

## MINUTES

### BOARD OF DIRECTORS MEETING

DECEMBER 2, 2008, AT 7:00 P.M.

The regular meeting of the Board of Directors was held on Tuesday, December 2, 2008, at 7:00 p.m., Board Chambers, City Hall, with Mayor Mike Bush presiding.

The invocation was given by Mr. Les Warren, 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, Rick Ramick, Tom Daniel, and Mike Bush, total 7.

#### **2** Approval of Agenda

A motion was made by Director Smith, duly seconded by Director Maruthur, that the agenda be approved.

Upon discussion, Director Weatherford requested that Item No. 20 (Proposed Ordinance No. O-08-80 Establishing Rules, Regulations, and Criteria for Development of Subdivisions and Land Division Within the City and Its Extraterritorial) and Item No. 22 (Proposed Ordinance No. O-08-82 Amending the Zoning Code of the City to Accept Territory by Annexation the Following Lands and Establish Initial R-2, Suburban Residential Zoning for Property Located off Lakeside Road Near High Meadow Loop; and Amending the Future Land Use Map by Reclassifying Certain Real Property as Residential Low Density, be withdrawn from the agenda.

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, Ramick, Daniel, and Bush, total 7; motion unanimously carried.

### **3 Approval of Minutes of November 18, 2008 Board Meeting**

A motion was made by Director Daniel, duly seconded by Director Maruthur, that the minutes of the November 18, 2008 Board Meeting be approved; and upon voice vote, the motion unanimously carried.

### **4 Recognition of Guests**

Director Maruthur recognized Mr. Castleberry from Beverly Hills, California.

### **CONSENT AGENDA**

The Consent Agenda consisted of the following:

### **5 Public Safety Report** (November 19, 2008).

### **6 Proposed Resolution No. R-08-278** Authorizing the Mayor to Execute a Lease Agreement Between the City of Hot Springs, Arkansas, and Maverick's LLC, d.b.a. Quick City Oil and Lube #2, Inc., for Certain Property at the Airport; and Repealing Resolution No. 6995.

### **7 Proposed Resolution No. R-08-279** Authorizing Revisions to the 2008 Budget by Appropriating Funds Within the Police Fund.

### **8 Proposed Resolution No. R-08-280** Extending a Franchise Agreement for the Operation of a Specialty Transit Service (Hot Springs Carriage Company).

### **9 Proposed Resolution No. R-08-281** Approving a Contract with Delta Dental for the City of Hot Springs Self-Insured Employee Dental Insurance.

### **10 Proposed Resolution No. R-08-282** Approving a Contract with Southwest EAP (SWEAP) for the City of Hot Springs Employee Assistance Program.

- 11 Proposed Resolution No. R-08-283** Extending an Agreement with Creative Outdoor Advertising of America, Inc. for the Placement of Public Benches Bearing Advertising Within the City of Hot Springs, Arkansas.
- 12 Proposed Resolution No. R-08-284** Extending a Contract with You See Us, Inc. for Certain Advertising Rights on Hot Springs Intracity Transit Buses.
- 13 Proposed Resolution No. R-08-285** Authorizing Priority Status for a Housing Rehabilitation Application for Certain Accessibility Repairs (156 Henderson Street).
- 14 Proposed Resolution No. R-08-286** Approving a Housing Rehabilitation Applicant's Request to Exceed the Maximum Subsidy of \$25,000 or 80% of Fair Market Value (1024 Park Avenue).

A motion was made by Director Jones, duly seconded by Director Maruthur, that the Consent Agenda be approved; and upon roll call, the following voted "aye": Directors Maruthur, Jones, Smith, Weatherford, Ramick, Daniel, and Bush, total 7; motion unanimously carried.

#### **UNFINISHED BUSINESS**

**15 Proposed Ordinance No. O-08-73**

An ordinance entitled, "AN ORDINANCE ADOPTING POLICIES AND RATES FOR CERTAIN VEHICLE TOWING SERVICES REQUESTED BY THE HOT SPRINGS POLICE DEPARTMENT; AND FOR OTHER PURPOSES," was taken from the agenda for consideration. **(Tabled October 21 and November 3, 2008).**

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

Upon discussion, Mr. Mark Toth, Montclair Lane, stated that the cost of the proposed towing ordinance is too costly for the citizens; and if this ordinance is passed, towing rates will in some instances rise 30 percent and others 50 percent overnight. He pointed out the ordinance also allows for annual five percent increases; and if that were to happen four times in a row over the course of four years, the maximum allowed rate would climb to \$103. He stated raising towing rates may also have a spill-over effect in that the tow companies having received approval when the Police Department called them out to charge these rates were carried over to other customers. He added the ordinance also creates new fees, such as a permit fee for companies, a permit fee for each tow truck driver, and a potential for an administrative fee. He said whether it is called a fee or not, it is a tax. He mentioned if the ordinance is passed, the tow operators will have to maintain records for four years; they have to maintain a base of operation in the city limits; they have to create and use new invoice forms; and every month they have to provide an employee list to the Police Department. He stated these costs will probably be passed onto the citizens of Hot Springs. He commented the proposed ordinance allows tow operators to request a five percent increase every year in tow rates; but as drafted, the ordinance does not require approval from anyone to put the rate increase into effect, and they only have to file the rate increase with the Police Department. He stressed this is not in the best interest of the citizens of the City.

