

MINUTES

BOARD OF DIRECTORS MEETING

MAY 21, 2007, AT 7:00 P.M.

The regular meeting of the Board of Directors was held on Monday, May 21, 2007, at 7:00 p.m., Board Chambers, City Hall, with Mayor Mike Bush presiding.

The invocation was given by Ms. Eula Yates, and Pledge of Allegiance to the Flag was led by Mayor Bush.

Mayor Bush called the meeting to order at 7:00 p.m.

1 Roll Call

Roll call was as follows: Present: Directors Peggy Maruthur, Elaine Jones, Steve Smith, Carroll Weatherford, Bill Edwards, Tom Daniel, and Mike Bush, total 7.

2 Approval of Agenda

A motion was made by Director Edwards, duly seconded by Director Maruthur, that the agenda be approved; and upon voice vote, the motion unanimously carried.

3 Approval of Minutes of May 7, 2007 Board Meeting

A motion was made by Director Daniel, duly seconded by Director Maruthur, that the minutes of the May 7, 2007 Board Meeting be approved; and upon voice vote, the motion unanimously carried.

4 Recognition of Guests

Director Edwards recognized the Hot Springs Women of Prayer.

CONSENT AGENDA

The Consent Agenda consisted of the following:

- 5 Public Safety Report** (May 9, 2007).
- 6 Proposed Resolution No. R-07-109** Accepting Certain Bid Awards (a) Sulphur Dioxide - Utilities [annual supply contract awarded to Allied Universal Corp.]; (b) Boots/Helmets - Fire Department [annual supply contract awarded to Casco]; and (c) HVAC Comprehensive- Public Works and Various Departments [annual supply contract awarded to Powers of Arkansas].
- 7 Proposed Resolution No. R-07-110** Adopting General Fuel Pricing Policies for the Sale of Aviation Fuels at Hot Springs Memorial Airport.
- 8 Proposed Resolution No. R-07-111** Authorizing the Filing of a Grant Application with the Homeland Security Administration/Transportation Security Administration to Reimburse the Hot Springs Police Department for Airport Security. **(Removed from Agenda)**
- 9 Proposed Resolution No. R-07-112** Waiving the Facility Use Fees for the Downtown Association of Hot Springs Event Held at Exchange Street Parking Plaza.
- 10 Proposed Resolution No. R-07-113** Declaring of Certain Real Property as Surplus and Authorizing the Sale Thereof (Lots 194 and 195 of Block 1, Mellard and Belding Subdivision).

A motion was made by Director Daniel, duly seconded by Director Maruthur, that the Consent Agenda be approved.

Upon discussion, City Manager Kent Myers stated that Item No. 8 (Proposed Resolution No. R-07-111 Authorizing the Filing of a Grant Application with the Homeland Security Administration/Transportation Security Administration to Reimburse the Hot Springs Police Department for Airport Security) needs to be removed from the

agenda at the request of the Police Department and Airport Director and will be considered at a future meeting.

Mayor Bush then called for a vote on the motion to approve the Consent Agenda, as amended; and upon roll call, the following voted "aye": Directors Maruthur, Jones, Smith, Weatherford, Edwards, Daniel, and Bush, total 7; motion unanimously carried.

NEW BUSINESS

11 Proposed Resolution No. R -07-114

A resolution entitled, "A RESOLUTION AMENDING THE 1997 COMPREHENSIVE PLAN FUTURE LAND USE MAP BY RECLASSIFYING CERTAIN REAL PROPERTY(LOTS 4 AND 5, BLOCK 16 OF MORRISON AND BELDING), was taken from the agenda and read by title only.

A motion was made by Director Edwards, duly seconded by Director Jones, that the resolution be adopted as read.

Upon discussion, Ms. Kathy Sellman, Planning and Development Director, stated this is a request by First Step, Inc. seeking a Comprehensive Plan Future Land Use Map amendment from Medium/High Density Residential for the purpose of developing a parking area on two lots, and the request was to Neighborhood Commercial on the map.

She noted there is a Commercial Enclave designation that actually meets the needs better to provide this parking lot and is specifically designed to recognize existing concentrations of commercial and office uses outside of commercial districts and corridors. She stated the recommendation is to approve a map amendment to Commercial Enclave, and the Planning Commission voted 6-0 for approval. Staff also recommends approval.

Director Smith questioned how often the Commercial Enclave designation is used, and Ms. Sellman replied that it is unusual and is more designed for a situation such as this.

Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted "aye": Directors Maruthur, Jones, Smith, Weatherford, Edwards, Daniel, and Bush, total 7; motion unanimously carried. Whereupon the resolution was declared adopted.

12 Proposed Ordinance No. O-07-51

An ordinance entitled, "AN ORDINANCE AMENDING THE ZONING CODE OF THE CITY OF HOT SPRINGS, ARKANSAS, BY REZONING LOTS 4 AND 5, BLOCK 16, OF MORRISON AND BELDING, FROM R-4, RESIDENTIAL MEDIUM/HIGH, TO C-TR, COMMERCIAL TRANSITIONAL," was taken from the agenda for consideration.

A motion was made by Director Daniel, duly seconded by Director Smith, that the rules be suspended and the ordinance be read for the first time by title only; and upon voice vote, the motion unanimously carried. The ordinance was then read for the first time by title only; and upon the question "Shall the ordinance be passed as read?" and upon motion of Director Jones, duly seconded by Director Maruthur, that the ordinance be passed as read.

Upon discussion, Ms. Kathy Sellman, Planning and Development Director, stated the applicant is First Step, Inc.; and the request is for developing a parking lot. This was approved by the Planning Commission, as well as Planning staff.

Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted "aye": Directors Maruthur, Jones, Smith, Weatherford, Edwards, Daniel, and Bush, total 7; motion unanimously carried. Whereupon the ordinance was declared passed.

13 Proposed Resolution No. R-07-115

A resolution entitled, "A RESOLUTION REQUESTING THE ARKANSAS STATE HIGHWAY COMMISSION CONDEMN BY RIGHT OF EMINENT DOMAIN CERTAIN REAL PROPERTY (ROBERT C. MALT PROPERTY - TRACT 8) FOR THE HIGDON FERRY ROAD (HIGHWAY 88) IMPROVEMENT PROJECT," was taken from the agenda and read by title only.

A motion was made by Director Daniel, duly seconded by Director Weatherford, that the resolution be adopted as read.

Upon discussion, Mr. Steve Mallett, Public Works Director, advised the purchase of this property is needed in order to complete the Higdon Ferry Road widening project. He stated the appraised amount of the property was given at \$23,000 and was approved by the Highway Department. He said the counteroffer from the property

owner is \$112,538, which is 389 percent over the appraised value. That counteroffer was calculated by using a per acre offer price he had on another piece of property that was a small piece of property at different locations, and he was using that as a basis for the counteroffer. Since it is well in excess of the appraised value, staff recommends referring this to the Highway Department for condemnation. He advised that the funds to be expended are 80 percent federal funds and 20 percent matching City funds on all three of the properties to be considered tonight.

Director Maruthur asked if this was appraised by a certified appraiser, and Mr. Mallett advised that it was. She questioned if requests for bids were advertised, and Mr. Mallett stated the City used the selection process from the stack of Statements of Qualifications. He added this was confirmed and approved by the Highway Department; therefore, they concurred with the City's selection.

Director Maruthur asked if the bid packet was sent out to all of the certified appraisers in Hot Springs; and City Manager Kent Myers explained that on appraisal services, they are listed as professional services under the statutes. He added the City is not required to go through a bidding process per se but requests Statements of Qualifications from professional firms. In this case, Mr. Frank Manzer was the only Statement of Qualification that was submitted and was retained. He mentioned that Mr. Manzer has done past work for the City and has been satisfactory.

Director Maruthur explained she was not asking about Mr. Manzer and pointed out that Mr. Joe Atchley appeared at the agenda meeting to explain this. She questioned what part Mr. Atchley played in this. City Manager Kent Myers stated that he is the City's right-of-way agent, who takes the appraisal, submits it to the owner, negotiates a purchase price, and works with the Highway Department. Director Maruthur mentioned that she had received some questions from some local appraisers.

Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted "aye": Directors Maruthur, Jones, Smith, Weatherford, Edwards, Daniel, and Bush, total 7; motion unanimously carried. Whereupon the resolution was declared adopted.

14 Proposed Resolution No. R-07-116

A resolution entitled, "A RESOLUTION REQUESTING THE ARKANSAS STATE HIGHWAY COMMISSION CONDEMN BY RIGHT OF EMINENT DOMAIN CERTAIN REAL PROPERTY (CENTRAL AVENUE, LLC PROPERTY - TRACT 9) FOR THE

HIGDON FERRY ROAD (HIGHWAY 88) IMPROVEMENT PROJECT,” was taken from the agenda and read by title only.

