

## MINUTES

### BOARD OF DIRECTORS MEETING

FEBRUARY 19, 2008, AT 7:00 P.M.

The regular meeting of the Board of Directors was held on Tuesday, February 19, 2008, at 7:00 p.m., Board Chambers, City Hall, with Mayor Mike Bush presiding.

The invocation was given by Mr. Jimmy Young, 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, Tom Daniel, and Mike Bush, total 6. Absent: Director Bill Edwards.

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

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

Upon discussion, Director Maruthur requested that Item No. 27 (Proposed Resolution No. R-08-52 Approving the Extension of Hot Springs Municipal Water Service to 265 Fox Pass Cutoff with the City Participating in Extension Costs) be moved to the first item under New Business due to a medical hardship of Ms. Neva Swann.

Mayor Bush then called for a vote on the motion to approve the agenda, as amended; and upon voice vote, the motion unanimously carried.

#### **3** Approval of Minutes of February 4, 2008 Board Meeting

A motion was made by Director Smith, duly seconded by Director Jones, that the minutes of the February 4, 2008 Board Meeting be approved; and upon voice vote, the motion unanimously carried.

#### **4**     Recognition of Guests

Mayor Bush recognized State Representative Dr. Gene Shelby.

#### **CONSENT AGENDA**

The Consent Agenda consisted of the following:

**5**     **Public Safety Report** (February 6, 2008).

**6**     **Proposed Resolution No. R-08-32** Authorizing Revisions to the 2007 Budget.

**7**     **Proposed Resolution No. R-08-33** Authorizing the City Manager to Establish an Employee Recognition Program. **(Removed from the Consent Agenda for Separate Consideration)**

**8**     **Proposed Resolution No. R-08-34** Authorizing the Filing of a Grant Application with the State of Arkansas for a 2008 General Improvement Fund Grant (Tennis Court Repairs at Family Park). **(Removed from the Consent Agenda for Separate Consideration)**

**9**     **Proposed Resolution No. R-08-35** Authorizing the Filing of a Grant Application with the National Park Service for a 2008 Challenge Cost Share Program (Construction of Valley Street Creekwalk Portion of Greenway Trail).

**10**    **Proposed Resolution No. R-08-36** Authorizing the Filing of a Grant Application with the U. S. Department of Transportation, Federal Transit Administration, Pursuant to the Alternative Transportation in the Parks and Public Lands Program.

**11**    **Proposed Resolution No. R-08-37** Approving a Capital Assistance Grant Agreement with the Arkansas State Highway and Transportation Department as Authorized by 49 U.S.C. §5309 and 49 U.S.C. §5307 (FTA Capital Assistance Program for the Urbanized Areas).

- 12 Proposed Resolution No. R-08-38** Approving the Chamber of Commerce Transportation Committee's Revised Priority List for Highway Development Projects in Hot Springs and Garland County.
- 13 Proposed Resolution No. R-08-39** Approving an Agreement with the U. S. Geological Survey for a Stream-Flow Monitoring and Early Flood Warning System.
- 14 Proposed Resolution No. R-08-40** Approving Change Oder No. 1 to the Contract with Right of Way USA, Inc. for Higdon Ferry Road Widening Project.
- 15 Proposed Resolution No. R-08-41** Appointing Willie J. McCoy to the Community Development Advisory Committee.
- 16 Proposed Resolution No. R-08-42** Appointing Bette' Volland and Richard "Dick" Antoine to the Animal Control Advisory Committee.
- 17 Proposed Resolution No. R-08-43** Appointing John D. Simms to the Board of Zoning Adjustment.
- 18 Proposed Resolution No. R-08-44** Appointing Stephanie (Stevie) Spargo to the Civil Service Commission. **(Removed from the Consent Agenda for Separate Consideration)**
- 19 Proposed Resolution No. R-08-45** Appointing Cheryl Batts to the Historic District Commission.
- 20 Proposed Resolution No. R-08-46** Appointing Ann Hair to the Parks and Recreation Advisory Committee.

**21 Proposed Resolution No. R-08-47** Appointing Wanda Thorp and James Clopton to the Planning Commission.

**22 Proposed Resolution No. R-08-48** Appointing Bruce Collier to the Transportation Advisory Committee.

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

Upon discussion, Director Daniel requested that Item No. 18 (Proposed Resolution No. R-08-44 Appointing Stephanie [Stevie] Spargo to the Civil Service Commission) be removed from the Consent Agenda for separate consideration. He mentioned he has received input regarding a controversy and believes the applicant should be given the opportunity to answer any questions.

Director Maruthur requested that Item No. 7 (Proposed Resolution No. R-08-33 Authorizing the City Manager to Establish an Employee Recognition Program) and Item No. 8 (Proposed Resolution No. R-08-34 Authorizing the Filing of a Grant Application with the State of Arkansas for a 2008 General Improvement Fund Grant [Tennis Court Repairs at Family Park]) be removed from the Consent Agenda for separate consideration.

Mayor Bush then called for a vote on the motion to approve the Consent Agenda, as amended; and upon roll call, the following voted "aye": Directors Maruthur, Jones, Smith, Weatherford, Daniel, and Bush, total 6. Absent and not voting: Director Edwards; motion unanimously carried.

### **NEW BUSINESS**

**27 Proposed Resolution No. R-08- 52**

A resolution entitled, "A RESOLUTION APPROVING THE EXTENSION OF HOT SPRINGS MUNICIPAL WATER SERVICE TO 265 FOX PASS CUTOFF WITH THE CITY PARTICIPATING IN EXTENSION COSTS," was taken from the agenda and read by title only.

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

Upon discussion, Public Works Director Steve Mallett advised that recently a request was made for the City to provide service to the resident (Ms. Neva Swann) at 265 Fox Pass Cutoff. He reported that Ms. Swann's water well has failed, and she is requesting that the City provide water to her residence. He stated at the December 4, 2007 Board Meeting, staff was instructed to put together a project and obtain bids to find out what it would cost to extend water to her property, and the cost for the project is estimated at \$85,800. He said the City surveyed all of the property owners it could contact and could serve approximately 11 properties, although there are currently only five houses that could possibly be served. He noted that does not include the gravel pit. Therefore, there are six current property owners who have houses that may be able to utilize it in the near future. Of those property owners that were contacted, only one, other than Ms. Swann, was willing to dedicate up to \$5,000 toward the installation of the water line, who was Mr. Rick Davis, owner of the gravel pit. He added that still leaves approximately \$80,000 that would have to be funded either by the City or the applicant or a compromise.

Director Maruthur stated that on December 4, 2007, the applicant, Ms. Swann, who lives on the corner of Park Avenue and Fox Pass, came before the Board and had previously applied for water since her well had gone dry. She stated Ms. Swann has attempted to have the problem corrected, but it could not be done and is having to use two hoses to get water from her son's home. She pointed out when Mr. Mallett first presented this to the Board, he gave an estimate of \$50,000. She mentioned there is a gravel pit, which is close to completion; and an interest has been expressed in developing a subdivision. She added there are a number of people who could develop if there were water and sewer, and there is a growth in the Oakbrook Heights area. She noted the City also runs water to Belvedere. She mentioned the City approved a payment schedule for another individual on Terryland several years ago. She stated as a result of that, several other individuals who expressed no interest then tied on, and the City received the revenue. She emphasized that the City is trying to get people to move into the City. She stressed that Ms. Swann has no water and is well within the city limits and was not notified of this meeting.