Ms. Kelly Singer, 230 Whittington, said that she appeared before the Board previously on this issue and expressed her concern that with the requirements to have additional towing impound lots in the city is going to create a blight in the community. She stated one of her concerns is that they were considering impound lots on Cedar Street, which would make a serious problem in an already congested Central Avenue for emergency vehicles to get to her side of the town. She pointed out this ordinance is not in the best interest of any citizen.

Attorney Josh Hurst, 518 Ouachita, said that he made his argument at the last meeting on this issue and reiterated they have no problem with the ordinance except for two clauses: Section 2a (operations base) and Section 4h (administrative fee).

Mr. Ted Burhenn, 318 Trapp Mountain, stated he is against this ordinance, not because of the increases, but because of the requirements of an impound lot. He said that he also owns property in the city and does not think that is the place for it. The other part he is against is the administrative fee, which is a tax against the disadvantaged because if they have their car wrecked or impounded, they are going to be faced with another \$25 administrative fee added. He commented there is some

conflict whether a vehicle is operable, such as not starting due to a dead battery. He pointed out there will be numerous code problems with this ordinance and will be expensive to administer and difficult to regulate.

Mr. Chris Pigman, 303 St. George Street, stated the proposed ordinance submitted by the Police Department was drafted by a committee and questioned who sat on this committee. Deputy City Manager Lance Hudnell advised that the Police Chief will be able to address that. Mr. Pigman said he knows that representatives of the Police Department and City Clerk's Office were on this committee and questioned which of the towing companies was present. If so, did they reside within the city limits or in the county. He pointed out Paragraph A of the existing code reads "vehicle tow and wrecker services procedures and internal management policies and procedures of the Hot Springs Police Department as may now or hereinafter be developed by said department shall govern the use of private wrecker services in the performance of police functions necessitating the use of such services." He said it would appear that the Police Department could get most of Section 2 of the new ordinance (2b through 2p) with the possible exception of the latter part of Section 2k (permittee employees) by amending or updating the vehicle tow and wrecker services procedures without a new ordinance being passed and they would get everything they want. As for the tow companies, he stated it appears to him if the wrecker services wish a rate increase and from what he is hearing, this is about all they agree with in the new ordinance, there must be a more practical way to go about this than passing a whole new ordinance. If that is not the case, he questioned why not amend the existing code and only change the rates. He said he would assume that it was the City Manager and City Clerk's Office, not the Police or the tow companies, that included Section 2a, which is for the base of operations and storage area inside the city limits with easy accessibility to the public. He commented he would not like to believe this provision was included at the insistence of the towing companies within the city to the detriment of those without. He said he believes the Police Department to be fair and unbiased in the implementation of the rotational towing list, and there is no compelling reason to request these lots. He stated it appears to him that the City has much to answer for in calling for these lots, which will not only be a blight upon the neighborhoods but may be such a financial burden upon the tow companies located in the county as to force them to remove themselves from the rotational list. He said if the ordinance is adopted, tow truck drivers must apply for a tow truck permit, and these permits are to be provided by the Police Department at a fee set by the Board. Regarding Section 4h, establishing an administrative fee by resolution of the Board of Directors to be established at a later date, he commented that he believes that is the driving force behind this whole ordinance. He pointed out if the tow companies wish a rate increase, they should be

able to apply for one; if the Police Department wishes for better recordkeeping or more security for impounded vehicle, they can amend the vehicle tow and wrecker service procedures; if the Board wishes to increase city revenues by mandating tow driver permits and administrative fees, then do it in a straightforward manner. He urged the Board to craft a bill to that purpose and leave the existing ordinance alone.

Director Maruthur commended Mr. Pigman for reading the entire ordinance and said she concurred with him about the existing ordinance being adequate. She stated the points he brought up are the critical points that could turn the City into an impound lot and destroy the integrity of all of the neighborhoods where they would be located; and she found that very disturbing.

In response to the previous question by Mr. Pigman regarding who served on the committee, Captain Bill Cooley advised that he gathered information from other ordinances, compiled it, and presented it to the wrecker services. He said that he, Deputy City Manager Lance Hudnell, City Attorney Brian Albright, and Police Chief Bobby Southard then discussed it.

City Attorney Brian Albright advised there was a work session in which this was an item of discussion, and Attorney Josh Hurst and Attorney Q. Byrum, Jr. were at that meeting with representatives from the towing companies. He said he did not believe a committee was formed but was just an issue of discussion.

Director Maruthur questioned who added the administrative fee in 4h, and Captain Cooley advised that it came from a Conway ordinance. He noted it was added for future use if it were ever needed. Director Maruthur pointed out with that clause, it opens areas up for the Board at a later date to go into the impound business; and the City could create a new department, which is unknown what this would entail. She questioned what the budget would be; what the overhead would be; what the City's liability would be; and where it would be located. She mentioned there are departments now that the City is struggling to fund, and progressive cities are going to be contracting things out. She questioned if rotation was a problem, and Captain Cooley said that it was not. Director Maruthur questioned the original ordinance that was passed in 2003, and Captain Cooley said the original ordinance was amended in 2003. Director Maruthur asked if there are safeguards built into the ordinance passed in 2003 which meets certain standards whereby a tow company would have to have certain equipment available to get licensed or permitted by the City even if they are in the County. Captain Cooley replied that is in the ordinance presently on the table and also in the previous ordinance and comes from the towing rules and regulations by the State. Director Maruthur questioned the need to have this limited to the City when this would put certain vendors out of business and could open the door to the City starting an impound business and another department, along with all the

