members present all voting affirmatively, the Vice-Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 29-16.

Item No. 4 was an ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan: from Residential Attached to Office, Research & Light Industrial / Rezoning: from Commercial Heavy (C-5) to Industrial Light (I-1) by extension located at 7423 Highway 271*).

Mr. Bailey briefed the Board on the item advising such is per the request of Thomas Shankle, owner and agent for Donnie and Peggy Kratzberg. The proposed is a corrective rezoning, which should not change how the property is developed; however, such will allow the buildings on the subject property to be rented and used for the purpose of their original construction. The Planning Commission held a public hearing on April 12, 2016 with no individual present to speak in opposition. The Planning Commission approved both the Master Land Use Plan amendment and rezoning by a vote of seven (7) in favor and zero (0) opposed.

Lorenz, seconded by Catsavis, 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

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for its readings. There being no discussion among the Board and the members present all voting affirmatively, the Vice-Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 30-16.

Vice-Mayor Settle reminded all that immediately following adjournment, a Town Hall meeting will be held; therefore, he encouraged those who have not yet signed to speak at said meeting to sign the Town Hall sign-in sheet at the City Clerk's desk.

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

- A. Resolution to accept the bid and authorize a contract for the 2016 Street Striping Replacement, Project No. 16-85-A (\$85,124.45 / Engineering Department / Budgeted - Sales Tax Program Fund)
- B. Resolution approving Pay Estimate 8 Pre-Final with reference to West River Front Trail Project and authorizing City Administrator to secure the completion of the subject project (\$75,521.33 / Parks Department / Budgeted - 1/8% Sales and Use Tax)
- C. Ordinance authorizing a seven month extension on an existing contract for service between the City of Fort Smith, Arkansas, and Bair Analytics, a LexisNexis Company, to provide crime analysts, technical personnel, analytical software and services for crime analyses for the city of Fort Smith through the Fort Smith Police Department (\$40,833.31 / Police Department / Budgeted - Support Services 4702-108)
- D. Resolution authorizing execution of a joint use agreement with Arkansas and Missouri Railroad Company regarding Jenny Lind Road and Ingersoll Avenue Widening Project, AHTD Job 040471, City of Fort Smith Project No. 07-01A (\$14,840.00 / Engineering Department / Budgeted - Sales Tax Program Fund)

Regarding Item No. 5B, the following individual was present to address the Board:

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- Sean O'Kelley
Barling, Arkansas

Re: Advised he's the electrical contractor for the project citing his work was completed at the end of January; however, he's yet to be paid for his services. The bonding company was contacted regarding such; however, they "*blamed the City.*" He then called the City, who in-turn "*blamed the bonding company*" for non-payment. Due to such, he merely requested the Board's assistance in assuring payment is received for services rendered.

Due to the concerns presented by Mr. O'Kelley and potential for lengthy discussion, Director Settle requested Item No. 5B be removed from the consent agenda and voted on as a separate item.

Catsavis, seconded by Good, moved adoption of all remaining consent agenda items, i.e. Items 5A, 5C & 5D. There being no discussion among the Board regarding said items and the members all voting affirmatively, Vice-Mayor Settle declared the motion carried and the ordinance and resolutions were adopted with the ordinance given Ordinance No. 31-16 and the resolutions numbered Resolution No. R-60-16 through R-61-16 respectively.

Regarding Item No. 5B, Acting City Administrator Jeff Dingman advised the proposed item authorizes pre-final pay estimate 8 for the subject project; however, due to a proposed settlement received today, he requested City Attorney Jerry Canfield address the Board regarding the matter.

Mr. Canfield briefed the Board reminding all that the contract with Dixon Contracting for the subject project was recently terminated, which included Board direction that the City Administrator and City Attorney pursue negotiations to conclude the contract. There have

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been multiple meetings and deliberations with the contractor's surety, i.e. SureTec Insurance Company; however, such was unsuccessful, which prompted the proposed resolution to be presented for consideration. Section 1 of the proposed resolution authorizes payment in the amount the City feels is currently due to the contractor. Section 2 authorizes the City to proceed with completion of the contracted work on the project by use of City forces, negotiated work by the current subcontractors and material providers, or by contracting, with compliance with all applicable procurement procedures, the completion of project work. Notice was provided to the surety that if they wish to complete the work, a proposal to accomplish such must be provided to the City by Monday, May 2. Said proposal was not received; however, as of this afternoon, a final settlement offer was extended to conclude all matters relating to the contract termination. Upon acceptance, such would resolve all disputes between the City, the contractor and the surety, which would conclude the matter in its entirety and dismiss any potential for future litigation. The proposed settlement includes the proposed pre-final pay estimate of \$70,521.33 plus an additional \$59,650 authorizing a final settlement of \$130,171.33. A detailed comparison regarding adoption of the resolution as presented and acceptance of the proposed settlement was provided. If the Board opts to accept the proposed settlement to conclude the matter in its entirety, the proposed resolution must be amended to reflect same and also include authorization for the City Administrator and City Attorney to effectuate all documents to accomplish such.