Mr. Mallett advised that he tried to contact her today, but Director Maruthur had told him that she had contacted Ms. Swann yesterday. Director Maruthur pointed out that the Board packet was put together prior to yesterday; and if she had not notified Ms. Swann, she would not have been here tonight. She stressed this is creating a

great medical hardship on Ms. Swann, and the Board has an opportunity to keep people in the City. She urged the Board to provide Ms. Swann with water and pointed out that the City has extended water outside of the City up to five miles.

Mr. Mallett clarified that developers have done that, and the City has taken it over after they were completed with it.

Director Maruthur stated she did not know if the City is trying to encourage people to move into the County because she is sure there is somewhere in the County where people can get water and sewer. She said a letter was distributed tonight from Mr. Courtney Crouch, Ms. Swann's employer, asking for this to be considered.

Ms. Neva Swann, 265 Fox Pass Cutoff, said that her well is dry; and her son is sending water to her house through a water hose when the weather is not freezing. When it is freezing, she has to go to her daughter's house to live. She stated she believes the work that has been done at the gravel pit has caused her well to cave in and is why it is dry. She commented that the water line will benefit the gravel pit company when the owner puts in his subdivision.

Director Maruthur asked if she would like to remain in the City, and Ms. Swann said that she would. Director Maruthur stressed that Ms. Swann is asking only for some assistance to get water because she has explored everything possible with her well, and they cannot get the water. She commented this serves as an example of why the City experiences a problem with the ETJ (Extraterritorial Jurisdiction) and why people resent that the City will not step forward and help these residents to get water and in some cases sewer. She commented there is a potential subdivision coming into the City near a newly developed subdivision, and to deny Ms. Swann water is sending a very loud message. She pointed out that she tried to get water before when her well was working.

Ms. Swann explained when she received permission to put in her double wide, she was told the City could run the water and would only cost about \$5,000 to hook up to the water, which was in 1999.

Regarding the bids, Director Maruthur stated on December 4, 2007, on the Board Action Request Form from Mr. Mallett, the cost estimate was \$50,000. However, there is now an estimate of \$133,000. She pointed out that is a large discrepancy from \$5,000. She urged the Board to schedule out payments and help this entire area so it can be developed, and they will not have to move into the County.

Director Smith thanked Ms. Swann for attending the meeting tonight, as well as two months ago. He said the Board is sympathetic and well prepared to take action on this tonight.

Mr. Gary Morgan, 283 Fox Pass, stated he wanted to hook up if they can get the water. He mentioned that at the present time, he has no problem with his well; but he did not know how long he can continue supplying two houses with water.

City Manager Kent Myers explained that the resolution authorizes the extension of water service to 265 Fox Pass Cutoff, and the City will pay for the estimated amount for construction of that line (\$85,800). He noted that Director Maruthur had mentioned scheduled payments from the property owner, but that is not included in the resolution. He stated the resolution can be amended; but it is worded whereby the City will cover 100 percent of the cost.

Director Maruthur then read from the Code of Ordinances, Chapter 5, Section 9-5-1, regarding utilities extension and connection regulations: "Provided, however, that the City may participate in the costs associated with the extension of water or wastewater lines or services when such extension is in the best interest of the City, public health, or as may be required by federal regulations as prescribed hereinafter. Any such costs to be borne by the City shall be approved by the Board of Directors on a project-by-project basis." She mentioned that Ms. Swann has a health condition and has gone without water with no remedy to this problem unless the City steps forward and provides it for her. She further read from the Code stating: "This shall be limited to the provision of water or wastewater lines to pre-existing, occupied structures on single parcels not otherwise involved in active development projects." She stated the City has been very generous with developers, and she is aware they pay their own way. However, they also have a return in revenue. She stressed that the City has a provision for people who are in this situation to step forward and help, and the City has been very prudent in exercising this option. She pointed out that the City does not do this very often, but there are some cases where the City has to do something to help people.

City Attorney Brian Albright asked if the cost of this extension goes to her residence or property line, and Mr. Mallett advised that it is to her residence. He noted the City can cut back some of the amount because there are some fire hydrants that fall within the City code. However, there are not any residents who would benefit from them now. Therefore, in order to reduce some costs now, the City can do that; and developer would have to put them in later. He advised the City can probably cut it back to \$70,000 or \$75,000 just to get it to her property line.

Regarding the \$50,000 mentioned by Director Maruthur, he stated that was his estimate and is why the City advertised for bids to get a better number. He advised there is another option if

the Board wants to consider a rebate agreement, which has been done for other people; and when others connect, they can pay the City back for their fair share.

City Attorney Brian Albright questioned if what is in the resolution takes it to Ms. Swann's residence, not just the property line; and Mr. Mallett advised that it takes it to the property line. He added it does not include the service. City Attorney Brian Albright pointed out that Ms. Swann would then be responsible from the main to her house.

Director Daniel questioned when this was discussed in December 2007, the gravel pit owner had stated he would donate \$5,000; and Mr. Mallett said that was correct. He added that the gravel pit owner understands if that line is not run now and he decides to develop sometime in the future, he is responsible for the full \$85,000 or whatever it takes to get that line to his property.

Mayor Bush then called for a vote on the motion to adopt the resolution; and upon roll call, the following voted "aye": Directors Maruthur, Jones, Smith, Weatherford, Daniel, and Bush, total 6. Absent and not voting: Director Edwards; motion unanimously carried. Whereupon the resolution was declared adopted.

## **18 Proposed Resolution No. R-08-44**

A resolution entitled, "A RESOLUTION APPOINTING STEPHANIE "STEVIE" SPARGO TO THE CIVIL SERVICE COMMISSION," was taken from the agenda and read by title only.

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

Upon discussion, Ms. Diane Silverman said she did not know Ms. Spargo but is aware that she is a successful realtor. She stated that this has nothing to do with Ms. Spargo personally, but one of her agents is a high-ranking police officer and her son is a fireman. She commented it would appear there could be conflicts of interest.

Director Daniel said he would like to give Ms. Spargo an opportunity to explain why she wants to serve on the Civil Service Commission, and why she felt whether or not it was a conflict.

Ms. Stevie Spargo, 400 Pritchard Street, commented that she has served the City in different capacities, such as on ad hoc committees and other commissions and found that many people in the City do not choose to serve. She said she was the only person who applied for the Civil Service Commission, and she has a son on the Fire Department and has a partner that is a high-ranking police officer. She stated that she did not believe the integrity of the Commission would be damaged in any way.

Director Maruthur mentioned there are a lack of applicants who are interested in certain commissions, but other commissions are flooded with people who want to serve. She pointed out this commission is not district sensitive, and she has a problem with the fact that she has an employee and relative that she would be overseeing should there be a problem. She stated it is called human nature. She mentioned that she has worked with Ms. Spargo on certain issues and stressed that this has nothing to do with her. She commented that Ms. Spargo is not the only person in the community, and the City needs to get the word out. She added there might be another commission that she could serve on without the perception of a conflict of interest.

Ms. Spargo responded that this commission position was open to the public for the required length of time, and everyone had the opportunity to apply. She stated that she has been endorsed by the Chief of Police, the Fire Chief, and the president of the Firemens' Union and did not understand the problem. Director Maruthur pointed out that the problem is that she is related to an employee, and there are three people where she could make a decision regarding some incident, behavior or whatever comes before the Civil Service Commission. She mentioned there is nothing on her application that shows this, and that was the first thing she looked at. She said that she voted for her on the ballot that was distributed, and then she started receiving calls.

Ms. Spargo said her understanding is that all of the votes taken on the Civil Service Commission is an average of the votes, and she does not see how she could override either way. Also, she would step away on anything that directly involved her son.

Director Maruthur pointed out that she could step away, but her influence would be there; and there would be a perception. She added that perception becomes reality.

