

MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ AUGUST 1, 2023 ~ 6:00 P.M.

BLUE LION, 101 NORTH 2ND STREET

The meeting was called to order by Vice-Mayor Jarred Rego, presiding. Invocation was given by Director Neal Martin, followed by the Pledge of Allegiance led by Director Andre' Good.

On roll call, the following members of the Board were physically present: Directors Jarred Rego, Andre' Good, Lavon Morton, George Catsavis, Christina Catsavis, Kevin Settle, and Neal Martin. The Vice-Mayor declared a quorum present.

Vice-Mayor Rego 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 July 11, 2023 regular meeting was presented for approval. Morton, seconded by Settle, moved adoption of the minutes as written. The members all voting aye, the Vice-Mayor declared the motion carried.

Item No. 1 was an ordinance zoning identified property and amending the zoning map (*Not zoned and Industrial Light-Special (I-1 SPL) to a Planned Zoning District (PZD) at the south side of Chad Colley Boulevard from 8603 - 9001, the east side of Massard Road from 9201 – 9599, and the west side of Custer Boulevard 9600-9700*) (*Planning & Zoning*).

Director of Development Services Maggie Rice briefed the Board on the item advising such is per the request by Crafton-Tull, agent for ERC Create, LLC. The subject property is located on the south side of Chad Colley Boulevard from 8603 - 9001, the east side of Massard Road from 9201 – 9599, and the west side of Custer Boulevard 9600-9700 and contains approximately fifty-four (54) acres with street frontages on Custer

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Boulevard, Chad Colley Boulevard, Massard Road, and approximately 2,000' of frontage adjacent to Interstate 49. The proposed will allow for a mixed-use commercial and residential development. A neighborhood meeting was held on June 21, 2023 with no surrounding property owners in attendance. The Planning Commission held a public hearing on July 11, 2023 with no individual present to speak either in favor or in opposition to the proposed. The Planning Commission voted six (6) in favor and one (1) abstention to recommend the matter to the Board of Directors for consideration.

Martin, seconded by G. 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 by caption for its readings. There being no director commenting and the members all voting affirmatively, the Vice-Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 64-23.

Item No. 2 was an ordinance zoning identified property and amending the zoning map (*Not zoned and Planned Zoning District (PZD) to a Planned Zoning District (PZD) at 12201 and 12211 Ward Avenue*) (*Planning & Zoning*).

Mrs. Rice briefed the Board on the item advising such is per the request of Rival Commercial RE, LLC, owner. The subject property is located at the intersection of Ward Avenue and Fort Chaffee Boulevard, and the two (2) tracts contain an area of 3.3 acres with street frontage along both Fort Chaffee Boulevard and Ward Avenue. The purpose of the proposed amendment will allow the existing buildings to be used as a hotel or duplex. A neighborhood meeting was held on June 28, 2023 with one (1) neighboring property owner in attendance, who spoke in support of the request. The Planning Commission held a public hearing on July 11, 2023 with no individual present to speak in

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opposition to the request. The Planning Commission voted seven (7) in favor and zero (0) opposed to recommend the matter to the Board of Directors for consideration.

Settle, seconded by Martin, 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 by caption for its readings. Prior to the vote, Director Settle inquired if the proposed will allow the developer to tear down and/or rebuild a structure whereby Mrs. Rice advised such will permit either to occur.

The motion remaining on the floor and the members all voting affirmatively, the Vice-Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 65-23.

Item No. 3 was an ordinance amending Section 4-8 of the Fort Smith Municipal Code and the 2019 Unified Development Ordinance of the City of Fort Smith (*Residential Fowl Regulations / properties greater than 5 acres*) ~ *Unanimously placed on agenda at the July 11, 2023 regular meeting ~ (Planning & Zoning).*

Mrs. Rice briefed the Board on the item advising that following the July 11, 2023 adoption of the residential fowl regulations, the Board of Directors requested staff add a provision for fowl ownership on lots greater than five (5) acres. The attached amendment requires property owners with five (5) or more acres who desire more than twenty (20) fowl to receive Conditional Use approval through the Planning Commission. By requiring Conditional Use approval, property owners of larger lots will be able to request additional fowl and go through a public hearing process.