Pennartz, seconded by Lorenz, moved adoption of the resolution. Prior to the vote, Directors Catsavis and Pennartz inquired of the procedure to ensure all subcontractors receive payment for services rendered.

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Mr. Canfield advised the City maintains no privity regarding payment to subcontractors or material providers citing such is the initial responsibility of the contractor. If the contractor does not provide payment, a claim must then be submitted to the surety, who holds the performance bond on the project. If the issue of non-payment remains and unpaid subcontractors do not wish to wait until conclusion of the matter, he encouraged they seek legal counsel. The surety has acknowledged existence of multiple unpaid subcontractors and material providers, and they have further acknowledged they must "*in good faith*" ensure payment is made. Upon approval of the proposed settlement, he conveyed assurance the settlement agreement will include a provision that all unpaid subcontractors and material providers will receive payment.

Regarding the proposed settlement, Director Good requested confirmation that such will preclude any future legal claim against the City.

Mr. Canfield confirmed that upon said acceptance, such will remove all possibility for future litigation regarding the matter.

Lorenz, seconded by Pennartz, offered a secondary motion to amend the resolution accepting the proposed settlement offer of \$130,171.33 and to authorize the City Administrator and City Attorney to effectuate all necessary documents regarding same. The members present all voting affirmatively, the Vice-Mayor declared the motion carried and the resolution stood amended.

The main motion remaining on the floor and the members present all voting affirmatively, the Vice-Mayor declared the motion carried and the resolution was adopted as amended and given Resolution No. R-62-16.

Due to the aforementioned adoption of Resolution No. R-62-16, Director Pennartz

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questioned the anticipated completion date of the project and requested an estimated cost to accomplish such.

Director of Parks and Recreation Doug Reinert advised completion will depend on weather and availability of contractors; however, he's "hopeful" the project will be completed by the end of May or early June. A preliminary cost estimate will be calculated and provided as requested.

Director Good extended much appreciation to Parks Department staff for *Tales of the Crypt*, held last weekend at Oak Cemetery, citing attendance was good on both Saturday and Sunday. He recently heard on the news that funding for the event could potentially be cut in future years.

Mr. Reinert noted he's been advised of the matter as well; however, he conveyed assurance there is no validity to the report as such information did not come from the Parks Department.

Vice-Mayor Settle opened the Officials Forum with the following wishing to comment:

- Vice-Mayor Settle

- Re:
1. Extended "*Happy Anniversary*" to Director Lorenz and his wife, Wendy.
 2. Noted May is Western Heritage Month and encouraged all to attend many upcoming events commemorating same.
 3. Acknowledged placement and donation of the Darby Statue in Cisterna Park the previous weekend and extended much appreciation to Joe and Liz Armstrong, and Darby Junior High School Principle Darren McKinney for their efforts in bringing the Darby Legacy Project to fruition.

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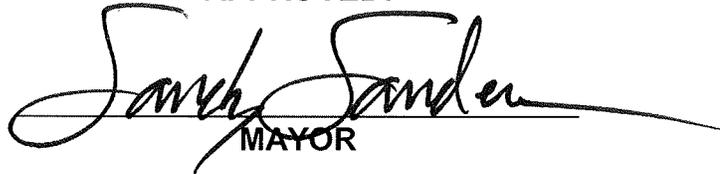
4. Noted the Steel Horse Rally also held the previous weekend citing the event was a success with a lot of visitors in Fort Smith.

■ Director Pennartz

Re: Extended appreciation to University of Arkansas Fort Smith students, "*Hannah, Jay and Jesse*", who created videos for several community based organizations at no cost.

There being no further business to come before the Board, Good moved that the meeting adjourn. The motion was seconded by Lorenz and the members present all voting aye, the Mayor declared the motion carried and the meeting stood adjourned at 6:49 p.m.

APPROVED:


MAYOR

ATTEST:


CITY CLERK