Ms. Spargo asked if she was doubting the integrity of the Commission, and Director Maruthur responded that she is doubting human nature. She stated she would have felt more comfortable if she had put on her application that her son was a fireman and that she employed one police officer and his wife.

Ms. Spargo said that she took it for granted that everyone knew, but the Board is now aware of it.

Director Maruthur asked if she would be willing to serve on another commission where applicants are really needed, and Ms. Spargo said that she is serving on another committee at the present time. She added this is the commission for which she applied, and she has been voted into this position and is ready to serve.

Director Maruthur pointed out she was the only person the Board had to vote for, and Ms. Spargo said it was the only application submitted. Director Maruthur stated the City could open that position up again, and she would be glad to support her on any other commission or committee where she did not have a relative or partner. She noted that she is going to withdraw her vote and vote "no." She commented if she were Ms. Spargo, she would not have applied because of the connection and perception, not because she would try to do anything improper. She stated the phone calls she received were from people she did not know, and she said that she would present it at the Board Meeting. She asked if she was willing to withdraw, and Ms. Spargo replied that she was not because she believes she can do a good job and be an asset to the Commission.

City Attorney Brian Albright clarified that the votes the Directors cast on the ballot form are not votes for the appointment. He advised that state law requires that the City Manager present to the Board nominations for these positions; and the City Manager's Office uses a paper ballot to formulate who the nominee will be, which is then included in the resolution for the Board to vote up or down. He explained that the Board's vote is for the resolution and is not for the nominee, and the nominee is before the Board now; and the resolution is to vote that nominee up or down.

At this time, a motion was made by Director Maruthur to table the resolution. There being no second to the motion, the motion died for lack of a second.

Mayor Bush then called for a vote on the motion to adopt the resolution; and upon roll call, the following voted "aye": Directors Jones, Smith, Weatherford, Daniel, and Bush, total 5. Voting "no": Director Maruthur. Absent and not voting: Director Edwards; motion carried. Whereupon the resolution was declared adopted.

## **7 Proposed Resolution No. R-08-33**

A resolution entitled, "A RESOLUTION AUTHORIZING THE CITY MANAGER TO ESTABLISH AN EMPLOYEE RECOGNITION PROGRAM," 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, Ms. Minnie Lenox, Human Resources Director, explained the program stating that the City Employees' Awards of Excellence Program was created to acknowledge and express appreciation for outstanding accomplishments made by the City employees who do not necessarily fall entirely within the scope of normal duties but shall be in the nature of a major contribution and positive recognition for the person and the city service. She stated an awards ceremony will be held annually to recognize award recipients during excellence in city government week. She added employees may be nominated for an award by other city employees, supervisors, coworkers, and subordinates as outlined in the individual award criteria. The meritorious service or accomplishments must be so outstanding that special recognition is justified. It consists of different elements, and the elements are the overall employees award of Excellence Recognition Program. Awards can be given in the following categories: innovations, distinguished acts, human relations, public service, attendance, safety, and years of service. The City is also incorporating the Bill Edwards Spirit of Customer Service Employee of the Year Award, Supervisor of the Year Award, and the Spotlight Award.

Director Smith commended Ms. Lenox for her work on this program.

Director Maruthur said she felt that such an excellent job had been done putting this program together that the community deserved to hear what has been done.

Director Jones stated she believes this is a great idea and will help the morale of the employees.

Director Daniel expressed appreciation to Ms. Lenox for this program, and incorporating Bill Edwards in that one special recognition is a wonderful idea.

Mayor Bush also commended Ms. Lenox on this 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. Absent and not voting: Director Edwards; motion unanimously carried. Whereupon the resolution was declared adopted.

## **8 Proposed Resolution No. R-08-34**

A resolution entitled, "A RESOLUTION AUTHORIZING THE FILING OF A GRANT APPLICATION WITH THE STATE OF ARKANSAS, FOR A 2008 GENERAL IMPROVEMENT FUND GRANT (TENNIS COURT REPAIRS AT FAMILY PARK)," 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, City Manager Kent Myers advised this resolution includes an application for \$18,000 from the State of Arkansas General Improvement Funds to resurface the tennis courts at Family Park. About a month ago, the City was informed by the West Central Planning District that a small pot of money was available to cities and counties around the State for special, local projects. This money was approved by the State Legislature; and in the case of Hot Springs, it qualified for \$18,000 in one-time funding for special projects in the community. He stated this information was sent to department heads and Board Members on February 1, and each of the department heads and Board Members were requested to come forward with ideas for this funding. He said the Parks Department submitted the idea for resurfacing the tennis courts, and this is the only project that was presented for consideration. He said if approved, the resolution will go to the Planning District, and they are scheduled to approve the projects next month.

Director Maruthur mentioned she has the City Manager's Update from February 1; and the way it was presented to the Directors, it stated there are local projects in mind for funding. She noted the two Representatives did, however, suggest that the project be highly visible and that it benefit the largest number of local citizens. She pointed out there is a painting project for the historic lights in the 100 block of Malvern and the remainder of Central Avenue, and there have been positive comments. She noted those lights have not been painted in 20 years. She stated this infrastructure improvement to resurface tennis courts would benefit only those that play tennis and is not highly visible. She added it is needed and is something the Board needs to revisit during midyear budget. She advised that she spoke to Representative Saunders and Representative Shelby; and the way this has been presented in the legislature, they cannot recommend anything. However, neither Representative had any problem. She said it was favorable that this high visibility that would promote downtown be completed and is a project that everyone sees and recognizes. She stated there are many things needed downtown, and Hot Springs is the No. 1 tourist destination. She recommended that the City apply this money to the No. 1 tourist destination, look at the paving for midyear budget, and take care of the tennis court resurfacing. She suggested if there is money left over, that it be applied to what the City had to short its citizens of in the area of paving in the downtown area.

A motion was made by Director Maruthur, duly seconded by Director Daniel, that the resolution be amended by applying this money to finish the beautification and needed attention to the rusted, historic light poles downtown and to thank Representative Gene Shelby and Representative Rick Saunders in a way that would recognize the fact that this was brought to the City's attention.

Upon discussion, City Manager Kent Myers advised that the project described by Director Maruthur is already in the 2008 budget; and the City is planning on painting those poles as soon as the weather gets warmer.

Director Maruthur commented the City could apply those funds to the poles and reserve the money the City has for the poles and apply that to the midyear budget. City Manager Kent Myers replied that he and Finance Director Dorethea Yates have done some preliminary estimates, and they are not anticipating any additional money at midyear budget for any new projects. He stressed that the project she is describing, the City is already planning to do and fully funded in the budget.

Director Maruthur pointed out that the City had to put a lot of paving into the alternate program because there was not enough money, and it is the Directors who make that policy and he is to execute it. City Manager Kent Myers stressed that the project is already funded. He pointed out the Board can fund it out of these funds if it wants but does not have to because the City is already planning on doing that project.

Director Maruthur said she would like to recognize the turnback money in the form of these highly visible improvements.

Mayor Bush asked if she was taking this away from the tennis court repairs, and Director Maruthur replied that she was not. She added it would be shifting that money later on unless the City has to use it for something else.

Director Daniel stated that the poles have been started, and the money is still in the budget to finish the poles. He questioned why not use the money for what the grant is intended. Director Maruthur responded that in the memo from City Manager Kent Myers, he is telling the Board what to do, and there are complaints about this all the time from the public.

Mayor Bush pointed out that the City Manager does not tell her what to do, and she does not have to agree with the memo.

