

MINUTES

BOARD OF DIRECTORS MEETING

JANUARY 8 , 2008, AT 7:00 P.M.

The regular meeting of the Board of Directors was held on Tuesday, January 8, 2008, at 7:00 p.m., Board Chambers, City Hall, with Mayor Mike Bush presiding.

The invocation was given by Ms. Mary Loye, 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.

Upon discussion, Director Jones requested that Item No. 16 (Proposed Resolution No. R-08-11 Waiving the Special Event Fees for the 2008 Dr. Martin Luther King, Jr. Day Parade) on the Consent Agenda be deleted from the agenda.

City Manager Kent Myers advised that a request has been received to remove Item No. 17 (Proposed Resolution No. R-08-12 Approving a Revised Subdivision Plat for Lot 6 of Serenity Place, Phase Two, Permitting the Construction of a Multi-Family Unit) from the agenda. City Attorney Brian Albright added that the appellant has withdrawn the appeal, as well as the applicant of the underlying application.

Mayor Bush then called for a vote on the motion to approve the 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.

3 Approval of Minutes of December 17, 2007 Board Meeting

A motion was made by Director Weatherford, duly seconded by Director Maruthur, that the minutes of the December 17, 2007 Board Meeting be approved; and upon voice vote, the motion unanimously carried.

4 Recognition of Guests

City Manager Kent Myers recognized Mr. Jim Scott, Purchasing Director and City Treasurer, who is retiring after 28 years of service to the City. He began work on November 26, 1979; and his last day of employment was January 4, 2008. He stated Mr. Scott was City Treasurer in November 1996 and has worked diligently to serve the City and support fellow employees and citizens of Hot Springs. At this time, Mayor Bush presented Mr. Scott with a retirement plaque.

Mr. Scott expressed appreciation for his retirement party held at the Transportation Depot last Friday and to everyone who was a part of his employment with the City for the last 28 years.

Police Chief Bobby Southard introduced recently hired police officers Trent Chadick and John Tinney.

CONSENT AGENDA

The Consent Agenda consisted of the following:

5 Public Safety Report (December 26, 2007).

6 Proposed Resolution No. R-08-1 Approving Certain Bid Awards (a) Title Search - Code Compliance [annual supply contract awarded to Garland County Title Company]; and (b) Lead Testing Services - CDBG [annual supply contract awarded to Lead Technologies].

7 Proposed Resolution No. R-08-2 Authorizing the Mayor to Execute Lease Addendum No. 3 with Hot Springs Avionics, Inc. for Hangar A-5.

- 8 Proposed Resolution No. R-08-3** Authorizing an Agreement with the Greater Hot Springs Chamber of Commerce for Economic and Business Development.
- 9 Proposed Resolution No. R-08-4** Authorizing a Contract for Services with the Greater Hot Springs Chamber of Commerce for Retirement Relocation Program.
- 10 Proposed Resolution No. R-08-5** Approving an Alley Name Change from 00004 Aly to Kips Alley.
- 11 Proposed Resolution No. R-08-6** Requesting the Arkansas State Highway and Transportation Department Include Bicycle Lanes in the Higdon Ferry Road Improvement Project Design.
- 12 Proposed Resolution No. R-08-7** Appointing Cynthia Rephan, Cynthia Keheley, and Courtney Butler to the Hot Springs/Garland County Beautification Commission.
- 13 Proposed Resolution No. R-08-8** Adopting a Pay Table for the Hot Springs Police Department.
- 14 Proposed Resolution No. R-08-9** Adopting a Pay Table for the Hot Springs Fire Department.
- 15 Proposed Resolution No. R-08-10** Adopting Revised Certification Pay Policies and Procedures for the Hot Springs Fire Department.
- 16 Proposed Resolution No. R-08-11** Waiving the Special Event Fees for the 2008 Dr. Martin Luther King, Jr. Day Parade. **(Removed from the Agenda)**

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

17 Proposed Resolution No. R-08-13 Approving a Revised Subdivision Plat for Lot 6 of Serenity Place, Phase Two, Permitting the Construction of a Multi-Family Unit. (Appeal) (Removed from the Agenda)

Mayor Bush stated that a request has been made to deviate from the agenda and consider the claim from Mr. Adlee Payne as the next item of business.

28 Consider Claim from Mr. Adlee Payne Regarding Damages from Water Leak at 733 Mountain Valley

Public Works Director Steve Mallett advised that in December 2006, the City turned on water at 733 Mountain Valley; and the homeowner was instructed to be there at a certain time period. He stated when the City employees were able to be there, it was after that time period; and the homeowner had left. He commented as the City does in some instances, it turns the water on and observed that the meter was not turning, which did not indicate there was any kind of leak and left. Shortly thereafter, unknown to the City, a leak occurred, creating damage to Mr. Payne's residence. Mr. Payne submitted a claim in February 2007, and City staff requested invoices. However, it was later in the year when those invoices were received. By the time City staff contacted him and his lawyer and agreed on an amount, the claim was in the amount of \$5,957.55. Mr. Mallett stated staff feels that the City bears some of the responsibility since they did not make the time they intended to be there.

Director Smith asked if it is his recommendation that \$5,957.55 was the amount agreed to by staff, and Mr. Mallett replied that it was.

Director Weatherford commented that the City spent money several years ago for all of the employees who carried cameras to take pictures of this type of thing; however, he has not seen pictures of any damage. Mr. Mallett replied that visually looked at it, but he has not seen any pictures. He noted it was in December 2006 when this actually occurred, but he has a first-hand account from Mr. Carl Briggs, Customer Service Coordinator. He said as he understands, one of the hoses from the washing machine burst, causing the leak.

Mr. Joseph Churchwell, 415-A Ouachita, representing Mr. Payne, stated the home at that time was unoccupied and had been winterized and believes that the petcock on the water heater was one of the main damages. He said the damage that was done was primarily to the floor, as it buckled the wood in all of the floors, ruined the carpet, and caused damage to the walls. He commented the \$5,597.55 is basically for the materials to replace it, which were the paint and primer, the drywall, carpet, and some of the tile. He stated the original amount included the labor for one of Mr. Payne's relatives, who performed the work. However, it was paid in cash; and he suggested that they remove that. He noted the original amount was closer to \$8,000; and the bills submitted are from Lowe's for materials, carpet, and labor.

Director Weatherford asked if he is indicating it is a water heater instead of the hose from the washer. Mr. Churchwell replied it was the water heater from being winterized, and they had opened all of the faucets and the petcocks.