expenses and liabilities. Captain Cooley responded if they are in or out of the City, it is not going to complicate matters for the Police Department. He mentioned they need to have some kind of area that is distinguished; otherwise, there could be people from Mt. Ida or Hot Springs Village who would be on their list, which could become a problem with the Police Department as far as wait time on a car being towed. Director Maruthur said the way the 2003 ordinance is written, it is okay. She said in 2003, she spoke to some of the people in the towing business; and there was supposed to be a clause in the ordinance that had a very specific distance outside of the city that would be margin. However, that was never included in the ordinance. Captain Cooley replied that he was not aware of that. Director Maruthur asked if they would feel comfortable having a certain distance from outside of the city, and Captain Cooley stated it would be workable. Director Maruthur questioned if he would have a problem using the ordinance from 2003 and then have a distance requirement. Captain Cooley responded there are some things in the new ordinance that the Police Department would like to have included, such as the permit they are asking for, which they currently have with the limousine and cab drivers, or any covered by the Transportation Code. He pointed out it is a \$5 permit and would eliminate the chance of somebody giving a friend the keys and asking him to tow a vehicle. He advised there is no education provided by the State for tow drivers; therefore, this would give the Police Department some control over who tows. Director Maruthur questioned where that is located in the 2003 ordinance and the ordinance on the table. Captain Cooley advised that is not included in the 2003 ordinance; but in the current ordinance, it is covered in Section 2k (permittee employees). Director Maruthur asked if he would feel comfortable with that one change, and Captain Cooley responded they would still like to have the list of all employees sent to them once a month, and it becomes a matter of evidence so they would know who is employed and who is around the vehicles that they have. Director Maruthur pointed out they feel comfortable with having a distance requirement from the city boundary and would like to have a list of employees. Captain Cooley commented if they could take the administrative fee out and place a distance requirement on them from the city limits. Director Maruthur questioned the operations base (Section 2a) and said there is nothing built in that would protect any neighborhood or anyone.

Mayor Bush pointed out that it would have to be rezoned before anyone moved into a neighborhood.

Deputy City Manager Lance Hudnell commented that everything from Section b, except for a and h, are items the Police Department desired to be in the ordinance after their review with the towing companies. He said with regard to Section 2a (operations base), the idea of being inside the City came during the Board Work Session and was the consensus of the Board to add. With regard to where they can be located in the City or not, he noted that is not the

purview of this ordinance to establish those locations but comes under zoning ordinances and other ordinances.

Director Maruthur said she did not want to see an operational base within the City and does not want to see 4h (administrative fee) that could be done by resolution, which opens the City to have its own impound lot and create a new department. She asked Captain Cooley if this would be acceptable to have a distance requirement, take out the base of operations and storage inside the city limits (Section 2a) out of this ordinance.

Deputy City Manager Lance Hudnell replied that in regard to base of operations, the base itself and other requirements are items the Police Department desires to have in the ordinance as far as security fencing and lockable gates. However, where it is located it is to the Board's discretion.

Director Maruthur questioned why it is needed in the city limits, and Deputy City Manager Lance Hudnell advised that it is not but is to the discretion of the Board. He said if the Board does not want that included in the ordinance, it needs to make a motion to stipulate within 1½ miles of the City or two miles of the City or whatever the Board desires. He said he did not think the Police Department has a concern with regard to that, but they do have a concern that the permittee must, at a minimum, enclose the area with a suitable fence and lockable gates and security measure, which they want in the ordinance and is in Paragraph a.

Director Maruthur said that she does not want to see Paragraph a loosely worded where it could be in the city limits. Deputy City Manager Lance Hudnell stated it could be in the city limits and pointed out there is one currently in the city that meets all the current ordinances. He advised in an M-1 zone or other zone that is properly zoned, there could be impound lots in the city under the current ordinance, as well as in the ordinance on the table unless the Board prohibits them from being in the city.

Captain Bill Cooley advised currently, there are three within the city limits.

Mr. John Lewis, 442 Whittington, said the old ordinance seems to be sufficient and would rather see it modified and new legislation. He noted this ordinance requires multiple permits and questioned why the Police would want each tow truck driver to have a permit. He suggested combining the tow company permit and the tow truck driver permit into one permit instead of multiple permits, which is harder to administer. Also, he mentioned the creation of new forms, which is more bureaucracy. He added there are multiple agencies of oversight, such as the Police Department, a new advisory committee, the Board of Directors, and Arkansas Towing and Recovery Board. In addition, he said the recordkeeping requirements under the new ordinance seem burdensome to him and would like to retain the old ordinance and amend it.