City Manager Kent Myers stated that in his memo of February 1, it stated to let him know if the Directors have any projects they would like for the Board to consider; but none of the Directors have contacted him in the last two weeks about any project they wanted funded. He pointed out that Director Maruthur did not call him today and inform him about the street light poles. He pointed out if she had called him today, he would have told her that it is already covered in the budget.

Director Maruthur replied that she did e-mail him; and as the City Attorney can attest to, there is a problem sometimes with e-mails going back and forth. City Attorney Brian Albright explained that his e-mail to Director Maruthur's home was classified as spam.

Mayor Bush then called for a vote on the amendment to the resolution; and upon roll call, the following voted "aye": Director Maruthur. Voting "no": Directors Jones, Smith, Weatherford, Daniel, and Bush, total 5. Absent and not voting: Director Edwards; motion failed.

Mayor Bush then called for a vote on the motion to adopt the resolution; and upon roll call, the following voted "aye": Directors Maruthur, Jones, Smith, Weatherford, Daniel, and Bush, total 6. Absent and not voting: Director Edwards; motion unanimously carried. Whereupon the resolution was declared adopted.

### **23 Consider Request from Mr. Elmer Beard to Revise the CDBG Funding Allocation by Increasing Funding for One-Stop Home Ownership Program (Reconsideration).**

City Attorney Brian Albright explained this is a reconsideration and is an item that was voted on by the Board less than 180 days prior to tonight. Therefore, under the Board's procedural rules in order to have a reconsideration of this item, it requires a 2/3 vote to place it on the agenda for further discussion. He explained there are six Directors present tonight, and 2/3 of quorum would be four.

A motion was made by Director Jones, duly seconded by Director Smith, to reconsider this item; and upon roll call, the following voted "aye": Directors Jones, Smith, and Weatherford, total 3. Voting "no": Directors Maruthur, Daniel, and Bush, total 3. Absent and not voting: Director Edwards; motion failed.

Director Maruthur thanked Mr. Beard for coming tonight and pointed out that the CDAC Committee has already made a commitment to those that are in need of housing repairs and that is what this is about.

Mr. Beard said he would like to have the invitation to come back to fully express this great need.

## **24 Proposed Resolution No. R-08-49**

A resolution entitled, "A RESOLUTION APPROVING A MULTIPLE BUILDING SITE PLAN FOR THE FLEETWOOD ESTATES MOBILE HOME PARK," was taken from the agenda and read by title only. **(Appeal)**

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

Upon discussion, Ms. Kathy Sellman, Planning and Development Director, explained this is an appeal by Attorney Dan Becker for the applicant, Mr. Andy Worley, who originally sought Article II Site Plan approval for 5.42 acres that is now partially developed to six manufactured homes. The land is located outside the city limits and is in the City's extraterritorial jurisdiction. She stated the application demonstrated the purpose of the proposed site plan review was to approve 17 single-family manufactured home spaces. The Planning Commission held a hearing on January 10, 2008, and voted to approve the request for the 17 spaces with eight conditions on a vote of 6-2, with Commissioners Campbell and Thorp voting against. After they discussed the need for stormwater remediation and screening that had been revealed in the testimony of neighbors at that hearing, she said Mr. Becker stated that the Planning Commission erred as the applicant was only seeking installation of a final water meter and is not planning for the development at this time. The record demonstrates otherwise that Mr. Worley submitted a site plan for 17 home spaces and that he has a history of presenting plans to develop and then representing to the City that he no longer has such plans while proceeding with substandard development of a de facto mobile home park that creates negative environmental and esthetic impacts on his neighbors. She said the appeal fails to demonstrate that the Planning Commission erred in this decision, and the recommendation to the Board is to deny the resolution and uphold the Planning Commission's action to approve the Article II Site Plan approval with eight conditions. She advised that the appellant is requesting that the eight conditions be removed.

Director Daniel asked if there was not a similar situation on Marion Anderson Road several months ago where the City issued some permits for water and then told the gentleman that he could not proceed and develop the rest of the land. Ms. Sellman explained in that situation, the applicant on Marion Anderson Road obtained water permits without asking permission to develop the land, and he was issued water taps. Director Daniel questioned when Mr. Worley got the seven meters he already had, and Ms. Sellman replied that he has six; this would be the seventh. She advised that he obtained those over the last 1½ years and came in with a plan in August 2006 with a preliminary plat to develop a 15-lot single-family residential subdivision of that property. In October 2006, he came in the office and said he was not going to proceed with it. He said that he did not want to have a subdivision and submitted a letter vacating that preliminary approval. She added it was once again a large piece of land, and there are now six homes on there. There was significant testimony at the Planning Commission hearing regarding stormwater problems that were represented by those testifying as being the result of the unsupervised development by Mr. Worley on the land.

Director Daniel asked if he physically has six separate meters, and Ms. Sellman advised that he does. Director Daniel questioned if he was paying city water for them, and Ms. Sellman said that he was. She added there was a request to subdivide to place 15 homes and then there was a request to forget about the 15 homes that it would not be developed in that way. She said that apparently meters were issued; and when this one came through for sign-off, it was apparent that this requires more scrutiny than it had been getting. She mentioned there were numerous homes on the lot.

Director Daniel asked if the City did not know every time it put a meter in that there was another home on the lot, and Mr. Sellman replied that she thinks the City would notice; but apparently, it did not. Director Daniel said he did not know how the City can continue doing this. He said that she is telling him that the City should have never given him the six, and Ms. Sellman replied that was correct; but the City did.

Director Maruthur said the site plan approval was contingent upon adhering to these eight conditions, and Ms. Sellman said that was correct. Director Maruthur asked if Mr. Worley had legal representation when he appeared before the Planning Commission, and Ms. Sellman said that she did not recall. Director Maruthur said if he did not at that time, he feels like he needs it now.

Mayor Bush pointed out that Mr. Dan Becker is present tonight and asked if he was present at the Planning Commission meeting. Mr. Becker replied that he was not.

Mr. Dan Becker, attorney representing Mr. Andy Worley, said all he asking for is one meter and is not requesting to enlarge the lot or the project at this time. He said that Mr. Worley understands if he enlarges the lot and puts in more mobile homes, he will have those eight conditions. However, at this time, Mr. Worley does not have the funding to bond or do the improvements; and all he wants is one water meter. He said if Mr. Worley is going to do more improvements, he will post a bond and comply with the City's request.

City Attorney Brian Albright asked if this is an existing home, and Mr. Andy Worley advised that the homes are already there. He added this started in 2004 and got his first water meter in 1996. He paid the City \$6,000 for running the water main to this property in 1997.

Mayor Bush asked if this has been there since 2004 without water, and Mr. Worley advised that this mobile home has not; but there have been water meters purchased since 1996.

Mr. Ronald Dunn, 340 Fleetwood Drive, commented he has 40 acres across the street and has been a problem since he started. He mentioned the street is in bad condition when it rains, although it has been corrected somewhat; however, he pays taxes on a paved street and does not want to get his vehicle muddy every time it rains. As far as the trailers, he said he understood it to be all modular homes or some kind of home, not trailers. He stated he does not want to look across his property and see 17 trailers.

Director Maruthur questioned his problem with mud; and Mr. Dunn said that every time it rains, the ditches fill up with soil and wash out on the street. Director Maruthur asked if there were a lot of trees there before, and Mr. Dunn said there were. Director Maruthur asked if this was clear-cut, and Mr. Dunn said not to his knowledge. He added there was a field there, and there was a road directly across from his driveway that they filled in with about 12-foot of soil. He said all of this is washing down the hill; and when the ditches fill up, it runs out on the road. He commented where they cut for the water across the road, there are dips in the road.