Director Weatherford questioned if Mr. Payne knew the water was going to be turned on, and Mr. Churchwell replied that Mr. Payne did not know that it was winterized. He added Mr. Payne was instructed to be there between 1:30 p.m. and 4:00 p.m. and waited until after 5:00 p.m.. He said Mr. Payne assumed the City was not going to be there and would reschedule and come back when he was there.

Director Weatherford questioned what time they arrived, and Public Works Director Steve Mallett advised that it was after 5:00 p.m.

Director Maruthur asked if Mr. Payne is the owner of the property, and Mr. Payne advised that he was. Director Maruthur questioned if the damages included the water heater, and Mr. Churchwell advised that they did not. Director Maruthur asked if the water heater leaked, and Mr. Churchwell replied that it did not necessarily leak and pointed out there is a petcock or valve on the bottom of the water heater, which they knew was opened as part of the winterization. He added the house was unoccupied at the time.

Director Maruthur asked what the damages will cover, and Mr. Churchwell advised that he had submitted an itemized statement, which was included in the Board Packet.

City Attorney Brian Albright questioned why it took so long for this claim to be submitted to the Board, and Mr. Churchwell replied that the claim was submitted in February 2007; and he had to get documentation from Mr. Payne and receipts. He

added that his office is backlogged, and he takes some of the responsibility for the time that it took.

Director Maruthur commented that the claim is for the structural damages of things not for personal items; and Mr. Churchwell replied that was correct.

A motion was made by Director Daniel, duly seconded by Director Maruthur, that the claim from Mr. Adlee Payne, in the amount of \$5,957.55, for water leak damages at 733 Mountain Valley, be approved; and upon roll call, the following voted "aye": Directors Maruthur, Jones, Smith, Edwards, Daniel, and Bush, total 6. Voting "no": Director Weatherford; motion carried.

18 Proposed Ordinance No. O-08-1

An ordinance entitled, "AN ORDINANCE AMENDING THE ZONING CODE OF THE CITY OF HOT SPRINGS, ARKANSAS, BY REZONING PROPERTY ON 144, 146, 148, 150, 152, AND 154 FRANKLIN DRIVE FROM R-4, MEDIUM /HIGH DENSITY RESIDENTIAL AND R-3, LOW/MEDIUM DENSITY RESIDENTIAL, TO C-2, GENERAL BUSINESS DISTRICT; AND AMENDING THE FUTURE LAND USE MAP BY RECLASSIFYING CERTAIN REAL PROPERTY ON FRANKLIN DRIVE LINEAR COMMERCIAL CORRIDOR," was taken from the agenda for consideration.

A motion was made by Director Maruthur, duly seconded by Director Jones, 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 Edwards, duly seconded by Director Maruthur, that the ordinance be passed as read.

Upon discussion, Ms. Kathy Sellman, Planning and Development Director, stated this is a request regarding six, separate lots that are located north of Franklin Street between Central Avenue and Nash Street. The original request was to change the zoning on the property from R-3 and R-4 to C-4, Open/Display Commercial District. Both the original request and the applicants have agreed to amend their request to rezone to C-2, which is the General Business District. Portions of these properties were previously used as part of the Buster Mooney Salvage Yard, which was a nonconforming vehicle salvage use and has since ceased to operate. She stated the original request for C-4 zoning was found to be inconsistent with the intent of the C-4 zone district; and the C-2, as considered by the Planning Commission, at their public

hearing on December 13. The vote was 7-0 to approve the rezoning to C-2, General Business District, on the 2.46 acres and also to amend the Future Land Use Map to designate the property Linear Commercial Corridor.

Mr. Michael Hunter, 116 Gardensgate Circle, said he has recently purchased this property; and the main property, which was purchased, is on Central Avenue, zoned C-4; and he originally requested to have the portion of the property at the back rezoned to C-4.

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.

19 Proposed Ordinance No. O-08-2

An ordinance entitled, "AN ORDINANCE AMENDING THE ZONING CODE OF THE CITY OF HOT SPRINGS, ARKANSAS, BY REZONING PROPERTY ON 204 AND 210 DAVIDSON DRIVE FROM R-1 TO M-1, LIGHT MANUFACTURING, AND AMENDING THE FUTURE LAND USE MAP BY RECLASSIFYING CERTAIN REAL PROPERTY ON DAVIDSON DRIVE INDUSTRIAL," was taken from the agenda for consideration.

A motion was made by Director Smith, 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 Jones, duly seconded by Director Maruthur, that the ordinance be passed as read.

Upon discussion, Ms. Kathy Sellman, Planning and Development Director, advised that applicant Bob Godman and owner Cynthia Davis are seeking M-1, Light Manufacturing zoning for 3.94 acres on Davidson Drive south where it intersects with Shady Grove Road. The land is currently zoned R-1, Rural Residential, just north of the City's Parks and Recreation Maintenance Facility; and the applicant proposes to develop the land with storage buildings. The requested M-1 zoning will permit light manufacturing uses consistent with the applicant's development plans, and the Code describes this zone district as being for uses that will not create a nuisance for residential and commercial neighbors. It is consistent with the Comprehensive Plan

Future Land Use Map designation of industrial; and if the Future Land Use Map is amended, the change is consistent with the objectives of the Zoning Code, plans adopted by the Commission, and meets the requirements of Hot Springs Code §16-2-11 (c)(4). The Planning Commission held a public hearing on December 13, 2007, and voted 7-0 to recommend that the Board adopt the ordinance and change the Future Land Use Map.

Director Weatherford pointed out this is rezoning to M-1 and also means it can be used for sexually oriented businesses. He added there is an M-1 farther down the road, which is surrounded by R-1, true residential. He commented just around the corner with Shady Grove, there was a piece that wanted to be commercial; but Planning did not recommended it and was not in their plan. However, this is in Planning's plan to make this M-1 in the middle of Residential R-1. He emphasized that anything can happen in M-1, and Ms. Sellman replied that is correct.

Director Smith asked if there was neighborhood opposition at the public hearing, and Ms. Sellman replied there was not. She added there was a neighbor who was interested in knowing what was happening, but that neighbor did not take a position for or against the item.

Director Maruthur said according to a lawsuit, the City had to have a certain percentage for that type of activity; and this is a part of it. She pointed out it does not mean it is going to happen or could happen; but means, by law, the City is providing a zoning for it.

City Attorney Brian Albright advised the City has to provide reasonable avenues of expression for that type of business and recently the Board amended its Sexually Oriented Business Ordinance to include availability for that type of business in an M-1 and thereby doing away with the restrictions on how close they can be to a residential area. In other zones, it requires 400 feet from a residential area; but in an M-1, that restriction does not apply. He said Director Weatherford is bringing to the Board's attention that in an M-1, there is a proposed use of storage buildings. However, once it is rezoned, it is open for whatever is permitted within that zone regardless of what an applicant may say his/her intentions are for the property.