Director Daniel said he appreciates what Director Maruthur is alluding to and how she has done her homework. However, the issue that concerns him is that they are looking at the people. He stated whenever a person has a car that is operable, and it is towed eight or ten miles outside of the City, they have get their car, which is placing a burden on the person. He added they have to find their way to where their car has been towed or take a cab, which will be far greater than the amount of the fees and pick up their car. As far as being located in the city, he said that means operable cars. If they cannot be driven, they can still take it out to their lot, which may be 15 miles out in the county because that will be dealt with by insurance companies and salvage yards. He said he did not think it is fair to the citizens if they have something happen inside the city limits and have to retrieve their automobile miles out because the City did not do its part. If they want to operate inside the city limits and be on the rotation cycle, he said that rotation means a lot because there are some people inside the city limits who have wreckers that operate; but they are not on the police rotation cycle. He pointed out they do not have to be on the rotation cycle, and the only reason they are on the rotation cycle is to get called. He add they get called by word of mouth and have a lot inside the city; and the only thing they do not do is operate through the Police Department, but anybody else can do the same thing. He said if the Police stops an automobile and have to get it towed because it is DWI, there is nothing wrong with the car. However, this car will be taken out a long distance and make the people go out and get their vehicle. He stated he did not that was fair to the person who is on limited income for whatever reason he or she was stopped. Regarding the Math and Science School, he said he did not think that is going to be a place that would be conducive for a wrecker company to locate. Regarding the drivers, he mentioned they could put them together with the same permit, but the person who owns the company is going to be in business longer than some of the drivers working for him. He said this would give the Police Department some identification. He commented their attorney is present and says there are only two issues in the new ordinance they disagree with, and the wrecker services themselves agree with the other. He urged the Board to honor their requests.

Director Maruthur took exception to comments made by Director Daniel and said she was talking to Director Weatherford in the presence of him and Director Ramick when it was expressed about Traffic Services being used for an operational impound lot. Director Weatherford commented that is not relevant to this ordinance, and Director Maruthur replied that it is, pointing out that Section 4h (administrative fee) would reserve the right for the City to go into the impound business. Director Weatherford asked if she thought the City would do that immediately and is something the City would have to work into a budget. Director Maruthur responded that she has seen a lot of things done. She added there is no need for Section 4h to be included in the ordinance except to reserve the right at any given time for the Board or future Boards to go into the business. She mentioned there is nothing in Section 2a (operations base)

that provides any protection for any neighborhood, and she is not concerned with people who get a DWI or that could be downtown and just parked in the wrong place. She stated when there is an impound lot with an operational vehicle, there has to be 24-hour security; and there has to be some type of fence, pointing out this is a magnet for criminal activity. She mentioned an individual was killed in an impound lot, and people no longer go after a certain hour because they do not feel it is worth risking their life. She noted if Section 4h (administrative fee) is included in the ordinance, the City is going to have liability and will be putting the City at risk. She pointed out that the people who spoke tonight expressed a real concern, and it is not about tourists. She commented there are standards and regulations that require a vendor to have appropriate equipment and get a license or permit, which is sufficient. Also, when there is an operational base, there should be requirements around that operational base and do not leave it open-ended and loose where it can be somewhere in the city. She stated there should be a distance from a church or school, at least 1,000 feet regardless of where it is going to be located. She said there is nothing wrong with what the City has except for the standards and Captain Cooley's concerns about having a list of people so the Police Department can monitor it. She emphasized that the citizens put the Board in here to protect people that live in the City, and she is not concerned about people who come here who might break the law or might have an accident.

Director Ramick made a motion, duly seconded by Director Jones, to amend the ordinance by removing Section 2a (operations base) and 4h (administrative fee); and upon roll call, the following voted "aye:" Directors Maruthur, Jones, Smith, Weatherford, Ramick, Daniel, and Bush, total 7; motion unanimously carried.

Director Maruthur stated that she would like to have some type of distance put into the ordinance from the boundary of the City. City Attorney Brian Albright pointed out that Section 2a (operations base) has been removed from the ordinance. Director Maruthur commented that she was aware of that but is talking about a vendor from another town, such as Mt. Ida. City Attorney Brian Albright advised that needs to go to the Planning Commission because that is a zoning issue.

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

## **16 Ambulance Franchise Award Recommendation (Appeal)**

Mayor Bush called for a motion to consider the ambulance franchise award recommendation. A motion was made by Director Smith that the Board consider the ambulance franchise award recommendation. There was no second to the motion.

A motion was made by Director Weatherford, duly seconded by Director Maruthur, that the Board reject all of the bids and send this back to be re-bid.

Upon discussion, Director Maruthur stated she wanted a different committee, and Mayor Bush stated that will be set up later.

Mayor Bush then called for a vote on the motion to reject all of the bids and send this back to re-bid; and upon roll call, the following voted "aye": Directors Maruthur, Jones, Smith, Weatherford, Ramick, Daniel, and Bush, total 7; motion unanimously carried.

### **PUBLIC HEARING**

## **17 Public Hearing Request to Vacate Portions of Tuggle and Euclid Streets in Fairdale Addition and Forrest Hill Addition**

This being the time and date set for a public hearing on the request to vacate portions of Tuggle and Euclid Streets in Fairdale Addition and Forrest Hill Addition, Mayor Bush declared the public hearing open.

Attorney Don Schnipper, with Wood, Smith, Schnipper, Clay and Vines, 123 Market Street, representing Polychris, LLC (Chris Polychron), said he is asking the Board to close a portion of Euclid Street and Tuggle Street. He stated even though he is representing Polychris, he is authorized to announce that the beneficiary of this action will be Oaklawn Jockey Club; and this property is behind the race track on the east side. He advised the closing of these streets and the purchase of the remainder of the property will allow Oaklawn to have contiguous property and for this property to be used for Oaklawn-related purposes. He then explained the map included in the Board packet. Regarding the railroad right-of-way that runs through the property, he mentioned this item was considered by the Board several weeks ago; and the Board voted to sell that right-of-way to Polychris, LLC. As a condition of that sale, Polychris, LLC agreed to deed back to the City 12 feet of the property on Sellers Street once those lots are closed. He said if the Board approves this request tonight, this matter will be presented to the Planning Commission for a change in zoning to C-4 so Oaklawn can make use of the property. He added he has received a letter from Fire Chief Ed Davis in which he sees no compelling reason to keep these streets open. Also, Police Chief Bobby Southard has looked at this issue, and the Police

Department has no problem with this closing, which will be Tuggle Street from Highland to Bellview; also, it would be Euclid Street from Sellers Street going west to an area already closed.