A motion was made by Director Weatherford, duly seconded by Director Smith, that the resolution be adopted as read.

Upon discussion, Mr. Steve Mallett, Public Works Director, advised the appraised amount of the property is \$629,125; and the counteroffer from the property owner was \$923,000, which is 40 percent over the appraised value. He stated since this is a pie-shaped piece of property between Higdon Ferry Road and Central Avenue, the owner was utilizing the amount that they pay for Central Avenue frontage as it adjoins a piece of property to arrive with his value. Based on that, staff is recommending that this be referred to the Highway Department for condemnation.

Director Maruthur asked that the amount of acreage be described that is being purchased for \$629,125, and Mr. Mallett replied that it is 2.15 acres.

Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted “aye”: Directors Maruthur, Jones, Smith, Weatherford, Edwards, Daniel, and Bush, total 7; motion unanimously carried. Whereupon the resolution was declared adopted.

15 Proposed Ordinance No. O-07-52

An ordinance entitled, “AN ORDINANCE WAIVING THE REQUIREMENTS OF COMPETITIVE BIDDING FOR THE PURCHASE OF CERTAIN REAL PROPERTY (STEVE KELLY, JLK, INC.) RELATED TO THE HIGDON FERRY ROAD IMPROVEMENT PROJECT; AND FOR OTHER PURPOSES,” was taken from the agenda for consideration.

A motion was made by Director Smith, duly seconded by Director Weatherford, that the rules be suspended and the ordinance be read for the first time by title only; and upon voice vote, the motion unanimously carried. The ordinance was then read for the first time by title only; and upon the question “Shall the ordinance be passed as read?” and upon motion of Director Jones, duly seconded by Director Edwards, that the ordinance be passed as read.

Upon discussion, Mr. Steve Mallett, Public Works Director, advised this ordinance authorizes purchasing the Steve Kelly, JLK, Inc. property, Tracts 23 and 23E,

at the counteroffer price of \$725,000. He stated the appraised value of \$595,275, which was offered, was based on the actual land value. In this case, he said he considers this to have special circumstances because there is a business at the location, and it displaces much of the parking. He said the property owner was negatively impacted, and some of his tenants were aware of what was going to happen. He added that staff believes he was burdened more than the others from which the City is buying property. He stated this was discussed with the Highway Department, and it usually looks at anything from 10 to 20 percent over the counteroffer to be reasonable especially if there are circumstances that would justify it. In this case, it is a 22 percent over the appraised value. He advised there is a small strip center and the Lock & Stor mini storage but does not affect the mini storage. However, it did affect the strip center up front; and staff recommends paying the counteroffer price rather than condemnation.

Director Maruthur said she is in opposition to what the City is giving this individual for this property because of these special circumstances. She pointed out this was discussed at the agenda meeting, and she had asked for the construction year of the original Lock & Stor because there has been discussion about the expansion of Higdon Ferry for more than five years. She questioned when the building was built, and Mr. Mallett advised that he bought the property around 2000.

Director Maruthur asked who originally purchased the property; and Mr. Mallett advised that in 1998, it went from Buck to Beasley; and in 2000, it went from Beasley to JLK, Inc. (Steve Kelly).

Director Maruthur asked if he was the one who built the storage units, and Director Daniel replied that Lee Beasley built them. Mr. Mallett added that it was between 1998 to 2000. Director Maruthur mentioned when Mr. Steve Kelly purchased this property, he might have been the only one in Hot Springs who was not aware of the construction of the five-lanes; and when this is done, according to the map, all he has to do is construct a wall. She stated there will not be a problem; therefore, she will not vote for this ordinance.

Director Daniel said it was his understanding the purchase of the property was going to go almost to the sidewalk of the shopping center; and if a wall were to be constructed, people would not be able to get into the shopping center at all.

Mr. Joe Atchley said that is correct. He added according to an aerial view, the line comes to within ten feet of the front door; and about six or seven feet of that is

overhang or walkway. Therefore, it leaves three or four feet for parking cars, which will not work. He noted this property was purchased in conjunction with seven other properties – all purchased at the same time. He commented there will be no parking in front of the building. He stated Mr. Kelly's tenants started moving out about three years ago.