Director Maruthur said she understands conditions cannot be placed on the rezoning and questioned if somebody wanted to have a sexually oriented business and there was opposition, if it would be the Board's discretion to determine that. City Attorney Brian Albright advised he is not saying the Board could not deny it; but given the sensitivity of First Amendment issues, he would have a difficult time advising the

Board to deny an application that came into a validly zoned M-1 area. Director Maruthur asked if that means all of the M-1 zones the Board has approved, and City Attorney Brian Albright advised not necessarily. He commented M-1 restrictions do not change the 500-foot restriction from churches, schools, parks, etc.

Director Weatherford questioned what can be in an M-1, and City Attorney Brian Albright advised that just about anything. He noted the City has recently added it can have single-family dwellings within an M-1.

City Manager Kent Myers pointed out the proximity of this site to the City's Wastewater Plant and Animal Shelter.

Director Jones asked if there were not enough residents to know they could put anything in there, and Ms. Sellman advised that the project was advertised. She pointed out the density in the area is extremely low, and R-1 is a one-dwelling unit per one acre minimum. Therefore, there are very few residents in the area.

Director Jones said she wonders after tonight how many people will object to this knowing they could have sexually oriented businesses in that vicinity.

Mayor Bush pointed out that the Planning Commission approved it 7-0.

Director Daniel questioned if the property owners in the area were notified, and Ms. Sellman advised that they were.

Director Maruthur asked if staff recommends approval, and Ms. Sellman stated that the staff's recommendation to the Planning Commission was approval; and the Planning Commission recommends to the Board that it approve the ordinance.

Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted "aye": Directors Maruthur, Jones, Smith, Daniel, and Bush, total 5. Voting "no": Directors Edwards and Weatherford, total 2; motion carried. Whereupon the ordinance was declared passed.

20 Proposed Ordinance No. O-08-3

An ordinance entitled, "AN ORDINANCE AMENDING THE ZONING CODE OF THE CITY OF HOT SPRINGS, ARKANSAS, BY REZONING PROPERTY ON 500 SHADY GROVE FROM R-2, SUBURBAN RESIDENTIAL, TO R-3, LOW/MEDIUM

RESIDENTIAL AND AMENDING THE FUTURE LAND USE MAP BY RECLASSIFYING CERTAIN REAL PROPERTY ON 500 SHADY GROVE FROM RESIDENTIAL LOW TO RESIDENTIAL MEDIUM/HIGH,” was taken from the agenda for consideration.

A motion was made by Director Jones, 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 Maruthur, that the ordinance be passed as read.

Upon discussion, Ms. Kathy Sellman, Planning and Development Director, advised that the applicant, Mr. Rodney Meyers and the property owners, Carl and Joan Teague, are seeking R-3, which is residential low to medium density zoning for 4.71 acres at 500 Shady Grove Road and is currently zoned Suburban Residential. The rezoning request is consistent with the Future Land Use Plan Map Designation of Residential Medium/High Density; and with an amendment to the Future Land Use Plan Map, this change to R-2 will be consistent with the objectives of the Zoning Code and plans adopted by the Commission. The Planning Commission heard this item on December 13, 2007; and by a vote of 6-1, recommended that the Board adopt the ordinance rezoning the land at 500 Shady Grove Road to R-3 and that the Future Land Use Plan Map be amended to designate the property Residential Low Density.

Mr. Rodney Meyers, 46 Baton Circle, Little Rock, Arkansas, said he is the owner of the property; and the Teague’s are no longer involved. He stated if this is approved, he plans to build garden homes.

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.

21 Proposed Ordinance No. O-08-4

An ordinance entitled, “AN ORDINANCE AMENDING ORDINANCE NO. 4405 REGULATING THE LOCATION OF SEXUALLY ORIENTED BUSINESSES BY PROVIDING FOR THE ANNUAL UPDATE OF THE ELIGIBLE LOCATIONS MAP; AND FOR OTHER PURPOSES,” was taken from the agenda for consideration.

A motion was made by Director Smith, duly seconded by Director Jones, 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 Maruthur, that the ordinance be passed as read.

Upon discussion, Ms. Kathy Sellman, Planning and Development Director, advised that in Hot Springs Code §16-8-1, purpose and intent was set up to regulate sexually oriented businesses and to promote the health, safety, and general welfare of the citizens of the City and to establish a reasonable and uniform regulation to prevent continued concentration of sexually oriented businesses within the City. She said it is neither the intent nor effect of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market unless otherwise restricted by law. To meet this intent, it is necessary to maintain a reasonable inventory of lands suitable to locate such uses, and an amendment providing that the official map may be updated annually is proposed. She advised the periodic review and remapping will assure that a reasonable inventory of suitable lands exist, and the Planning Commission held a public hearing on December 13 to hear testimony; and by a vote of 7-0, recommends that the Board approve the ordinance.

Director Maruthur asked that she summarize what the Board is considering, and Ms. Sellman advised there is a map that demonstrates the areas where there are schools, parks, and churches. There is a 500-foot distance requirement that has to be measured out and is carved out from any otherwise eligible areas for the location of such a business. When information becomes available, it is the City's goal to do this annually; and if there is a school that opens or closes or a church that moves, etc., then those changes would be made to the map so that anyone wanting to know what areas are eligible for the location of a business of this nature, that information would be accurate and this would allow the City to make that change to the map without requiring action of the Board adopting a new map.

Director Maruthur asked if there would be automatic adjustments, and Ms. Sellman replied that there would. Director Maruthur questioned if there is a change in definitions for parks and schools.

City Attorney Brian Albright advised there is no change in definitions, and the map simply tries to illustrate what the ordinance provides. He noted it is just an illustration of what is available given the restrictions applied by the ordinance.

Director Maruthur pointed out there public and private schools and then there are schools of dance and schools that open and close. She questioned someone opening a business, if this would prohibit that area being used for this. Ms. Sellman explained that the map would be updated a minimum of annually, and there would be no consideration of types of schools that are not being considered under today's definitions. She added the City would be consistent in interpreting what institutions are suitable for mapping and that would be done and a map generated.

City Attorney Brian Albright asked if she was asking if the City is changing definitions of anything tonight, and Director Maruthur said that she was. City Attorney Brian Albright advised that school is presently defined within the City's ordinance as follows: "a lawfully established public or private elementary, secondary, or post-secondary school." He stated a dance school, barber school, massage school, etc. would not fall into the definition of school. He pointed out this is referring to public or private, elementary, secondary, or post-secondary education.