City Attorney Brian Albright pointed out there are three conditions placed within the ordinance vacating these streets; and they are as follows: (1) that Polychris, LLC purchase all of the adjacent properties; (2) that the rezoning takes place to a commercial use; and (3) all of this area be replatted in such a way that the new lots show public access to the street. Mr. Schnipper said they have no problem with that.

There being no further comments, Mayor Bush then declared the public hearing closed.

### **NEW BUSINESS**

#### **18 Proposed Ordinance No. O-08-79**

An ordinance entitled, "AN ORDINANCE VACATING PORTIONS OF TUGGLE STREET AND EUCLID STREET LOCATED IN FAIRDALE ADDITION AND FORREST HILL ADDITION, SUBJECT TO CERTAIN CONDITIONS," was taken from the agenda for consideration.

A motion was made by Director Weatherford, 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 Ramick, duly seconded by Director Weatherford, that the ordinance be passed as read; and upon roll call, the following voted "aye": Directors Maruthur, Jones, Smith, Weatherford, Ramick, Daniel, and Bush, total 7; motion unanimously carried. Whereupon the ordinance was declared passed.

#### **19 Proposed Resolution No. R-08-287**

A resolution entitled, "A RESOLUTION ADOPTING UPDATED POLICIES AND PROCEDURES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT HOUSING

REHABILITATION PROGRAM; AND REPEALING CERTAIN RESOLUTIONS,” was taken from the agenda and read by title only.

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

Upon discussion, Mr. Gerald Harman, CDBG Administrator, stated this document includes some housekeeping and grammatical corrections to make this particular document more accurate to the program. He noted that the major change in Section 2 is to allow the Community Development office to be able to give priority to a homeowner who has an immediate need that poses a threat to the health, safety or welfare of the occupants as well as the safety of the house. Another change is in Item No. 10, which is to eliminate the ten percent retainage that was retained for 30 days after completion of the project in lieu of a percentage draw basis. The contractor would be required to make draw requests in percentages of 25, 50, 75 or 100. The final payment regardless of percentage would be held until all permits are completed and final inspection is done and lien waivers are signed.

Director Smith questioned Item No. 5 (maximum subsidy) and asked how many times in the past two years they have gone over \$25,000. Mr. Harman said the only times he aware of are when they had to go back and do the lead paint abatement on houses that were done prior to 2007. Director Smith asked when they are aware of the lead-based paint; and Mr. Harman advised when they qualify a home, the first thing they do after the title search, is a lead paint test.

He added they have to have the house inspected for lead paint and for lead paint hazards, which is required by HUD; therefore, that is done prior to any rehabilitation. Director Smith asked if that automatically raises the amount they have to put into it, and Mr. Harman replied it is “yes” and “no.” He explained the reason they went to the \$25,000 maximum subsidy was to avoid full abatement, which is very costly. At the \$25,000 threshold, they are required to do interim controls, which is a lot less expensive than doing full abatement. He added the lead paint inspection and risk assessment are part of the bid specifications that they do on the home. Director Smith asked if there is a maximum of \$25,000, and they run into situations where they have to put \$10,000 or \$15,000 into lead paint abatement. Mr. Harman replied it has not been in the ones with which he has been associated.

Director Maruthur commented floor coverings and paint are available today that are lead based. Mr. Harman stated that their contractors are not allowed to use any kind of lead-based paint in their projects. Director Maruthur pointed out unless it is noted on the package or somewhere on the label, they still sell this. Also, she tried to get a cap on the CDBG in November 2006 for \$25,000; and at that meeting, it was raised to \$40,000. She said she is glad to see it back to \$25,000. Mr. Harman stated that lead paint is allowed but not in residential applications, only in commercial.

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, Ramick, Daniel, and Bush, total 7; motion unanimously carried. Whereupon the resolution was declared adopted.

**20** **Proposed Ordinance No. O-08-80** (Establishing Rules, Regulations, and Criteria for Development of Subdivisions and Land Division Within the City and Its Extraterritorial).(Removed from the Agenda)

**21** **Proposed Ordinance No. O-08-81**

An ordinance entitled, “AN ORDINANCE AMENDING THE ZONING CODE OF THE CITY OF HOT SPRINGS, ARKANSAS, BY REZONING PROPERTY WITHIN THE 300 BLOCK OF BROADWAY FROM M-1, LIGHT MANUFACTURING DISTRICT, TO C-1, CENTRAL BUSINESS DISTRICT; AND AMENDING THE FUTURE LAND USE MAP BY RECLASSIFYING CERTAIN REAL PROPERTY WITHIN THE 300 BLOCK OF BROADWAY,” was taken from the agenda for consideration.