Director Maruthur stressed that everyone knew about this project, and she would like to see this reconsidered. She said she does not consider this as a good use of taxpayers' money (\$595,275), and he was asking \$725,000; and everyone was aware of the widening of Higdon Ferry Road. She emphasized that she is in favor of the project, but she believes this individual is unfairly going to make a tremendous amount of money. She commented unless he does not live here and did not have any knowledge of it, this is not fair to the taxpayers.

Director Daniel said that he met the gentleman one time at a meeting at St. Joseph's Regional Health Center two or three years ago when the Highway Department laid out their plans. He stated that he and his dad had moved to Hot Springs from out of town and bought seven properties from Lee Beasley, all of which were storage units around Hot Springs. He added that he probably was not aware of it since he was not from Hot Springs. Regarding the tenants moving out, he stated they only started moving out after the meeting at St. Joseph's when he found out they were taking 60+ feet from his front door. At that time Southwest Specialties moved out and relocated.

Director Maruthur commented it could have been a poor business move; and since he has several facilities, it was just poor judgment. However, she does not think it was fair to pass this on to the taxpayers.

Director Daniel said if it goes to the State, it might be more costly; and Mr. Mallett said that was possible. He added the only other option is to proceed with condemnation, and the City is going on the advice from the Highway Department based on similar circumstances they have had with condemnation of property. He said the Highway Department felt the City would probably be well served to go ahead and pay this amount rather than go with condemnation because many times if they do have a condemnation, it is a jury of the peers. If they can convince the jury they require that amount or more, many times they do get it.

Director Maruthur asked if there was any indication of what Mr. Kelly is going to do after the City acquires this property; and Mr. Mallett said as far as his business is

concerned, he has not asked that question. He pointed out that Mr. Kelly will not have any parking in the front and will be difficult for him to operate out of those buildings.

Director Maruthur asked if he has property behind the storage units, and Mr. Mallett said he does not know if he has any property behind them. However, he believes that property is packed in with the storage units from the description he remembered seeing.

Director Daniel pointed out that the shopping center sits in front of the retail center, and the storage units are in the back. Unless he wants to tear down some storage units and the shopping center and go back and relocate, then the only thing that retail shopping center is going to be, outside of being worthless, is to be some storage units which does not bring in near the money as a shopping center at \$10 to \$12 a square foot.

City Attorney Brian Albright, speaking to condemnation, said if the City were forced to go into court with this, it would have to rely on Frank Manzer's appraisal that he has provided for the City. He explained the property owner would be the one who would have the incentive to try to drive that up with their own expert testimony. He added it is possible that the City would end up spending considerably more than \$725,000. With regard to whether or not Mr. Kelly is the one profiting, he said it would not matter whether Mr. Kelly owned the property or it was still in the hands of Mr. Beasley. The City would still be looking at this dollar amount; and whether it is Mr. Beasley who is purportedly profiting or whether it is Mr. Kelly, the dollar amount is still the same when looking at it from the City's standpoint. He said he would hesitate to advise the Board to take this into a condemnation setting because of the unknown. He added when negotiating this amount, the City knows what this amount is, can budget it, and get the reimbursement from the federal government. If the City goes into court, it does not know what it is looking at.

Director Maruthur said she understands about the reimbursement from the federal government, but she does not know this individual. She commented it is the fact that everyone has known about this widening proposal for years, and there are many other purchases the City is going to have to make.

Director Weatherford pointed out this is the last three pieces of property the City is buying. He added the County buys everything else.

Director Maruthur commented that the City is Garland County, and her point is that the person has special circumstances because they built, and somebody knew this was going to be widened. She said it appears it was a very profitable move, and she cannot support it.

Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted "aye": Directors Jones, Smith, Weatherford, Edwards, Daniel, and Bush, total 6. Voting "no": Director Maruthur; motion carried. Whereupon the ordinance was declared passed.

16 Proposed Ordinance No. O-07-53

An ordinance entitled, "AN ORDINANCE ACCEPTING ADDITIONAL RIGHT-OF-WAY IN THE FIRST BLOCK OF RUGG STREET; AND FOR OTHER PURPOSES," was taken from the agenda for consideration.

A motion was made by Director Edwards, duly seconded by Director Maruthur, that the rules be suspended and the ordinance be read for the first time by title only; and upon voice vote, the motion unanimously carried. The ordinance was then read for the first time by title only; and upon the question "Shall the ordinance be passed as read?" and upon motion of Director Smith, duly seconded by Director Maruthur, that the ordinance be passed as read; and upon roll call, the following voted "aye": Directors Maruthur, Jones, Smith, Weatherford, Edwards, Daniel, and Bush, total 7; motion unanimously carried. Whereupon the ordinance was declared passed.