Director Maruthur mentioned she brought this up because there are now distance learning schools and asked if that qualifies, and City Attorney Brian Albright replied that he did not believe it would. Director Maruthur commented that it should and that is why she was questioning the definitions.

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.

22 Proposed Ordinance No. O-08-5

An ordinance entitled, "AN ORDINANCE AUTHORIZING A CONTRACT FOR SERVICES WITH GARLAND COUNTY ECONOMIC DEVELOPMENT CORPORATION; WAIVING COMPETITIVE BIDDING; AND OTHER MATTERS RELATED THERETO," was taken from the agenda for consideration.

A motion was made by Director Smith, duly seconded by Director Daniel, 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 Edwards, that the ordinance be passed as read.

Upon discussion, City Manager Kent Myers advised that GCEDC provides economic development services on behalf of the City; therefore, the City does not have to retain economic development staff members. In return for this, the City's contract with GCEDC is for \$100,000 a year, which is the same amount paid in 2007. He mentioned the other terms of the contract remain unchanged from the previous year.

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.

23 Proposed Ordinance No. O-08-6

An ordinance entitled, "AN ORDINANCE AUTHORIZING A CONTRACT FOR SERVICES WITH THE HOT SPRINGS BOYS AND GIRLS CLUB; WAIVING COMPETITIVE BIDDING; AND FOR OTHER PURPOSES," was taken from the agenda for consideration.

A motion was made by Director Jones, 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 Daniel, duly seconded by Director Jones, that the ordinance be passed as read.

Upon discussion, City Manager Kent Myers explained the amount of the contract with the Hot Springs Boys and Girls Club is for \$30,000; and the service being provided is the operation of a youth baseball program on behalf of the City. He stated this contract remains unchanged from the prior year.

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.

24 Proposed Ordinance No. O-08-7

An ordinance entitled, "AN ORDINANCE ACCEPTING A PORTION OF HIGHWAY 128, SECTION 10, INTO THE STREET SYSTEM FOR THE CITY OF HOT SPRINGS, GARLAND COUNTY, ARKANSAS, FROM THE ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT," was taken from the agenda for consideration.

A motion was made by Director Daniel, duly seconded by Director Jones, 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 Weatherford, that the ordinance be passed as read.

Upon discussion, Public Works Director Steve Mallett, advised that recently the Highway Department completed construction of the new section of Highway 128 from Grand Pointe Drive to just north of the Ouachita River, which left a section of the old Carpenter Dam Road intact. However, they are asking the City to take that over as a City street. Since it is within the city limits, and meets the City's criteria, staff recommends it for City maintenance. However, staff does not recommend that it be named at this time because a name has not been chosen.

Director Daniel asked if any progress has been made on the street lights, and Mr. Mallett said the Highway Department has no objections to placing them in the street right-of-way.

Director Maruthur asked who is going to submit the street name, and Mr. Mallett said they are currently working with the property owners and taking suggestions. If they cannot come to a consensus, then it will probably be named Old Carpenter Dam Road.

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.

25 Proposed Ordinance No. O-08-8

An ordinance entitled, "AN ORDINANCE AMENDING ORDINANCE NO. 5378 (STORMWATER MANAGEMENT REGULATIONS); AND FOR OTHER PURPOSES," was taken from the agenda for consideration.

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

Upon discussion, Public Works Director Steve Mallett stated the City has been following this ordinance for two years, and there are clarifications that need to be made to some definitions and modifications that will better fit what the City is doing in the field with regard to stormwater erosion. He noted some of the topics deal with submission of the stormwater management plan criteria that is received from the developers and engineers, definition of construction sites, and changes to the specifications for erosion control.

Mr. Bob Driggers, 3 Stonegate, said he has four major problems with what the Board is considering. He stated it appears the Board is considering items that relate to the mandate and how the City is going to be handling future stormwater practices and policies. He commented it appears this might be unnecessary, deceptive, illegal, and discriminatory. Some of the unnecessary items he has heard proposed, for example, is a \$155,000 initial fee to put the citizens of Hot Springs in a database so they can be notified when a storm is coming, plus another \$40,000 per year for an outside firm to maintain the software. He pointed out there is already a service that does that (the National Weather Service). He commented that calling this a fee instead of a tax is very deceptive and similar to what the Board proposed when it was proposing a new City Hall, by not allowing the people a voice or a vote, and saying this is related to a mandate. He mentioned the City already has a stormwater system in place, which it is paying for out of the General Fund and is funded by taxes. He said if the City edits the means to pay additional money for services already in effect, the courts have upheld

that charge is a tax, not a fee. As far as the mandate, he would like to be on the record requesting a copy of the state mandate that is requiring the City to put in this program. He stated that he understands Benton is the only other city in the State that has attempted to do anything, and it added \$.50 to their water fee. As far as illegality, he said the City Attorney received a letter today which he responded to pointing out past court cases, etc. As far as being discriminatory, for example, if \$3 is added to a minimum bill of \$10, he said people on fixed incomes will be paying a 30 percent increase. However, if an individual pays \$100 per month, that will only be a three percent increase. Therefore, the City is singling out those who can least afford to pay.

City Manager Kent Myer clarified that the item before the Board (Item No. 25) does not relate to fees. He stated as Public Works Director Steve Mallett pointed out, this ordinance only updates the regulations; and the fee issue will be discussed under Item Nos. 26 and 27.

Director Jones asked if Public Works Director Steve Mallett could produce the mandate that Mr. Driggers mentioned, and Mr. Mallett replied that he does have a copy. City Manager Kent Myers pointed out that it is a federal mandate.

Director Maruthur asked if the mandate he has is the one that came in 2005 that said if the City did not comply, it could be facing penalties. City Manager Kent Myers replied that the original EPA regulations were adopted in 1999. However, there is a phase-in period for the regulations starting with larger cities, such as Little Rock and working down to cities the size of Hot Springs.

Public Works Director Steve Mallett stated that Hot Springs fell under the regulations in 2005 and has an existing program that it is currently paying over \$100,000 a year to fund the program that was mandated. Now, it has the next phases; and one of those phases is mapping of the outfalls, for which the City does not have any money identified.

Director Maruthur asked if this mandate was the one that threatened the Board with prison, and City Manager Kent Myers advised that it was not. She added there was one regulation that had to do with water seepage; and if the City did not comply, the Board would be responsible for it.

Mr. Denny McPhate advised this particular one was related to construction runoff. Director Weatherford asked if that is the one where the City has to install the silt fence, and Mr. McPhate said that is it. Director Weatherford asked if that was mandated, and Mr. McPhate advised that it was. Director Weatherford questioned if

there is a fine if the City does not do it, and Mr. McPhate replied that there is. He added that it is a state and federal requirement. The federal government mandated it to the State, and the State pushed it down to the local level.