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

Upon discussion, Ms. Kathy Sellman, Planning and Development Director, stated this is a request by applicants Diana Bratton, James and Barbara Jane Randall, Gary Rugendorf, and Larry Meyers. They are represented by Attorney Ray Owen, Jr. and seeking C-1, Central Business District zoning for their five connecting properties in the 300 block of Broadway. Their future development plans called for something in the Central Business District character. The staff’s finding is the existing character of the area generally is downtown commercial, and the rezone request is consistent with the Comprehensive Plan Future Land Use Map designation of Linear Commercial Corridor and the Gateway Community Master Plan designation of Entertainment Overlay. Therefore, this change is consistent with the objectives of the Zoning Code, plans adopted by the Commission, and is not based exclusively upon the applicant’s desire to increase the value or income potential of the property. The Planning Commission held a

hearing on November 13, 2008, and they accepted the staff findings and voted 7 to 0 to recommend that the Board approve the rezoning to C-1.

Director Weatherford asked if this affected the square footage for SOB, and City Attorney Brian Albright advised that it did not. He added it is too close to the Greenway, and the elimination of the buffer in an M-1 and M-2 was only with regard to residential and did not apply to parks.

City Attorney Brian Albright asked if C-1 requires off-street parking; and if not, would it be a problem in that area. Ms. Sellman advised that it does not require off-street parking for anything other than single-family residential, which is not anticipated in that area. She noted there is adequate public parking and some on-street parking available in the surrounding area, and this is entirely consistent with what the Gateway Community Master Plan anticipated as its ultimate best use.

Director Maruthur questioned where the Entertainment Overlay is specified, and Ms. Sellman advised that the Entertainment Overlay was not adopted as a specific land use designation for the purpose of implementing a community master plan. Director Maruthur asked if it could be added in quotations, and Ms. Sellman replied there is not such a designation.

Attorney Ray Owen, Jr., with Owen, Farnell and Garner, 209 Hobson, stated he has been working with Ms. Sellman on this from the very beginning; and her department has been very helpful and cooperative.

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, Ramick, Daniel, and Bush, total 7; motion unanimously carried. Whereupon the ordinance was declared passed.

**22** **Proposed Ordinance No. O-08-82** (Amending the Zoning Code of the City to Accept Territory by Annexation the Following Lands and Establish Initial R-2, Suburban Residential Zoning for Property Located off Lakeside Road near High Meadow Loop and Amending the Future Land Use Map by Reclassifying Certain Real Property at Residential Low Density) **(Removed from the Agenda)**

**23** **Proposed Ordinance No. O-08-83**

An ordinance entitled, "AN ORDINANCE AMENDING THE ZONING CODE OF THE CITY OF HOT SPRINGS, ARKANSAS, BY REZONING PROPERTY AT THE CORNER OF SECTION LINE ROAD AT CENTRAL AVENUE FROM R-2, SUBURBAN RESIDENTIAL DISTRICT, TO C-4, REGIONAL COMMERCIAL/OPEN DISPLAY DISTRICT; AND AMENDING THE FUTURE LAND USE MAP BY RECLASSIFYING CERTAIN REAL PROPERTY AT THE CORNER OF SECTION LINE AND CENTRAL AVENUE," 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 Weatherford, duly seconded by Director Jones, that the ordinance be passed as read.

Upon discussion, Ms. Kathy Sellman, Planning and Development Director, stated the applicant on this project is Jim McAdams on behalf of owner Harmony Properties Three, LLC, and is currently vacant. The request for the zoning change is to be compatible with adjoining properties, and the staff finding is that the request is consistent with the Comprehensive Plan Future Land Use Map designation that matches the designation of the commercial area surrounding it. If the Future Land Use Map is amended, then the change is consistent with the objectives of the Zoning Code, plans adopted by the Commission, and not based exclusively upon applicant's desire to increase the value or income property. The Planning Commission held a hearing on November 13 and on a vote of 7-0 accepted the staff findings and recommends that the Board approve the rezoning.

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, Ramick, Daniel, and Bush, total 7; motion unanimously carried. Whereupon the ordinance was declared passed.

## **24** **Proposed Ordinance No. O-08-84**

An ordinance entitled, "AN ORDINANCE AMENDING THE ZONING CODE OF THE CITY OF HOT SPRINGS, ARKANSAS, BY REZONING PROPERTY AT 319 HAWTHORNE FROM R-3, LOW/MEDIUM DENSITY RESIDENTIAL DISTRICT, TO C-TR, COMMERCIAL TRANSITIONAL DISTRICT; AND AMENDING THE FUTURE LAND USE

MAP BY RECLASSIFYING CERTAIN REAL PROPERTY AT 319 HAWTHORNE,” was taken from the agenda for consideration.

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

Upon discussion, Ms. Kathy Sellman, Planning and Development Director, advised that the applicant is Anthony Taylor, on behalf of owner Les Surfas, and is requesting C-2, General Business District zoning for this property. The property is currently vacant but has been used informally for sometime for parking and is zoned R-3, Low Density Residential. The rezoning request is parking for adjacent commercial property. The commercial property in question is the Hamp Williams Building, which is currently undergoing a significant repair and facade restoration project. The future plans for occupancy of the structure are going to require that parking be provided. This rezoning extends the existing C-2 zone to the south, and that zone encompasses much of the commercial area south of downtown. The staff’s finding to the Planning Commission is that the C-2 request is consistent with the Comprehensive Plan Future Land Use Map designation of Linear Commercial Corridor; and if so amended, that would be consistent with the requirements of the Zoning Code. The Planning Commission’s finding and recommendation, however, are different. The Commission considered public testimony at its November 13 meeting and voted 6 to 1, with Chairman Gary Threadgill dissenting, to recommend that the Board amend the staff findings and recommend a zoning change from R-3, to C-TR, Commercial Transitional, because they found that in the C-TR district’s requirement that all nonresidential uses require prior Planning Commission approval of a site plan; and in that way, the application would more fully demonstrate compliance with the Zoning Code standards. Therefore, their recommendation to the Board is an alternative to what was originally sought, which is a change to Commercial Transitional rather than General Business.