Director Maruthur asked if he had read the conditions that were placed on this development, and Mr. Dunn said that somewhat. Director Maruthur asked if he felt more comfortable with these conditions, and Mr. Dunn said that he did.

Director Daniel asked who takes care of the pavement, and Mr. Dunn said he believes the county road department; but when they put the water in, he does not know who takes care of it.

Mr. Worley advised that he paid the City \$6,000 to get the water main to his property, and they crossed the road, which has caused a dip; but it was done by the City.

Mr. Ted Patton, 287 Fleetwood Drive, said his property borders the trailer park; and all of his money is invested in his home. He stated since the trailer park was built, his yard floods and his children wait for the bus in water. He stressed that he is opposed to the trailer park being there.

Director Smith asked if the County works on the road when there is a problem with the road, and Mr. Patton replied that normally Mr. Worley brings his tractor and cleans off the road. He noted he has seen him doing it once or twice. Director Smith asked if anyone from the County has been out there, and Mr. Patton said that he does not recall. Director Smith questioned if he has called the County Judge, and Mr. Patton replied that his wife has talked to several people; however, nothing has been done; and this has been going on for two or three years.

Director Maruthur asked if he was familiar with the eight conditions that were contingent upon this being approved, and Mr. Patton said he was aware of some of them. Director Maruthur pointed out that No. 8 of the conditions says the applicant shall provide the City with written documentation that the site has been inspected and is in compliance with stormwater pollution requirements, which would help protect his property.

City Attorney Brian Albright pointed out whether or not the Board allows this connection on the existing home that Mr. Worley has already situated on this lot or not does not address the road or anything else. He added the only way that Mr. Worley gets the connection right now is if he adheres to these eight conditions. However, if he chooses not to connect to that, he does not have to meet those eight conditions. He explained to Mr. Patton that neither he nor the Board is here to make Mr. Worley do these things, and the Board is only going to require him to do it presently if he gets the connection. He advised if Mr. Patton believes he has claims against Mr. Worley, then he needs to pursue those elsewhere. He added that he is not here tonight for the Board to make Mr. Worley do anything, and the only way the City can make Mr. Worley do anything is if he elects to go forward and connect this mobile home that is already there.

Ms. Stephanie Patton, 287 Fleetwood Drive, stated this started in 2005 when Mr. Worley started moving the ground and doing dozer work, which would cause flooding and washing in the road. She mentioned Mr. Worley would take his equipment and scrape the road and take shovels and get it out of the road. She informed the Board that she went to the County Judge in the spring of 2006, and he came out and had the County crew dig a ditch. She said all they did was dig a deeper ditch; and in a couple of weeks, it was filled up because every time it rained, it washed profusely. She stated she was informed about the Garland County Department of Environmental Services and talked to Mr. Rick Garner, who came and looked at it and said that Mr. Worley was going to have to fix some things. However, nothing happened for a while; and she called him again. He came out and said he was going to give Mr. Worley a certain amount of time to fix it; and if he did not, he would be heavily fined. She said all they did was put up a plastic fencing, and it continued to flood. In 2006, she called the Department of Environmental Services again and talked to Mr. Tommy Kerr, who came out and required Mr. Worley to bury the fence as he should have and buried it from the road to her house. He sewed some grass, and it was not two weeks; and the fence was down. She stated Mr. Worley has put in a road on the other side of the trailers, which has helped the washing somewhat; but it still floods in the road; and nothing is done to the back of their property. She said because he has hauled in so much dirt, the back of their property floods; and they have lost a large tree because of it. She pointed out Mr. Worley is not going to handle his business unless he is forced to; and if he is allowed to put in another water meter, she wants him to fix the problem before he is allowed to do anything else. She stated if he would fix it right, she would not have a problem; but he is not going to unless he is forced. She said she is asking the Board to force him to do it right.

Director Daniel asked if they knew the eight conditions, and Ms. Patton said the only thing she knew was his having to put up a six-foot opaque fencing but is not aware of the other conditions. Ms. Patton was then presented with a list of the eight conditions.

Director Daniel commented that the problem is with her being in the County, it is hard for the City; and the only thing the City controls is the water and sewer and the water meter itself. He pointed out if the Board turns him down on the water meter, then those eight conditions will not be enforced. If the Board grants him the water meter before he can hook it up, he has to comply with those eight conditions.

Ms. Patton said it was her understanding after the Planning Commission meeting, that he could hook up the water to this one more trailer if he put in the opaque privacy fence; but she was not aware of the other conditions.

City Attorney Brian Albright pointed out the only thing before the Board tonight is Mr. Worley's appeal wanting those eight conditions removed, but there is no appeal before the Board of the granting of the water hook up with the conditions. He explained if she were not happy with the Planning Commission's decision to grant the water extension subject to the eight conditions, she could have appealed that; but as it stands whatever happens tonight, Mr. Worley still has the ability, if he complies with the conditions set forth by the Planning Commission, to get his connection.

Ms. Patton read from the conditions that the development site shall be constructed and developed in strict accordance with the approved site plan including, but not limited to, street construction, parking areas, fire hydrant, and landscaping. She said that she does not see the fence listed and asked if that was considered as part of the landscaping, and City Attorney Brian Albright said that No. 7 is that he has to have screening around the perimeter of the property.

City Manager Kent Myers pointed out in the staff report and in August 2006, Mr. Worley came to the Planning Commission and asked for approval of a 15-lot, single-family manufactured home subdivision. Two months later, he submitted a letter asking that the preliminary plat approval be vacated; and subsequent to that, he continued to develop the property even though he asked for removal of that preliminary plat approval.

Director Daniel asked if the City continued hooking up meters, and City Manager Kent Myers advised that the City did.

Ms. Patton advised at the last Planning Commission meeting, Chairman Gary Threadgill stated the Commission had been deceived on this property the first time by statement, and Mr. Worley has already violated and disregarded the EPA regulations. He had stated that once the Planning Commission approves this, the City will not have any control over it because it is in the County.

Director Maruthur pointed out that the recommendation from staff is to deny this resolution to hold Mr. Worley to these eight conditions. City Attorney Brian Albright said that is correct. Director Maruthur commented a "no" vote is what Ms. Patton would want.

Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted “aye”: Directors Smith, Weatherford, Daniel, and Bush, total 4. Voting “no”: Directors Jones and Maruthur, total 2. Absent and not voting: Director Edwards; motion unanimously carried. Whereupon the resolution was declared passed.

At this time, Director Smith said he wanted to bring this issue back on the floor since he had made a mistake on his vote and wants to re-vote.

City Attorney Brian Albright announced for clarification that actions taken by the Board are always worded in the affirmative, and this is an appeal from the decision of the Planning Commission. He explained the applicant at the Planning Commission meeting was granted a water extension, subject to eight conditions. Mr. Worley appealed that asking that the conditions be removed. He advised the Board is now voting, and it is his understanding that the Board at the same meeting before going to the next agenda item wants to rescind its votes and vote again on this matter. He clarified that a vote “yes” is to grant the appeal, which would be to remove the eight conditions; a vote “no” would be to deny the appeal and stay with the Planning Commission’s prior decision.

Director Maruthur pointed out if the Board votes “no,” it is going to deny the resolution and put in place those eight conditions that were contingent upon the approval of the site approval and protect the people.

Mayor Bush then called for a vote on the motion to adopt the resolution; and upon roll call, the following voted “no”: Directors Maruthur, Jones, Smith, Weatherford, Daniel, and Bush, total 6. Absent and not voting: Director Edwards; motion unanimously failed. Whereupon the resolution was declared failed.