Director Maruthur asked if Little Rock has complied, and Mr. McPhate advised they were audited several weeks ago by the EPA and anticipate receiving some fines. He stated they had a program, but he does not believe they have fully complied.

Director Maruthur asked the City Attorney for his opinion, and City Attorney Brian Albright advised that the City definitely has a mandate; therefore, the program needs to be implemented.

Mr. McPhate pointed out what is before the Board tonight is some changes and issues staff has experienced in the field in the last two years, the potential to pollute on the lake, and will give the City the ability to manage it better. Instead of having a one-acre threshold of commercial construction anywhere in the City, any commercial development in the City would fall under those requirements. He commented it is just some problems and issues that would better serve the community if they were adjusted from the 2½ years the City has been in the program.

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, Daniel, and Bush, total 6; motion carried. Voting "no": Director Edwards; motion carried. Whereupon the ordinance was declared passed.

26 Proposed Ordinance No. O-08-9

An ordinance entitled, "AN ORDINANCE ADOPTING STORMWATER DRAINAGE UTILITY FEES AND ESTABLISHING A STORMWATER UTILITY FUND; AND FOR OTHER PURPOSES," was taken from the agenda for consideration.

A motion was made by Director Daniel, duly seconded by Director Jones, that the rules be suspended and the ordinance be read for the first time by title only; and upon voice vote, the motion carried, with Director Edwards voting "no." 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 Weatherford, that the ordinance be passed as read.

Upon discussion, Public Works Project Director Steve Mallett advised that due to mandates from the government and State, the City has a program in place that currently costs the City approximately \$100,000 to \$110,000 a year. These fees, at \$3 per residential account in the city limits and \$6 per commercial account in the city limits, would help offset that amount of money; the remaining money that is generated from the fund would go to cover the mapping; and the City has to map all of its outfalls and is an \$80,000 item and a total of almost \$1 million to totally complete the project over the next several years. There is \$100,000 designated for revising or replacing the flood warning system and \$272,000 that would be dedicated to storm sewer upgrade. He noted there are many requests from people who have drainage issues in their yards, and staff has to inform them that it is not City property but is the property owner's responsibility. He commented this would allow the City to be able to address some of those on a case-by-case basis. Currently, those who have money are able to repair a drainage issue; but it is the citizens who do not have the money that suffer; and the City is not able to help them. Therefore, they continue with flooded basements, etc. He mentioned the City would generate approximately \$70,000 a year for the Emergency Stormwater Fund that would deal with any kind of collapses in any of the tunnels or the major drainage structures.

City Manager Kent Myers added that he received a call today from one of the State Legislative members asking that he clarify the stormwater regulations are regulations. He noted the Department of Environmental Quality is charged with enforcing those regulations, but the City is not implementing this program because of any state mandate. He pointed out the mandate actually came from the government, and the State is enforcing it on the City. He said he wanted to make sure for the record that it was clarified that the City is not adopting this program as a result of State legislative action.

Director Edwards said he believes there should be some kind of provision for the people who cannot pay their regular water bill and are living on a fixed income.

Mayor Bush questioned how he proposed the City do that, and Director Edwards suggested the City find out why people cannot pay their regular water bill and how much they could pay on this, such as \$1.00 a month.

Director Daniel questioned the estimate on the revenue received from the \$3 and \$6; and Public Works Director Steve Mallett stated that based on the number of accounts, it is estimated about \$667,000 annually, and approximately \$150,000 of that would go to cover the current expenses with an additional employee, if needed. Once

the City is into the construction part and starts doing its own contracting for some of the repair work, the other \$500,000 could be dedicated toward drainage repairs. He advised there has been discussion regarding retrofitting or storm inlet boxes with screens in previous presentations. Therefore, the City can start trapping some of this debris that makes it all the way to the lake. He stated all of that is included, and the City is mandated by the government to manage and reduce pollution in the streams to the maximum extent practicable.

Director Daniel asked if there is a phase-in time on the mandate, and Mr. Mallett advised that on portions of it, there are. On the mapping and the program, the City has until 2009 to comply; and they will renew the City's permit in 2009. He stated in that permit, the City will likely be given more strict requirements and regulations it has to meet.

Director Daniel questioned the \$1 million he mentioned, and Mr. Mallett explained that is just for the mapping. He added if the City does the full-blown mapping over a six to eight- year period to get where it needs to be, probably to comply with the next phase with the renew permit, there is \$870,000 for the total proposal. As of the present time, the City is only required to do \$80,000 of it by 2009.

Director Daniel asked if it was feasible to do a phase-in schedule on the funding for it, and Mr. Mallett said that is was, which is what he is proposing. Director Daniel questioned instead of charging \$3 and \$6 immediately, if the City needs that much money each year to start (\$670,000). Mr. Mallett replied that there were different proposals, and he had informed the Board what the City could do with each, and that decision was based on what the City could do with the money available. He explained if the City drops down to \$2 and \$4, it probably would not be able to fund the early warning system and would have to choose one over the other. Also, the City would not have enough money to make any kind of dent in the drainage if it went with the other. He said he believed it was the Board's pleasure to be able to at least put some money toward each one of these individual problems and that is how staff came up with the amounts set in this proposal. He stated staff could work with whatever is available; but of all the options they presented, that was the one that most fit what everyone wanted.

Director Daniel said he understands Director Edwards concerns, but the City does not have a coded water bill that tells what income bracket people are in that are connected to water in residential. He stated that he believes a business could afford

an extra \$1 or \$2 a month more than a residential could afford \$3 a month. He suggested reconsidering the amount.

Mr. Mallett pointed out the City does not want to give the impression that all of this is ly mandated. He explained that it is not specifically ly mandated that the City repair the tunnel. He noted the City has money available to repair some of the other culverts that may collapse. He added they had rather be able to repair them on the front-end, not just band-aid them, and deal with some of the private property issues as well.

Director Daniel said he agreed with that and observes everyday storm drains that are clogged, and there are many areas where contractors did not prepare when they put in their drainage; and their subdivisions were brought into the City resulting in problems. He stressed that he is concerned with the amount for residential.

Director Smith commented that the revenue generated from this will be deposited into the Stormwater Utility Fund and can only be used for items related to stormwater. He pointed out he would like for the public to know this is segregated money and will be used accordingly.