Director Daniel pointed out this building will be an asset to the community, but he is concerned about making it C-TR and questioned if that hinders anything as far as their use; and Ms. Sellman replied it would require that Planning Commission review the site plan for any proposed use. She mentioned that a parking lot has very specific, stringent standards for screening and landscaping with or without Planning Commission review. She noted those are required before the parking lot could be built in any case.

Director Daniel asked if the landscaping ordinance would apply regardless of the zoning, and Ms. Sellman replied that it would be landscaping and parking whether it is C-2 or C-TR.

Director Ramick questioned if the drawing submitted is what they are proposing with the trees and landscape buffer. Ms. Sellman replied this is a concept that was submitted with the rezoning request, but the applicant's representative will be able to inform the Board on how binding they intend this to be.

Director Maruthur praised the new development but said she is always concerned about the neighborhood because things change. She then quoted from the Code of Ordinances, §16-2-49 which states: "in order to protect neighborhood stability, the Planning Commission carefully monitors development carried out in the district. The district exists to achieve the plan objectives of promoting positive development and redevelopment of mature areas in the city." Director Maruthur questioned the distance of homes from that site, and Ms. Sellman replied there are homes adjacent to this property. Director Maruthur asked if they are aware of this rezoning, and Ms. Sellman advised they have been notified and her office has not received any opposition.

Director Smith asked if it is C-2 all the way down to the corner of Ouachita, and Ms. Sellman replied that she believes it is. Director Smith pointed if the Board approves a C-TR, there will essentially be three zoning phases in a one-block area (C-2, C-TR, and R-3). He questioned if there is a problem in extending the C-2 for this property. Ms. Sellman responded it is clear that the C-TR zone district is intended specifically for in-fill sites; and whether that is the best in this particular situation, the Board will have to determine based upon facts and recommendations of the Planning Commission.

Mr. Anthony Taylor, with Taylor/Kempkes Architects, 210 Central, said they applied for a C-2 zoning for several reasons; and this property was conveyed as one parcel; the remainder of the parcel is C-2. Therefore, they believe the balance of the single parcel should be C-2. At the Planning Commission meeting, the question arose regarding C-TR and whether or not that would provide the City more control in the future. He commented while it is meant as a way to control in-fill development, this is not in-fill development. He said this is a piece of property that is connected directly to a 43,000-square foot building and is the only off-site parking. He pointed out it really does not make much difference if it is C-2 or C-TR because it is only going to be a parking lot and will comply with the landscaping and all the buffer requirements.

However, there is one concern by his clients, and if it is zoned C-TR, they have to go to the Planning Commission for a Conditional Use Permit, which takes another month. He said they have tenants signed up who have been told they will have a parking lot in April. However, if they have to wait until the next Planning Commission meeting for a Conditional Use Permit, there may be a problem with the timing. He commented this property would have to be re-parceled as an independent piece of property in order to be developed; and any further construction on that site will also mean new parking regulations in a C-2; but there is not enough land for that. He urged the Board to approve a C-2 zone so they can go forward immediately.

Director Maruthur said Mr. Taylor mentioned it would not make any difference if it were C-TR or C-2; and Mr. Taylor replied in the end result, it will delay them and in a detrimental manner. Director Maruthur stated in the future, the way this is written, C-TR, it is to protect neighborhood stability; and this could be subdivided in the future. Mr. Taylor said there would be no reason for the City to try to maintain that kind of control over one piece of property within a larger parcel. Director Maruthur pointed out it borders in a residential area. Mr. Taylor commented there will be no difference in the way it is developed, whether it is zoned C-2 or C-TR. Director Maruthur questioned if that is what the code says and wants what is best for the neighborhood. Mr. Anthony replied what is best for the neighborhood is to allow this individual to develop this piece of property and not delay him another 45 days. Director Maruthur asked if he is going to guarantee this is never going to be subdivided, and Mr. Anthony said he cannot give any guarantees on that but is going to guarantee that he will comply with the code.

A motion was made by Director Weatherford, duly seconded by Director Ramick, to amend the ordinance that it go back to C-2.

Upon discussion, City Attorney Brian Albright asked if that would require a change in Section 3 of the ordinance which would be a change in the Future Land Use Map; and Ms. Sellman replied that it would be Linear Commercial Corridor. City Attorney Brian Albright advised if there is an amendment to the ordinance to C-2, he would suggest that Section 3 be amended to be compatible; therefore, it would be Linear Commercial Corridor.

Director Weatherford said that he would also include that in his amendment, which Director Ramick stated he would also second that to be included.

Director Maruthur asked if that would offer any more protection if it were Linear Commercial Corridor, and Ms. Sellman said that it would not necessarily. She added

that Linear Commercial Corridor is a broader designation, and Commercial Enclave is more limiting.

Mayor Bush then called for a vote on the amendment to change the zoning to C-2 and reclassify the Future Land Use classification to Linear Commercial Corridor; and upon roll call, the following voted "aye": Directors Jones, Smith, Weatherford, Ramick, Daniel, and Bush, total 6. Voting "no": Director Maruthur; motion carried.