## **25 Proposed Resolution No. R-08-50**

A resolution entitled, “A RESOLUTION GRANTING A SIGN CODE VARIANCE PERMITTING THE PLACEMENT OF A SECOND FREESTANDING SIGN AT 2360 MALVERN AVENUE,” was taken from the agenda and read by title only. **(Appeal)**

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

Upon discussion, Ms. Kathy Sellman, Planning and Development Director, advised that this is a request by adjacent property owners both appealing Planning Commission's action to deny a variance to place a second sign along Malvern Avenue at the Diamond Center, which is the Arkansas Diamond Bank, at the corner of Carpenter Dam Road and Malvern Avenue. The appellants would like to place a second sign on the property. She stated the Diamond Bank Center project has frontage on Malvern Avenue and is next to another development called the Carpenter Center. She advised that the Carpenter Center, while visible from Malvern Avenue, does not have frontage on Malvern Avenue; and the frontage is a key element in being able to place a freestanding sign. She stated the Carpenter Center does not have such a sign at this time and would like to share some space on a freestanding sign with the Diamond Center, but the Sign Code does not allow for this. She stated there is no provision for a freestanding sign for the Carpenter Center, and the Malvern Overlay also applies to this. Also, there is a requirement for a separation of freestanding signs of 500 feet. She added there would be 165 feet if this second sign were placed. The Planning Commission heard this on January 10 and voted 7-0 to deny that variance request, with Commissioner Kleinman abstaining. She commented the appellants are before the Board tonight requesting that the Board re-think that and would like approval for that second sign. The recommendation, based upon the facts, is for the Board to deny the resolution and uphold the Planning Commission's action denying the Diamond Center variance.

Director Daniel said this is in his district and is something he has been aware of for several years. He stated when Mr. Mike Turbyfill bought the property, at that time there was some wordage put into the deed about being able to use that. He said in coming up Carpenter Dam Road at the present time, Diamond Bank has a sign that appears to be facing Carpenter Dam Road as much as it does anything else. He stated it is two-sided and is an informational sign because it gives time and temperature. He said, in his opinion, they have only one sign on Malvern Road; and the property that this sign wants to go on is the property that belongs to Diamond Bank of which they are willing to share a space. He recommended that the Board approve this appeal from the property owners and allow this freestanding sign.

Director Maruthur asked if this varies from the norm, and Ms. Sellman said that it does; however, it is not unique.

Attorney Brian Reis, 135 Section Line Road, representing Mr. Mike Turbyfill, who is the property owner and in addition one of his tenants, Simmons Bank. He pointed out that Director Daniel mentioned there is a 1996 deed that places restrictions

on this property; and Mr. Turbyfill and the Diamond Center got together and were able to reach an agreement in order to have good signage at their property. He said they were able to come to an agreement that they thought would work well. He stated if the Board allows them do what they are asking, a person driving down Malvern Avenue will see exactly what the Sign Code contemplates because it will look like the Diamond Center, which has its sign, and then his client's building, which has its sign and is permissible under the Code. He stated that Ms. Sellman's remark about the 500-foot separation is correct, and that 500-foot separation actually comes from a part of the Code for a single development. He mentioned the Planning Department treated this as a single development even though his client, Mr. Turbyfill, built his building five years ago; and the Diamond Center just opened a month ago. He stressed this is not a single development, and he believes the Planning Department was trying to help them in treating it as a single development; however, it is not; and the Planning Code sections that refer to a 500-foot separation are requirements that are for that. He advised that all of the neighbors are in favor of this. He said that he is not asking for anything other than what the sign regulation contemplates.

Attorney Don Schnipper, 123 Market, said he is appearing on behalf of the Arkansas Diamond Development, LLC, which is the owner of the property on which the Diamond Bank is located at the corner of Malvern and Carpenter Dam Road and is also the owner of the land on which this other sign would be located. He stressed that Diamond Bank and the owner of the property on which the sign will be located fully support the request for this variance and the location of this multi-tenant sign. He stated the developer, the bank, and the tenants of Mr. Turbyfill's center are very cooperative; and they believe they have an attractive and convenient commercial center. He added Diamond Bank has a conservative, attractive, and complying sign. He stressed they are not talking about neon signs. He pointed out that he believes there are a couple of fallacies in the application of the Planning Commission's requirements for signs that affect this particular development. To get to Mr. Turbyfill's development would mean going across property owned by the Diamond Bank people, and he believes the 500-foot spacing for signs in this ordinance is extremely wide. He noted he believes the 165 feet is what they talking about and believes that is very reasonable for these two developments. He assured the Board if Arkansas Diamond Development, LLC and the Arkansas Diamond Bank felt this sign would not fit in this facility by appearance or would not be a directional help to its customers and the general public, they would not allow it on their property. He urged the Board to grant the variance.

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. Absent and not voting: Director Edwards; motion unanimously carried. Whereupon the resolution was declared adopted.

## **26** Proposed Resolution No. R-08-51

A resolution entitled, "A RESOLUTION APPROVING A LETTER OF INTENT WITH SIEMENS BUILDING TECHNOLOGIES, INC. FOR CERTAIN PROFESSIONAL SERVICES (ENERGY AND WATER LOSS AUDIT)," was taken from the agenda and read by title only.

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

Upon discussion, Mr. Steve Mallett, Public Works Director, stated the City experiences what he considers to be a higher than acceptable amount of unaccounted for water and has taken a look at the water meters and their accuracy. In an effort to reduce the amount of unaccounted for water, the City solicited qualifications for firms to provide a comprehensive audit of water meters and also asked for qualifications related to energy audits for the various buildings. Responses were received from two firms (Siemens and Trane); and after rating the firms, Siemens was selected. He stated there is a Letter of Intent in the Board packet, and the City is not at this point going into a performance contract. He added this is a Letter of Intent to do an audit which will provide recommendations that will be brought back to the Board. At that time, the City will decide whether it wants to move forward with paying cash up front and make the recommendations, doing nothing with the recommendations, implementing or phasing them in, or entering into a performance contract, which allows the City to utilize guaranteed savings to pay off the initial construction costs over time. He stated in anticipation of some discussion on the energy part, he talked with the Siemen's representatives; and they had no objection to setting aside the energy part from the water part if the City chose to do that. He said it is staff's recommendation to proceed at a minimum with at least the water part of the Letter of Intent between the City and Siemens.

Director Smith said he would not have a problem separating the water and energy into two parts.

Mr. Bob Driggers, #3 Stonegate, was recognized stating he is president of Energy Smart Corporation and met with City Manager Kent Myers and Public Works Director Steve Mallett yesterday. He advised that his company has done hundreds of energy audits since 1981. He stated that in the meeting with the City, he cautioned

them about performance contracts and can provide numerous names of people who have gotten into performance contracts and wished they had not. He stated the price for the service appears to be over double what it normally would be, and \$85,000 is a lot of money for a study. He said that he informed them of the components of a comprehensive energy audit; however, even though it was promised, he does not have all of what was proposed but would like to review them. He said that he had passed that information on yesterday at the meeting. He reported that his company has had successes in hundreds of audits and typically averages well over \$100,000 in energy savings per year for schools. He mentioned an industry in north Arkansas that his company has recently done work for where he actually saved them over \$240,000 a year and got back about \$27,000 in overcharges from the local power company. Due to the fact that he believes in giving back to the community, he said he offered his services yesterday morning to the City to perform a comprehensive energy audit and cost reduction study for free. He stated this morning while he was typing up the offer, he was surprised to hear the City Manager on the radio talking about how negative he was and disparaging remarks that were inappropriate as far as he was concerned. He said at that time he had second thoughts about doing the audit for free but decided to bring it to the Board and will still do it if the Board would like.