Director Maruthur reported that she has had several discussions with Mr. Mallett, and he provided her some papers and noted Item No. 25 (the mandate). Mr. Mallett said those are the six items the City was required to do by mandate. Director Maruthur mentioned there is another paper that has a breakdown of the numbers, and the government has told the City it has to clean up certain things according to the environment; and the Board just voted to do that. She pointed out it is how to fund it and says that it is going to generate \$500,000 annually, which she said is a coincidental amount. She commented the City is going to come up with \$500,000 for another project; and in the Board Action Request Form, alternatives included denying approval of these fees or approve alternate fee amounts. She asked how long it would take if the Board were to have a work session or add it to the next work session to look for an alternative fee amount rather than to pass it on to those who are struggling to pay their water bills. She said since she has spoken to Mr. Mallett, she has been inundated with phone calls pleading that the Directors not to do this, which has been from all of the districts. Mr. Mallett replied that he had presented five options at a previous work session and can pull that information out and revisit it if that is the Board's pleasure. Director Maruthur said that is what she would like to recommend. She added that she received a letter that the City Attorney received and wants to make sure this is legal. She noted the City is calling it a fee; but if it is a tax, she questioned if the City can do it

without the taxpayers voting on it. She said she is reluctant to do something that she is not on firm ground about, and the City does need to comply. She noted the City needs to come up with \$500,000 but believes the Board needs to postpone voting on this tonight and see what else can be done.

A motion was made by Director Maruthur, duly seconded by Director Daniel, to table the ordinance until the Board has a work session.

Upon discussion of the motion, City Manager Kent Myers reminded the Board that this item has been discussed at two budget work sessions; and the fee being proposed tonight is a fee that the Board indicated it wanted to proceed with and approved it as part of the 2008 budget. He advised that the City is already spending money based upon this fee revenue; and if the City does not proceed with this fee, it will have to cut money out of the budget, including possibly one position that is currently staffed in that program.

Director Weatherford stressed that the Board discussed this at two or three budget work sessions and the Directors voted on this when they adopted the 2008 budget. He added that the Board has discussed a higher fee and a lower fee and decided on this fee and voted on it in the budget.

Director Maruthur said until the details came out in the newspaper, the residents were not aware of the impact it would make on their water bill. Director Weatherford pointed out that when she voted in support of the budget, she was aware of what it would do to their water bill.

Mayor Bush then called for a vote on the motion to table the ordinance until the Board holds a work session; and upon roll call, the following voted "aye": Directors Maruthur and Daniel, total 2. Voting "no": Directors Jones, Smith, Weatherford, Edwards, and Bush, total 5; motion failed to table.

Mr. Bob Driggers, 3 Stonegate, pointed out that budget meetings are not open to public comment and neither are Board of Directors Meetings; therefore, the public has had very little input. He commented that Mr. Mallett had made the statement that all of the expenditures associated with it are not mandated in any way, and this was his reference to deception. He asked that City Manager Kent Myers' comments relative to the mandate as to why no other city in Arkansas, other than Benton, is considering this a mandate that has any teeth in it and why the City is not already complying. He also asked that the City Attorney provide a legal opinion as to the letter he received today.

He requested that Public Works Director Steve Mallett explain the early warning system and why the City needs to spend that much money on technology when it has a Police and Fire Department that cannot communicate with each other and cannot communicate as required by Homeland Security mandates.

City Manager Kent Myers clarified that all of the meetings are open to the public and are open for public comment. He stated there was a public hearing regarding the budget before it was adopted; therefore, the comment that the meetings are not available for public participation is not correct and did not understand why Mr. Driggers would make that statement. He explained that stormwater and why it is enforced on a strict basis is due to Lake Hamilton, which is a source of a lot of tourism activity, as well as residential activity; and most cities in Arkansas do not have that type of asset in their community. He said that he does not want to speak for the State because the State enforces the regulations but believes one of the reasons it is enforced so strictly on the City of Hot Springs is because it wants to protect Lake Hamilton. He commented that not only the City but the State wants to protect it as a resource for current and future generations. He explained that the stormwater program is the best in the State, and the City has received recognition for that and wants to continue to be in a leadership position. He mentioned that ADEQ has commended the City's program, but it cannot continue to operate within those mandates at that level without additional funding.

City Attorney Brian Albright advised that Mr. Driggers was referring to a letter that was faxed to him today from Mr. James McCafferty. He stated the jest of his letter was whether or not this type of an issue would be considered a fee or a tax; and if it were a tax, if that were not voted on by the people, would that be an illegal exaction. He said Mr. McCafferty cited a case in 1983 by the Arkansas Supreme Court, city of North Little Rock vs. Graham, and indicated he felt the case stood for the proposition that this would be a tax and not a fee. He advised that he called Mr. McCafferty to discuss his concerns and cited him a 1993 case that was decided by the Arkansas Supreme Court involving the city of Marion, involving impact fees for water and sewer. In their discussion in that case, the Supreme Court tried to give some guidance on what is the difference between a fee and tax. He then stated that an example of a fee charge that exercise the city's police power is found in Holman versus the city of Dierks, and the court held that an annual sanitation charge of \$4 per business and residence, which was to be paid for fogging the city with insecticides three times a year, was not a tax for services to be rendered. On the other hand, the Graham court, which was the case that Mr. McCafferty cited to him, was the consideration of the validity of North Little Rock's ordinance which imposed a \$3 per month public safety fee on a water bill that was to be

used to subsidize police and fire salaries. He stated the distinction the court was making is one was a fee that was added onto water bills for fogging for insects. The court deemed that it had a reasonable connection between the fee and the service to be provided. Whereas, in the Graham court, the fee was being added onto a water bill to try to subsidize public safety employees salaries; and there was no reasonable connection between the two of those. He commented if Director Maruthur is asking if he can tell her with any degree of absolute certainty that this is not a tax and, therefore, not an illegal exaction, the answer is that he cannot. He stated in almost 99 percent of the cases that he is asked that question, the answer is going to be that he cannot because Arkansas does not have enough law to provide absolution in their direction and giving the City guidance. He advised that he can refer her to statutory authority where stormwater fees are permitted under impact ordinances, and that is under the building and zoning regulations, which are police powers, and was exactly the kind of thing they were talking about in the city of Marion case. He stated in reading the Marion case and what little statutory guidance there is, he is reasonably certain that this appears to be permissible; but he cannot advise with any degree of absolute certainty.