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Vice-Mayor Rego announced a revised ordinance to include an emergency clause was distributed to the Board prior to the meeting, which sets an effective date of August 10, 2023; therefore, the motion to adopt the ordinance must include “*as revised.*”

Settle, seconded by Morton, 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 by caption for its readings. Prior to the vote, Director G. Catsavis questioned the number of complaints received regarding chickens and if any complaints are regarding odor.

Mrs. Rice confirmed that complaints are received multiple times weekly, which include noise, aesthetics of fowl enclosures, and sometimes odor; however, the most common complaint received is associated with roosters and the accompanying noise.

Martin, seconded by C. Catsavis, moved to amend the ordinance to include a grandfathering provision for residents that presently have over twenty (20) chickens on property containing more than five (5) acres. Prior to the vote, there was brief discussion for clarification of the proposed amendment. Ultimately and in order to determine exactly which properties should be ‘grandfathered’, the motion was amended to also include a requirement that those having over 20 chickens on greater than 5 acres must submit a letter to the Planning Department to declare the present number of chickens and that such must be submitted prior to September 30, 2023. Director C. Catsavis concurred with the amendment to the motion to amend.

At the request of Director G. Catsavis, Mr. Russ Bragg with OK Foods addressed the Board citing he feels the City is “*on the right track*” with the proposed adding the allowance of 20 chickens is “*more than generous.*” When properties maintain a large

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number of fowl, such requires compliance with various State and Federal regulations, many to address disease control. Upon request, he advised that a “backyard chicken” maintains a lifespan of approximately eight (8) years.

There was continued discussion with the Board submitting multiple inquiries whereby Mrs. Rice addressed each advising there are approximately one-hundred-seventy (170) properties within the corporate boundaries of the city that contain over 5 acres; and, if the proposed amendment is not approved, the proposed ordinance affords those residents wishing to exceed the 20 chicken maximum to apply for a Conditional Use Permit to be considered by the Planning Commission adding the cost for said application is \$350.

The motion remaining on the floor to amend the ordinance to include a grandfathering provision whereby residents that currently have over 20 chickens on properties greater than 5 acres must declare the current number of chickens by submitting a letter to the Planning Department by September 30, 2023. The members voted as follows: ayes – Rego, Morton, G. Catsavis, C. Catsavis, and Martin; nays – Good and Settle. The Vice-Mayor declared the motion carried and the ordinance stood amended.

The motion to adopt the ordinance as revised and as amended remaining on the floor, the members all voted affirmatively with the exception of Director Good, who voted “no.” The Vice-Mayor declared the motion carried. G. Catsavis, seconded by Martin, moved adoption of Section 3 the emergency clause. The members voted as follows: ayes – Rego, Morton, G. Catsavis, C. Catsavis, and Martin; nays – Good and Settle. The Vice-Mayor declared the motion carried and the ordinance and emergency clause were adopted and the ordinance was given Ordinance No. 66-23.

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Item No. 4 was an ordinance amending Ordinance No. 46-22 regarding the non-exclusive franchise granted thereunder to operate a taxicab service in the city of Fort Smith (*Payless Taxi, LLC*) ~ *Tabled to the August 1, 2023 regular meeting at the July 11, 2023 regular meeting ~ (City Clerk).*