Director Maruthur asked where he heard the remarks, and Mr. Driggers said it was on the radio (Talk of the Town).

Director Maruthur asked if he was willing to do this energy audit at no cost to the City, and Mr. Driggers replied that he offered to provide his professional services at no cost to the City for the energy audit.

Director Jones asked if his company was licensed to do that, and Mr. Driggers replied that his company does work in several states and has a history of doing hundreds of audits. He mentioned he brought half a dozen yesterday to show the City Manager and City Engineer and will be glad to show them to the Board and provide the hundreds of references.

Director Smith questioned if his company was licensed in Arkansas, and Mr. Driggers replied that they are an Arkansas corporation; but it does not require a license per se to do this type of service. However, they have all of the permits and licenses required by law in the states in which they operate.

City Manager Kent Myers asked if he would have to get a business license in order to do this project within the City, and City Attorney Brian Albright advised that he

would. When referring to energy, he asked if this is just related to electricity and if he is not able to do the water portion. Mr. Driggers advised that his company can do the water side, but the water side is not a free offer because that would require additional personnel. He added any expenses, other than his professional services, would be passed onto the City.

City Attorney Brian Albright questioned how the City would know what he is going to be doing is the same as that proposed by Siemens without the Board having received a proposal from him, and Mr. Driggers advised that he cannot answer that because he has not seen the scope of work proposed by Siemens. He added that he has worked with Siemens, Johnson Controls, Honeywell, and many others on various projects over the years and knows generally what they do. He advised that his company typically does not do a comprehensive electric energy audit. However, as far as the water part, if the City gets their price reasonable, he has no problem just doing the electric only. He said he has not read all of the details of the scope of work but would recommend if the City wants to consider the entire project, to table the resolution and allow him an opportunity to return with a proposal.

Mayor Bush questioned why he did not propose something previously, and Mr. Driggers said he was not aware of it until yesterday.

Mr. Chad Nobles, Magnolia, Texas, said that Siemens is doing much more than an energy audit; and the company is licensed in Arkansas to do this type of work and has done work with cities in Arkansas already. In addition to the energy audit, his company is getting firm bids from contractors to implement the work; and Siemens is actually providing the City a cash flow mechanism. He stated the company will come back to the City with a list of recommendations. Also, on the water side, the company is going to look at all of the water meters, lines, and wastewater plants, not only from an energy standpoint but from a water loss. He pointed out that his company was approached because the City has a huge water loss; and when his company does an audit of this nature, it actually buys new water meters for the City and puts the meters in the ground, which causes the price to increase. He stated the audit is much more in-depth than what some engineers may refer to as just a 30,000-foot level look at an audit. He explained Siemens is actually going to count every light fixture in every building that the City has and is going to propose an actual sample of what that is going to be and what the company proposes back. He said the same thing is also done with the water meters and with the HVAC. He stated the company is putting measuring devices and establishing a baseline for which a guaranteed project would be

measured against. He stressed this is much more in-depth than what would be typically seen as a utility bill audit.

Director Maruthur asked that Mr. Driggers respond to that since it sounds like two different things. She added that she wants to do what is best for the City, save money, and does not care who does it.

Mr. Driggers commented that as far as the electric energy audit, his company typically does four things and categorizes them under four headings: (1) alternatives; (2) accuracy; (3) methodology; and (4) conservation. He pointed out typically what Siemens does is conservation, which is counting all of the light fixtures and recommending that the City change its T-12's to T-8's or T-5's, etc. He commented that checking the EER ratio of the HVAC equipment is a straight line equation if the City replaces it with more efficient equipment and can actually quantize the savings. In addition and regarding the alternatives and the accuracy, his company goes back and actually recalculates all of the electric bills that the City has received to verify that it is on the proper tariff, and proper riders are applied and getting all of the discounts possible. He said his company actually recalculates the bills using its exclusive software so that the bill is calculated properly. Then the company verifies down multipliers on the meter, CT ratios, and PT ratios so it knows what the building multiplier is. He noted that the company negotiates with the utility companies if necessary and looks at the contracts, which is the accuracy side of it. He pointed out the one thing that his company does that others do not is the methodology where there are multiple meters serving multiple buildings and very often can result in large savings. He stated his company typically ranges from 30 to 50 percent savings on the City's energy bill where most people that do energy audits range from about 12 to 25 percent.

Regarding the free audit, Director Smith questioned how long it would take and once it is done, would he be forthcoming and share all of that information with the Board. Mr. Driggers replied that he would share the information and always recommends at the end of any audit he does, that he give a powerpoint presentation of the findings; and the section of the report also includes the recommendations. He added it is up to the City to implement some of the recommendations. He advised that quite often his company will get refunds from the power companies on the City's behalf, and his company shares in those when it gets money back that the City has already spent. However, unlike performance contracting, his company does not take any of the City's future savings.

Director Smith asked how long his audit would take, and Mr. Driggers replied that it depends on how much information the City already has. He added if the City has an inventory, for example, of its HVAC equipment and all of the nameplate data, etc. is on that, then that saves a lot of time because they do not have to climb on the roofs and get that data themselves. He noted it would typically take a week minimum, a month maximum.

A motion was made by Director Smith, duly seconded by Director Maruthur, to amend the resolution by approving the Letter of Intent with Siemens for water loss and accept Mr. Driggers' free offer for the energy side.

Upon discussion, City Manager Kent Myers questioned since the City does not have a contract for Mr. Driggers before the Board tonight, if the Board could ask him to bring a contract back so it can be formally approved. He stated if that is the intent of the Board, the City does not have anything in writing but ask him to bring that back to the Board for formal consideration at the next meeting.

Mayor Bush questioned the thoughts on the amendment from the Siemens representatives since their Letter of Intent was for both.

Mr. Chad Nobles replied they have no problem moving forward with the water part, and they discussed some of that pricing with City staff. He clarified that when Mr. Driggers mentioned that Siemens typically does conservation, it is a big part of this. However, Siemens covers everything else he said. He added they do utility bill auditing, look at the rate tariffs, achieve rebates for the City, and negotiate rates on the City's behalf. He commented Siemens does exactly everything Mr. Driggers has discussed and even takes it a little further. He said Siemens looks at energy stock and also at L.E.E.D. He stated the company also goes further in looking at other programs that may be available to the City. As part of their performance contract, he stated any savings the City occurs, it gets to keep 100 percent of it, where Mr. Driggers said his company would share in it.

City Attorney Brian Albright said it is his understanding there is discussion about bringing this back, but he is not sure how to amend a Letter of Intent. He added that the resolution refers to the attached Letter of Intent, which covers energy and water at a set price. He pointed out there has not been a negotiated price, and the City has not gone through the rating process that is required under State law from Mr. Driggers' proposal. He recommended that the Board table the resolution.

At this time, Director Smith withdrew his amendment to the resolution.

Director Smith questioned if the resolution can be tabled for two weeks, and City Attorney Brian Albright advised that the Board can, assuming that the proposals can get here and the City can go through its rating process.

Director Daniel asked Mr. Driggers if he could get his proposal done and be back in two weeks, and Mr. Driggers replied that he could.

A motion was made by Director Smith, duly seconded by Director Daniel, to table the resolution for two weeks; and upon roll call the following voted "aye": Directors Maruthur, Jones, Smith, Weatherford, Daniel, and Bush, total 6. Absent and not voting: Director Edwards; motion unanimously carried.