Public Works Director Steve Mallett said regarding being ly mandated, he does not think the City ever stated the entire program it presented was 100 percent ly mandated specifically to each individual item. He added the Stormwater Program is ly mandated, and the City has to have a Stormwater Program, a plan, and book of best management practices, which the City does. He advised that one of the requirements is the mapping, which is a ly mandated requirement to have done by 2009; and the salaries, benefits, and operating budget for a Stormwater Program and MS4 mandated mapping are directly related to a mandate. Regarding the early flood warning system, he said the City is not specifically told by government that it has to upgrade its flood warning system. However, the City has not had an operable one in several years; and the flood insurance rating is a large part of that and is based on the fact that the City has an early warning system in place. Regarding the Code Red System that Mr. Driggers referred to, he stated it is a system that the City became aware of and is a way to notify by mass volumes of people through cell phones. He mentioned it is a relatively new concept and is something the City will be considering, as well as Fire and Police Departments and any other county groups or anyone who is involved in it. He said the City is not planning on spending any money there unless it is something that is seen as a benefit for everyone involved. He reported that staff is talking with USGS to deal with a monitoring system to monitor the watershed to let the City know within a very short time that there is an imminent flood heading this way. He stated there is a maintenance fee for that on an annual basis. He noted that is what the City has had in the past and is trying to get back to where it was. Also, the City would be considering

replacement of the audible signs that are no longer operable. Regarding the storm sewer upgrades, he reported Molly Springs was a street where the City replaced the culverts and was a street that continually flooded every time there was a substantial rainfall. He pointed out those are the types of things the City does not have any funding for and that was one year the City had \$40,000 dedicated for drainage improvements. He stated every year, staff puts that in the budget; but every year that seems to be the first thing to go. He said he would like to be able to get money in there every year so the City can do things like that to improve the community and improve the drainage throughout the system. He advised that is not specifically required by mandate, but it is within the City's Stormwater Program and feels that it is the City's obligation to the community to look at those things and is why staff proposed it. Regarding the Stormwater Emergency Fund, he stated there are issues on Tom Ellsworth; and when replacing the water line, the entire drainage ditch collapsed inside. He noted it is an old conduit, and the City does not have money set aside in its budget to repair that. Therefore, the City has to go into the Street Department budget and pull out material money and move money around just to be able to repair what collapsed. He advised that the City would like to have some money in an emergency fund that when things like this happen, it would have a fund to draw from.

City Attorney Brian Albright asked if this would have any impact on the City's ability to warn people if there were an emergency with regard to the dam at Lake Ricks or anything of that sort. He questioned if he is just referring to rainwater or also a warning if there were a catastrophe.

Mr. Mallett replied that the Code Red System can be utilized if there is a leak, and the City had to place a portion of town on a boil order and could bring up the map and highlight the area and hit enter. He explained it would call all of these people in that area that gave their home phone number and cell phone number. If there was a problem where the City had to detour traffic because it had a collapse of a storm drain, it would notify the entire town and could notify the whole county. He pointed out this is something the City never heard of prior to a couple of months ago when City Manager Kent Myers sent an e-mail for staff to look into it. He stated it may be applicable to what the City doing, but it may not.

Mr. Denny McPhate advised that particular system can also be tied into the National Weather Service for any warnings that they issue for this area.

Director Maruthur said to clarify the statement made by Director Weatherford regarding the budget, it is a difficult thing to approve in total because there are line-item items; and there were several in the budget that she did not want to see approved.

However, when the Board has its work sessions, there is a consensus; and when the Board makes it very clear that it is going to support something and continues to remove items out of the budget that the Directors personally would like to either see reduced or increased, she said they would be here all night. She commented it was for that reason that her vote was to approve the budget, especially with the Police and Fire issues that were in the budget. She stated she was not in favor of this; and at last Board Meeting when Director Daniel made a comment about something, there is a consensus at the work sessions but does not mean that each one of the Board Members agrees; they are just outvoted. She pointed out that she made a motion tonight to table this to look for alternative funding to come up with the money that is needed, but it was denied. She pointed out that was not her fault, and she tried. She said she did not agree with every single item that was in the budget and wanted to see another person hired to clean the drains. However, that is going to be addressed at the midyear budget. She stressed that she would like to get to the early warning system because she was a part of that. She mentioned that the early warning system she was involved in was a direct result of the flood downtown and in response to that, a one-mile, thirty-foot diameter tunnel was almost drilled into West Mountain. When that was defeated, the money from FEMA was applied to repair the inlets downtown so there was no longer flooding at the same level to which the City was accustomed. She said her understanding that the early warning system that is no longer functional would notify the tourists, the people who could be from the city or county, or anyone who is downtown that they could be in a lake situation. She commented if the City does not approve a warning system for the downtown area, its ISO ratings could increase. She explained she is not saying the City should not do what it needs to do to protect the citizens, to serve the citizens, and meet the mandate but is suggesting that the City look for something else. However, the Board has already turned that down. She noted there are many issues that have been neglected for many years. She added according to the Board Action Request Form, staff is recommending approving alternate fee amounts. She stressed that she was not in support of the increase, but the public was not present; and as soon as it was published in the newspaper, she received several phone calls and her answering machine was full. She stated she cannot in good conscience approve this. She added she is not denying the need for these things, but the \$500,000 that the City does not have, she believes the City needs to look at funding what Mr. Mallett stated is mandated and scheduled to be done in a timely fashion and implement the remainder of it incrementally and try to fund it the best way it can be done.

Director Weatherford stated she needs to review the minutes of Board Work Sessions and what was discussed about a lower rate and a higher rate. He added this

was the decision the Board made to go in between, and she expressed no concern as to this. Director Weatherford reiterated that the Board discussed a higher rate, this rate, and a lower rate; and the consensus of the entire Board was to go with the amount in the ordinance. Also, the Board discussed a lower rate and not doing as much as the City is going to do.

Director Maruthur said she and he were the two Directors who attended Leadership Hot Springs today, and it was discussed about new information and changing things. She explained that what she is saying is there are only certain things the City has to do right now and she can respond to the public; but if he does not want to, that is his business. Director Weatherford said if she was not in agreement with this, she should have shown opposition at the Budget Work Session.

City Manager Kent Myers pointed out in November 2007, when he made his presentation of the 2008 budget, he allowed Mr. Denny McPhate and his staff to make a presentation on the new Stormwater Program that was funded by fees. He added that was on television, reported in the newspaper, and a detailed account of the whole proposal. He stated that was the first step in the process, and staff received compliments regarding that presentation. After that, the Board had extended discussions on this; and at none of those Budget Work Sessions was there any opposition expressed by any Board Member about a fee. He pointed out that staff had proposed a fee, and the Board said the City needs a higher fee because it wants to do more; and there was no opposition expressed at any of the meetings. He commented the Board adopted the budget, and it includes the fees. He advised that it was repeatedly pointed out to the Board that the budget includes those fees; and the City is operating at the present time under the assumption that the fee revenue is going to be forthcoming because there are ongoing expenses for staff, utilities, etc. He stressed for the Board to suggest now that the City not go forward with the fee will cause some major budget changes. He said he understood the Board had thoroughly discussed this and had reached a 7-0 consensus.