Attorney Ray Owen, Jr. stated this vacant lot has been used for parking for a number of years and is the only off-site parking near that area. He commented his client is spending a lot of money to buy a building that was deteriorating and rehabing it in such a way to add about 43,000 square feet of commercial space in an area to have that type of commercial space near that business area. He stated the plan that came in with the application to rezone to C-2 was a drawing from Anthony Taylor which showed a parking area that complied. He talked with one of the neighbors, and they do not have any problem with it. He said they wanted to make sure their sewer line was going to be okay, and they worked that out with them.

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

## **25 Proposed Ordinance No. O-08-85**

An ordinance entitled, "AN ORDINANCE AMENDING THE ZONING CODE OF THE CITY OF HOT SPRINGS, ARKANSAS, BY REZONING PROPERTY AT 105 TREVA PLACE FROM R-4, MEDIUM/HIGH DENSITY RESIDENTIAL DISTRICT, TO C-2, GENERAL BUSINESS DISTRICT; AND AMENDING THE FUTURE LAND USE MAP BY RECLASSIFYING CERTAIN REAL PROPERTY AT 105 TREVA PLACE," was taken from the agenda for consideration.

A motion was made by Director Weatherford, 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, stated the applicant and owner of this property is Ms. Betty Boone, who is requesting C-2, General Business District zoning for approximately ½ acre at 105 Treva Place. This would require opaque screening to be installed where the property abuts residential property should the request be granted and new development be proposed there. The staff recommendation to the Planning Commission is that this request is consistent with the Comprehensive Plan Future Land Use Map designation of Linear Commercial Corridor, and it does match the designation of the commercial property that is just to the north along Albert Pike. The Planning Commission's finding after their hearing on November 13, was by a vote of 7 to 0 to recommend that the Board approve the rezoning and amend the future land use map to designate the property as Linear Commercial Corridor.

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, Ramick, Daniel, and Bush, total 7; motion unanimously carried. Whereupon the ordinance was declared passed.

### **OTHER BUSINESS**

## **26 Board of Directors Items**

Director Jones reported a Pleasant Street Historic District meeting was held last night, and the Historic District Commission answered questions from those in attendance. She said they left the meeting feeling comfortable with the Commission. She commented she was very uncomfortable knowing that most of the people were not aware of what they could or could not do and how to get permission. She urged all of the other Directors to get guidance from the Historic District Commission if they have a historic district or planning on starting one.

Director Maruthur said she agreed with Director Jones. She wished her mother a Happy Birthday, which will be tomorrow. She reported an account is set up at Regions Bank for Firefighter Gene Yarbrough, who passed away several months ago and hopes that people will donate since the family is in need. In light of what happened in the Tillman Family and the loss to the community and also with the passing of Mr. John Seales, the City's previous Animal Control Director, she read a poem she had written entitled, "Before It's Too Late."

Director Maruthur stated there are two terms that are frequently used (RFP's, which is Request for Proposals; and BARF (Board Action Request Forms), and does not believe the public understands those acronyms. She said that several people have asked her about an RFP.

She stated she is going to send a Letter to the Editor using some of the acronyms that are frequently used during the Board Meetings.

## **27 Interim City Manager's Report**

Interim City Manager Lance Hudnell said that he asked Fire Marshal Nate Schanlaber give a brief presentation on fire safety during the upcoming Holiday Season.

Fire Marshal Nate Schanlaber gave a video presentation regarding fires started by natural Christmas trees and urged individuals to select a tree with a high moisture content and also to check if it has been spray painted; make sure it is stable after they get it home; water it daily; and keep the tree away from heat sources a minimum of three feet.

Police Chief Bobby Southard gave tips on Holiday safety and asked that people be observant of their surroundings; take note of people who are leaving in and out of the stores; look at the parking lot; park in a well-lighted area. While shopping in the stores, women need to be aware of the location of their purses and keep their purse close to their heart; when paying with a credit card make sure to get the credit card back and not someone else's. Place packages into the trunk of the car. When going home, use the rear view mirror and side mirrors. If it appears someone is following, go to a lighted area and call the Police Department but do not go home.

Director Daniel pointed out there are many good people also, and he witnessed that this past Friday. He said it was raining, and he accidentally kicked his receipts from the day before out of his vehicle onto the parking lot and never knew they were gone. That afternoon, he received a phone call from a lady who lives on Mountain Pine Road, who had found them and met her the next morning and returned his receipts.

Interim Deputy City Manager Lance Hudnell reported that the Arkansas Municipal League Conference is coming up and asked that the Directors get their reservations into Margaret Parris because early registration will be prior to the next Board Meeting. The budget work session will be held tomorrow at 5 p.m., Board Chambers. The agenda meeting next Tuesday, will be at 5 p.m., rather than 4 p.m., because everyone is invited to Leadership Hot Springs at 3:50 to participate in the panel discussion. Regarding the Consent Agenda, he thanked those who made donations to the upgrading of the police motorcycles.

Director Weatherford thanked all of those who came to the chili cook-off last Tuesday in support of the downtown Christmas lights.

## **28** ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 8:45 p.m., to meet again on Tuesday, December 16, 2008, at 7:00 p.m.

ATTEST: \_\_\_\_\_

APPROVED: \_\_\_\_\_

Lance Hudnell, City Clerk

Mike Bush,

Mayor