17 Proposed Ordinance No. O-07-54

An ordinance entitled, "AN ORDINANCE REGULATING TRANSIENT MERCHANTS WITHIN THE CORPORATE LIMITS OF HOT SPRINGS, ARKANSAS; AND FOR OTHER PURPOSES," was taken from the agenda for consideration.

A motion was made by Director Daniel, duly seconded by Director Edwards, that the rules be suspended and the ordinance be read for the first time by title only; and upon voice vote, the motion unanimously carried. The ordinance was then read for the

first time by title only; and upon the question “Shall the ordinance be passed as read?” and upon motion of Director Daniel, duly seconded by Director Edwards, that the ordinance be passed as read.

Upon discussion, Director Maruthur asked that the public be informed as to what the transient merchants can do, and Deputy City Manager Lance Hudnell explained there is an emergency clause with this ordinance because the current ordinance goes into effect June 1, 2007. He stated this ordinance is based on comments from the work session, and it takes a different view of the transient merchants’ problem in that this ordinance prohibits transient merchants. However, there is a list of exceptions, which include food establishments and seasonal operations, etc. Also, it does require individuals to comply with setbacks of the zone they are in; and the setbacks would include any of their ancillary items, such as tables, chairs, canopies, etc. He advised they would also have to have their regular license from the State if they are a food operation; and instead of paying a special transient merchants tax, they would pay the regular occupation tax for their type of business.

Director Maruthur pointed out the people who have the taco stands had received a notice, and the entire Board was not aware of the amount of these temporary or transient merchants that were being addressed. She said there was a lot of concern about their status and, except for the setback, asked if anyone is going to be put out of business. Deputy City Manager Lance Hudnell advised that not any of those who are food-related.

Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted “aye”: Directors Maruthur, Jones, Smith, Weatherford, Edwards, Daniel, and Bush, total 7; motion unanimously carried. Whereupon the ordinance was declared passed. A motion was made by Director Edwards, duly seconded by Director Jones, that the emergency clause be passed; and upon roll call, the following voted “aye”: Directors Maruthur, Jones, Smith, Weatherford, Edwards, Daniel, and Bush, total 7; motion unanimously carried. Whereupon the emergency clause was declared passed. City Attorney Brian Albright noted that this ordinance is now effective June 1, 2007, and will impose the penalties, if any, on July 1, 2007.

OTHER BUSINESS

18 Board of Directors Items

Director Maruthur recognized the Certified Volunteer Manager Program graduates who received recognition on Thursday, May 10, at the Rotunda in Little

Rock. There were four from Hot Springs (Dorothy Brennan, Levi Hospice; LaJean Burnett, Mid-America Science Museum; and Woody Lee Davis from P.H.O.E.B.E.). She expressed appreciation to those individuals. Also, if people would like to sign a petition for the right to vote on the bond issue on City Hall, which is a 25-year commitment, she said there are four numbers people can call: 282-2811; 617-1847; 624-1965; and 617-4777. They have agreed to answer and make sure people have the opportunity to sign the petition if they would like. She mentioned that she is a member of the VCK Club, and tomorrow she will be their guest speaker at the Library, 5 p.m. for social hour; and 5:30 p.m. begins the meeting. The public is invited to attend.

Director Jones congratulated Jeremiah Maglero on the Mayor's Youth Council, who was summoned by the NFL. She also congratulated Ms. Jernigan on her successful restaurant business.

19 City Manager's Report

City Manager Kent Myers gave the following report:

1. The Farmers' Market is now operating at the Transportation Plaza and is averaging about 20 vendors every Saturday. The Market is held three days a week (Tuesday, Thursday and Saturday) starting at 6 a.m. Also, there is entertainment on the weekends.

2. An item for the next Board Meeting will be to consider expanding the Planning Commission from seven to nine members, which would include two County representatives. This is an item the Board discussed at a recent work session and indicated an interest in moving in that direction. The ordinance has been circulated to the Board; and if there are any comments, the Board needs to get them to Deputy City Manager Lance Hudnell.

3. He has a written report on major projects that he is working on and distributed to the Board. If there are any questions, the Directors may give him a call.

20 ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 7:35 p.m., to meet again on Monday, June 4, 2007, at 7:00 p.m.

ATTEST: _____

APPROVED: _____

Lance Hudnell, City Clerk

Mike Bush,

Mayor