City Clerk Sherri Gard briefed the Board on the item as presented at the July 11, 2023 regular meeting whereby the matter was tabled to August 1, 2023 regular meeting to allow representatives from Payless Taxi, LLC to be in attendance. In 2020, Mr. Jerry Burnett and Mr. Kyle Empsall submitted a request for a non-exclusive franchise to operate a taxicab service in the city of Fort Smith. Ordinance No. 38-20, adopted May 19, 2020, granted said request specifically to Jerry Burnett and Kyle Empsall d/b/a Payless Taxi, LLC for a period of two (2) years, which commenced on July 1, 2020. In 2022, a request to extend the non-exclusive franchise for a period of five (5) years was submitted whereby the Board of Directors authorized same per adoption of Ordinance No. 46-22. The current non-exclusive franchise period began on July 1, 2022 and expires June 30, 2027. The co-owners, Mr. Burnett and Mr. Empsall, initiated the dissolution of Payless Taxi, LLC and the Arkansas Secretary of State issued Articles of Dissolution on May 23, 2023. On the same date, the Arkansas Secretary of State also issued a Certificate of Organization for Payless Taxi, LLC with Kyle Empsall as the sole member. The City of Fort Smith was notified of such and was provided copies of the aforementioned documents on June 9, 2023. As stated, Ordinance No. 46-22 granted the non-exclusive franchise specifically to Jerry Burnett and Kyle Empsall d/b/a Payless Taxi, LLC; therefore, due to Mr. Kyle Empsall now being the sole member, the aforementioned ordinance requires amendment. At the request of both the City and Payless Taxi, LLC legal representation, it was recommended that the subject non-exclusive franchise be placed solely in the name of

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Payless Taxi, LLC with no reference to individual owners. Notice of the proposed consideration was published in the River Valley Democrat Gazette on Sunday, July 2, 2023. A copy of the Notice and the proposed ordinance were also provided to each taxicab service, i.e. Payless Taxi, LLC and Westark Taxi, LLC, presently operating in the city via certified mail on June 26, 2023.

City Attorney Colby Roe clarified that Mr. Burnett was granted a non-exclusive franchise to operate Westark Taxi, LLC whereby there is some disagreement between the attorneys for each of the respective taxicab companies, i.e. Payless Taxi, LLC and Westark Taxi, LLC. Mr. Burnett's legal representative contends that the newly reorganized Payless Taxi, LLC is illegally operating in the city and must request a new franchise from the City of Fort Smith. It is the opinion of both the City and Payless Taxi, LLC's legal representation that the Board of Directors maintains the authority to accommodate the continuation of the non-exclusive franchise granted to Payless Taxi, LLC via adoption of the proposed ordinance.

The following individuals were present to address the Board:

- Don Smith, representing Westark Taxi, LLC / Jerry Burnett
Re: Confirmed that his client concurred with the aforementioned dissolution of Payless Taxi, LLC; however, Mr. Burnett was not advised of Mr. Empsall's intent to re-organize another taxicab entity of the same name. He alleged "*it's wrong*" to allow the newly created entity of the same name to continue to exist and operate in the city of Fort Smith, especially without having to re-apply and go through the proper steps to request a new non-exclusive franchise from the City of Fort Smith.
- Laura Sossamon, representing Payless Taxi, LLC / Kyle Empsall
Re: Advised the proposed "*is not a complicated matter*" citing Mr. Burnett and Mr. Empsall, as co-owners of Payless Taxi, LLC, executed an operating agreement whereby it was agreed that Mr. Burnett would oversee Fort Smith operations and Mr.

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Empsall would oversee taxicab operations in northwest Arkansas. She alleged that concerns arose with the manner in which Mr. Burnett was conducting operations in Fort Smith, and her client learned that Mr. Burnett created a new taxicab entity in Fort Smith, i.e. Westark Taxi, LLC, further alleging that such is a violation of the aforementioned operating agreement. Rather than proceed with litigation regarding the violation, the co-owners agreed to dissolve the Payless Taxi, LLC entity. She concurred with Mr. Roe that the proposed ordinance will accommodate and authorize the newly organized Payless Taxi, LLC to continue to operate in Fort Smith.

Morton, 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 by caption for its readings. Prior to the vote, Director Morton conveyed surprise that the Arkansas Secretary of State (SOS) would dissolve and re-organize a company under the same name on the same date. He inquired if there was any litigation filed prior to the dissolution of the Payless Taxi, LLC whereby Mr. Smith responded “no.”