## **28** Proposed Ordinance No. O-08-19

An ordinance entitled, "AN ORDINANCE WAIVING THE REQUIREMENTS OF COMPETITIVE BIDDING FOR THE PURCHASE OF ADDITIONAL GPS UNITS FOR SANITATION FLEET VEHICLES FROM FLEET LOGISTICS; 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 Jones, duly seconded by Director Maruthur, that the ordinance be passed as read and upon roll call, the following voted "aye" Directors Maruthur, Jones, Smith, Weatherford, Daniel, and Bush, total 6. Absent and not voting Director Edwards motion unanimously carried. Whereupon the ordinance was declared passed.*

## **29** Proposed Ordinance No. O-08-20

An ordinance entitled, "AN ORDINANCE AMENDING ORDINANCE NO. 5549, AS AMENDED (SPECIAL EVENTS ORDINANCE)," 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 and upon roll call, the following voted "aye" **Directors Maruthur, Jones, Smith, Weatherford, Daniel, and Bush, total 6.** Absent and not voting **Director Edwards** motion unanimously carried. **Whereupon the ordinance was declared passed.**

### **30** **Proposed Ordinance No. O-08-21**

An ordinance entitled, "AN ORDINANCE PERMITTING CERTAIN APPOINTED OFFICIALS TO CONDUCT BUSINESS WITH THE CITY OF HOT SPRINGS; PRESCRIBING THE INTENT OF THIS AUTHORITY; AND FOR OTHER PURPOSES," 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 Smith, duly seconded by Director Maruthur, that the ordinance be passed as read.**

**Upon discussion, City Attorney Brian Albright pointed out this is referring to an appointed official, Mr. Sandy Scott, who is a member of the Animal Control Advisory Committee.**

**Mr. Steve Mallett, Public Works Director, advised that Mr. Scott sent him a letter and in the past he has sold promotional items of nominal value to the Animal Services Department. He added it is usually small orders a few hundred dollars and includes such items as mouse pads, key chains, dog biscuits, etc. He stated Mr. Dan Bugg, Chief Animal Services Officer, has always shopped and found Mr. Scott to be the lowest.**

**Director Maruthur said this is allowing people to do business with the City and serve on a commission or committee. She stated she has no problem with that but would like to see a disclosure of the amount of the money that they get from the City and specifically which departments. Depending on which commission or committee and what their business is, she said it could affect a position that would be taken with the City.**

**City Manager Kent Myers advised that the City buys items from Mr. Scott on a monthly or bimonthly basis and asked if she would have any objection to the staff providing an annual report of all the business the City has done with people on commissions and committees at the end of the year. He added there are several others that fit into this category. Director Maruthur replied that she would have no problem with that. City Manager Kent Myers asked if the staff could provide the Board with that report in January of every year with the individual's name, and Director Maruthur said she had no problem with that.**

*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. Absent and not voting Director Edwards motion unanimously carried. Whereupon the ordinance was declared passed.*

## **OTHER BUSINESS**

### **31 Board of Directors Items**

Director Jones expressed appreciation to everyone who attended the Webb Center's First Annual Valentine Ball and hopes to do it again next year.

Director Smith congratulated Finance Director Dorethea Yates, who recently received an award on the City's Comprehensive Annual Financial Report.

Director Maruthur announced that on February 12, there was a Park Avenue Community Association meeting with over 90 residents in attendance. She reported there was a wonderful presentation from Ms. Cynthia Stone and Mr. Stephen Hitt, developers of the Majestic Hotel, and thanked them for their attendance, as well as the people in the Park and Whittington areas.

Director Weatherford stated if Director Edwards is watching, he hopes he is feeling better and returns soon.

### **32 City Manager's Report**

City Manager Kent Myers gave the following report:

1. He had an opportunity to address the Garland Good Government group last Tuesday night. There were about 25 people in attendance at the Transportation Depot. It was a good exchange of information, concerns, and ideas and is obvious they do not agree on everything as far as the City's stand on different issue. However, everyone was cordial and professional and thanked the members of that group for inviting him to that meeting.

2. On the Consent Agenda, the Board approved the appointment of Willie McCoy to the Community Development Advisory Committee; Bette' Volland and Dick Antoine to the Animal Control Advisory Committee; John Simms to the Board of Zoning Adjustment; Cheryl Batts to the Historic District Commission; Ann Hair to the Parks and

Recreation Advisory Committee; Wanda Thorp and James Clopton to the Planning Commission; and Bruce Collier to the Transportation Advisory Committee.

3. There was a discussion last week before the Building Study Committee regarding security improvements in light of the recent incident in Kirkwood, Missouri. It has heightened the concern as far as security at city buildings, and Director Maruthur and Director Weatherford asked for this Building Study Committee to consider that issue. The committee met with Police Chief Bobby Southard last week, and he had several recommendations, which were approved by the Building Study Committee and will be part of their final report that will be presented to the Board in about 30 days. The primary thing that the Police Chief has recommended is the installation of electronic monitoring equipment outside the Board Chambers similar to what is used in the court facility. That equipment will be operational before, during and after the Board Meetings and will be staffed by a security guard. The City will continue to have a police officer at the Board Meetings.

4. Sanitation Director Bill Burrough was recognized by Mr. Norman Newman last week through a positive letter of appreciation. Mr. Burrough was requested to provide some assistance during the recent MLK Parade; and even though it was a holiday, he responded in a very timely manner and assisted Mr. Newman and the group.

5. Next Thursday, February 28, at 5 p.m., Board Chambers, there will be a combined meeting between the Board and the Planning Commission. At the present time, there have been seven agenda items recommended by individual Board Members or Planning Commission members and also have some additional items that do not involve the Planning Commission. He plans to put together an agenda that includes all of these items, and the Board can select when they get to the meeting. There are seven Planning Commission items and seven other items. He will put together all 14 items and then continue until whatever time the Board wants to adjourn. They will not be able to cover all of those items but may want to cover some of the important items that do not involve the Planning Commission. It was agreeable with the Board to proceed in that direction.

6. In the State of the City Report, he included the recommendation that the City Manager get out more in the community and meet with some of the citizens and get an idea of their thoughts and concerns. Over the next two months, he will go out and visit with some of the citizens over coffee. The first three sessions have been scheduled and thanked the following businesses for their willingness to loan their

facilities: (1) next Tuesday, it will be at the Embassy Suites; (2) a couple of weeks later, they will be meeting at Starbucks on Central Avenue; and (3) two weeks later, Director Smith has agreed to host at the Quapaw Community Center. Any important items brought up at those meetings will be reported back to the Board.

Director Maruthur pointed out that on the Consent Agenda, the Board approved an agreement with the U. S. Geological Survey for a stream-flow monitoring and early flood warning system. She said that someone dropped off photos of warning systems in Star City, Gravette, Mountain Pine, Glenwood, Rose City, Locksburg, Green Forest, Eudora, Dermott, Pea Ridge, Boles, McGehee, Warren, and Crossett. She added there was also information from the Internet that indicated during the last tornado alert in Jonesboro, on February 8, 2008, 26 tornado sirens apparently failed to operate; and they were flooded with calls because they had some bad tornadoes in 1968 and 1973. She pointed out when these things happen, people do not forget; and they really went into a panic. She said that she believes since the Board has funded and is going to implement this flood warning system, in light of what happened in 1990, is a real step forward to protect the visitors and residents. She stated she was surprised that these small towns had warning systems; and hopefully, the City can do something more in the future as funds become available because it not only saves lives but property and security. She added during the ice storm, the City lost communications; and when the City has time to prepare, it saves everything. She requested that these photos be submitted into the record.

### **33 ADJOURNMENT**

There being no further business to come before the Board, the meeting adjourned at 9:05 p.m., to meet again on Monday, March 3, 2008, at 7:00 p.m.

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

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

Lance Hudnell, City Clerk

Mike Bush,

Mayor