Director Maruthur commented when the Work Session ended, City Manager Kent Myers stated he hoped the Board could come together and that this will be a unanimous vote on the budget. She expressed to several Board Members that she could not go with this. She noted there was a consensus. She stated Directors can object to something; but when a Director is outvoted or outpolled, that is the way it is going to be, but they have to respond to what is happening today. She mentioned that people are calling her and begging not to do this. She pointed out they have to pay their water bill, or they will get it shut off. Regarding the budget, she said she asked

for a pro-active Code, and the City needs one more person; and the Board almost did not fill a position. She stated that she asked for things on nuisance abatement. She said there were many things she thought were important and did not vote against them. She commented if the City Manager was asking for a unanimous support of the budget, it was because he did not think there was one.

City Manager Kent Myers commented she had whole list of concerns that she questioned but never did she express a concern about stormwater fees. He stressed that he is pointing out for the record that none of those concerns were ever expressed by her or other Board Members. Director Maruthur commented it is how the City funds something and not does the City do something. She said it is how does the City pass on the cost and what can it look at. She stated she understood that the budget has been passed, and she could have voted against it but questioned what difference would that have made tonight. She stressed that people were calling today, and the Board needs to respond to what they are calling and asking the Board not to do. She asked if any other Directors received any calls, and no one responded that they received any calls or e-mails. Director Jones said that she received personal one-on-one at work and people questioning why Hot Springs was first.

Director Jones asked how difficult it would be to charge businesses \$4 and residences \$2. Director Daniel mentioned that businesses would go along with a higher fee, and that would still be the \$3 that is in the budget if \$1 were added to the businesses; and they pay \$4 instead of \$3, leaving the residents to pay \$2.

Finance Director Dorethea Yates explained that will not necessarily equal the same amount because there is a different number of businesses than residences. She noted the commercial accounts are already \$6 per month, and the residential accounts are \$3 per month.

Director Jones asked if there was any way to even this out without having the residents pay less and leaving it \$3 in the budget as the Board voted on. Ms. Yates advised that the Board can explore other rate scenarios, but the rate scenario used and included in the budget in order to produce those dollars was \$6 per month for the city commercial, industrial accounts and \$3 for the residential accounts. She reminded the Board in doing so, the cost of the department itself was probably about \$80,000 to \$100,000 and that money was moved over into the Stormwater Fund. She stated that is one of the things staff explored to do to create more money to use for Police and Fire.

Director Maruthur pointed out there are 13,300 residents and only 2,400 businesses.

Public Works Director Steve Mallett stated that in order for that to be the same amount of money generated to get a \$2 household bill, there would have to be an \$11 commercial fee to generate the same money.

At this time, Director Weatherford called for the question.

Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted "aye": Directors Jones, Smith, Weatherford, Daniel, and Bush, total 5. Voting "no": Directors Maruthur and Edwards, total 2; motion carried. Whereupon the ordinance was declared passed.

27 Proposed Ordinance No. O-08-10

An ordinance entitled, "AN ORDINANCE AMENDING ORDINANCE NO. 5536 (UNIFORM MUNICIPAL UTILITY BILLING PROCEDURE); AND FOR OTHER PURPOSES," was taken from the agenda for consideration.

A motion was made by Director Jones, 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 Smith, duly seconded by Director Edwards, that the ordinance be passed as read.

Upon discussion, Deputy City Manager Lance Hudnell advised this is a housekeeping measure to implement the ordinance that was just passed. He stated several years ago, the Board passed a Uniform Billing Procedure Ordinance that dealt with water, wastewater, and sanitation with regard to how they are handled on the bill, how penalties are assessed, and how the due dates are, etc. Since this fee will be on that combined utility bill, the word "stormwater" needs to be added to that.

Mayor Bush 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.

OTHER BUSINESS

29 Board of Directors Items

Director Jones announced that the Dr. Martin Luther King, Jr. breakfast will be held on January 19, from 8:30 a.m. to 10:30 a.m. at the Hot Springs Civic and Convention Center, Horner Hall; and tickets are \$25.

Director Daniel wished Director Elaine Jones a great trip to Little Rock to represent the City at the Arkansas Municipal League meeting.

Director Maruthur said she promises that everything she is opposed to or wants to implement will be written out and recorded in detail. She stated that she hopes there are not any complaints about it and is no problem to do. She stated if Elvis Presley were alive today, it would be his 73rd birthday. She thanked the Women of Prayer for all of the their cards sent over the holidays and expressed appreciation for all they do.

Director Weatherford announced that today in Leadership Hot Springs class someone questioned about apologizing, and he would like to apologize to Director Maruthur if he offended her in any way tonight for disagreeing with her. Director Maruthur replied that she was not offended but pointed out that at the Leadership Hot Springs Class, the issue of Roberts Rules of Order was brought up; and they were not aware that the Board had some procedural rules.

City Attorney Brian Albright advised that the Board has some procedural rules but does not follow Roberts Rules of Order.

30 City Manager's Report

City Manager Kent Myers gave the following report:

1. The Board approved the Consent Agenda and included a resolution designating Higdon Ferry Road as part of the bike lane system. This is between the Expressway and Central Avenue by Oaklawn. The City is going to start acquiring property in that area for future widening of Higdon Ferry Road, and the Highway

Department wanted to know if the City wants to designate that for bike routes so it could acquire the right-of-way. The Board decided to designate that as a bicycle route. The Board appointed Cynthia Rephan, Cynthia Keheley, and Courtney Butler to the Hot Springs/Garland County Beautification Commission. The Board approved a new pay table for the Police and Fire Departments.

2. He welcomed a student delegation that is in town this week from Hanamaki, Japan, who they will be participating in the local schools (Lakeside, Fountain Lake, and Hot Springs). On Saturday, members of the Board will be joining them for dinner.

3. He recognized the Public Information staff for the new City Services Guide, and this was the result of a lot of hours on behalf of Terry Payne and Jeff Fields. If there are any citizens who would like a copy, they may contact the Public Information Office.

4. The next meeting will be on Tuesday, January 22, since January 21 is the Dr. Martin Luther King, Jr. Holiday.

31 ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 8:45 p.m., to meet again on Tuesday, January 22, 2008, at 7:00 p.m.

ATTEST: _____

APPROVED: _____

Lance Hudnell, City Clerk

Mayor

Mike Bush,