Mr. Roe confirmed that if an entity is dissolved, it is not unusual for the SOS to permit re-use of the same name for a newly created entity immediately thereafter.

Director G. Catsavis questioned what would happen if the proposed ordinance is defeated; and, if approved, if future legal action would be forthcoming. He denoted it appears there’s “*bad blood*” between the two (2) gentlemen and requested confirmation of same.

If the proposed is defeated, Mr. Roe confirmed that the City may revoke the Payless Taxi, LLC non-exclusive franchise if it so chooses.

Ms. Sossamon confirmed there is indeed “*bad blood*”; however, that it is not her client’s desire to proceed with any future litigation although she alleged that grounds exist

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to do so. She confirmed the desire is to merely allow Payless Taxi, LLC to continue to operate in Fort Smith.

Director Settle expressed concern that either defeat or approval of the proposed could result in litigation. Regardless, since the Board maintains the authority for passage of the proposed, it appears that any litigation would be between the two (2) entities/former co-owners citing such matters should be considered by a court of law, not the Board of Directors. He further inquired if there is any pending litigation associated with either of the entities whereby Mr. Smith responded, “no.”

The motion remaining on the floor and the members all voting affirmatively, the Vice-Mayor declared the motion carried. G. Catsavis, seconded by Morton, moved adoption of Section 3 the emergency clause. The members all voting affirmatively, the Vice-Mayor declared the motion carried and the ordinance and emergency clause were adopted and the ordinance was given Ordinance No. 67-23.

Item No. 5 was an ordinance amending Section 16-15 of the Fort Smith Municipal Code regarding membership requirements for members of the Property Owners Appeal Board (*City Clerk*).

Mrs. Gard briefed the Board on the item advising the Property Owners Appeal Board (POAB) was established by the Board of Directors on April 15, 1997 and consists of five (5) members appointed by the Board of Directors, each serving a five (5) year term. The POAB was created for the following:

- Review City ordinances relative to clean up of lands for the purpose of making recommendations to the Board of Directors concerning amendments thereto

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- Hear appeals of delinquent property owners charged by the City for abatement costs who feel themselves aggrieved by action of the City. (The Fort Smith Municipal Code requires appeal hearings be held on two (2) separate evenings each September)
- Consider requests for variances of certain provisions regarding property maintenance

On Monday, July 10, 2023, the POAB conducted its annual planning meeting to select the chairperson for the 2023 - 2024, schedule the 2023 appeal hearing dates for delinquent property cleanup liens, etc. At said meeting, there was concern expressed that members of the POAB are not required to be owners of real property within the city of Fort Smith. Due to the POAB maintaining authority to consider and promote compliance with all property maintenance regulations, it was recommended by majority vote that an ordinance be presented to the City of Fort Smith Board of Directors to require that any future appointee to the POAB be required to be an owner of real property within the corporate boundaries of the city. It was specifically requested that language be included within the ordinance to clarify that such amendment will not impact any individual presently serving on the POAB, but only impact any new appointee, which is accomplished by Section 1 of the proposed ordinance. Section 2 of the proposed ordinance accomplishes the requested membership requirement.

Martin, seconded by G. 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 by caption for its readings. Prior to the vote, Director Settle inquired as to what prompted the request.

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Mrs. Gard advised she was unaware of any specific issue that prompted such reiterating the POAB simply requested the proposed be presented to the Board for consideration.

Director Morton conveyed no objection to the proposed citing the main issue of concern is getting property owners to properly maintain their properties. Regardless, he indicated his intent to vote in favor of the item.

Director Good inquired if members of the POAB are required to reside within the city of Fort Smith whereby City Administrator Geffken confirmed such is a requirement for all members of any City of Fort Smith board, commission, or committee.

Director Martin conveyed unfamiliarity with the POAB whereby Mrs. Gard confirmed that it's the POAB that conducts annual appeal hearings for delinquent property cleanup liens, which results in the annual ordinance to certify same to the Sebastian County Tax Collector's Office each November.

The motion remaining on the floor and the members all voting affirmatively, the Vice-Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 68-23.

The consent agenda consisting of the below items (Item No. 6) were presented for consideration:

- A. Resolution authorizing the Vice-Mayor to execute the project reconciliation change order to the agreement with Van Horn Construction, Inc. for providing construction management services for the Wastewater Pump Station Flood Damage Remediation Project, declaring the amendment closed and authorizing final payment (\$345,448.97 / Budgeted / Water Utilities - 2018 Revenue Bonds) (Water Utilities)

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- B. Resolution to accept the bid and authorize a contract for construction of the 2022 Traffic Signal Improvements, Phase A, Project No. 22-09-A (\$579,452.00 / Budgeted / Engineering - Sales Tax Program) (Engineering) ♦ Future Fort Smith Item
- C. Resolution accepting the bids for the purchase of roll-off containers for the Solid Waste Services Department (\$126,426.52 / Budgeted / Solid Waste Services - 63072104-527660 (Containers)) (Solid Waste Services)
- D. Resolution accepting bids for the purchase of two (1) ton trucks for the Fire Department (\$133,268.00 / Budgeted / Fire - Capital Outlay - Vehicles (48010101- 531100)) (Finance)
- E. Resolution authorizing the City Administrator to proceed with the purchase of cybersecurity equipment, maintenance, and licensing from Heartland Business Systems (\$249,677.51 / Budgeted / Information Technology - Operating Funds) (Information Technology)
- F. Resolution authorizing the execution of a memorandum of understanding between the City of Fort Smith, Arkansas, and Sebastian County, Arkansas, regarding the 2023 Edward Byrne Memorial Justice Assistance Grant (JAG) Program (Police)

Martin, seconded by Morton, moved adoption of all consent agenda items. Prior to the vote and regarding Item No. 6B, Director Martin expressed concern with cost and inquired if such is “in line” for other traffic signal projects whereby Director of Engineering Stan Snodgrass responded affirmatively adding the department actually budgeted \$600,000 for the proposed.

Director Morton noted the traffic signals appear to be functioning properly; therefore, the questioned the necessity of replacement.

Mr. Snodgrass advised that although they are presently functional, such were installed in 1989; therefore, concern exists with years of fatigue, old conduit and wiring, etc. He added the typical replacement cycle for such is approximately twenty (20) to thirty (30) years.

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With regard to Item No. 6C, Director G. Catsavis inquired if the purchase is for additional carts or replacement of existing carts, and the proposed sizes to be acquired.

Director of Solid Waste Services Nicole Riley advised the proposed purchase includes both additional and replacement carts. The sizes proposed for purchase are seven (7) 20 yard containers; seven (7) 30 yard containers; and, five (5) 40 yard containers.

Director Morton inquired if the trend is holding with regard to the flat tonnage received at the landfill whereby Ms. Riley advised tonnage has actually increased by approximately 20,000 tons over the last year.

At the request of Administrator Geffken, Ms. Riley also advised that the Washington County has contacted the City of Fort Smith and indicating they are *“about to run out of landfill space.”* Due to such and in order for them to preserve space in their landfill, they are requesting third party haulers to bring their tonnage to Fort Smith.

Director Settle noted that Fort Smith has adequate landfill space and good water supply, and is growing; therefore, he expressed concern with allowing other municipalities to utilize the City’s resources.

Director Good concurred with Director Settle citing the City needs to preserve what we have and plan for our future. Regardless, he inquired if when the third party hauler rate was reviewed and if there is a fee to residents for use of a roll-off container.

Administrator Geffken and Ms. Riley advised residents pay a fee for use of a roll-off container; however, many are donated for community events. With regard to third party hauler rate, such was last increased in 2019; however, such is evaluated periodically to ensure the rate is adequate.

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Director Morton also concurred with the previous comments of Directors Settle and Good; however, he denoted that the increased revenue of third party haulers from Washington County could generate funding needed to accommodate future landfill closures.

Administrator Geffken confirmed the Fort Smith Sanitary Landfill maintains a one-hundred (100) year capacity. He concurred the City should preserve its resources, but in order to ensure costs are covered, the City could consider an “outside county” rate.

Director G. Catsavis inquired if the City of Fort Smith Solid Waste Services Department provides service at the Air National Guard Base and medical college whereby such was confirmed.

The motion to adopt all consent agenda items remaining on the floor and the members all voting affirmatively, the Vice-Mayor declared the motion carried and the resolutions were adopted and given Resolutions No. R-138-23 through R-143-23 respectively.

Vice-Mayor Rego opened the Officials Forum with the following comments offered:

► Director Good

Re: Simply conveyed he’s glad Administrator Geffken is feeling better.

► Director Morton

Re: 1. Requested an update on the dog park on Old Greenwood Road.

Administrator Geffken advised he will inquire and advise.

2. Regarding renewal of the one-percent (1%) county-wide sales tax set for electoral consideration at a special election on Tuesday, August 8, he urged the importance of its passage and encouraged all “to go

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vote.” He further reminded all that such is not a new tax, but a renewal or continuation of an existing tax.

▶ Director G. Catsavis

Re: Requested an update regarding the letter to the Fort Chaffee Redevelopment Authority (FCRA) regarding donation of the Deer Trails golf course.

Administrator Geffken advised the letter will go out on Thursday.

▶ Director C. Catsavis

- Re:
1. Regarding the county-wide sales tax, she reminded all that early voting started today.
 2. Advised the city of Fort Smith lost a bid to host a United States Marshals convention due to the high cost of airfare out of the Fort Smith Regional Airport. Due to such, she urged a solution be considered to lower airfare costs.

Administrator Geffken advised a consultant has been selected to focus on grants that will assist in attracting another airline service(s) to the community.

Director Martin simply noted that the next time the Board goes to Washington, DC they should visit the U.S. Marshals headquarters.

▶ Director Settle

Re: Regarding the recently held Peacemaker Festival, he extended much appreciation to the Parks and Recreation, Solid Waste Services, Police, and Fire Departments for their efforts to ensure a successful event.

▶ Administrator Geffken

- Re:
1. Requested the Board call for a special meeting to occur immediately following the study session scheduled for 6:00 p.m., Tuesday, August 22, 2023 to conduct an executive session to discuss cybersecurity related to the City of Fort Smith Water Utility System.

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Directors Morton, C. Catsavis, Settle, and Martin concurred to call the special meeting as aforementioned.

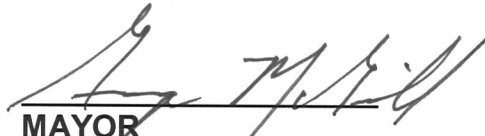
2. No study session is presently scheduled for Tuesday, August 29, 2023; however, due to numerous items in need of discussion, he requested the Board schedule a study session on said date at its usual time and location, 6:00 p.m., Blue Lion, 101 North 2nd Street.

Directors Morton, C. Catsavis, Settle, and Martin concurred to conduct a study session as aforementioned.

3. With regard to the Granicus agenda management system, which has been utilized for publishing the agenda board packets on the City of Fort Smith website for several months, the last phase of implementation of the system is online, livestreaming of Board of Directors meetings. Several tests have been conducted with no issue; therefore, full transition from Ustream to Granicus will be effective beginning with the August 15, 2023 regular meeting. Livestreaming of Board of Directors meetings on the City of Fort Smith website will be provided solely through the Granicus platform for online viewing. Much appreciation was extended to staff for their efforts in ensuring a smooth transition.

There being no further business to come before the Board, Director Morton, moved that the meeting adjourn. The motion was seconded by Director G. Catsavis. The members all voting aye, Vice-Mayor Rego declared the motion carried and the meeting stood adjourned at 7:26 p.m.

APPROVED:


MAYOR

ATTEST:


CITY CLERK (Acting)