

MINUTES

BOARD OF DIRECTORS MEETING

DECEMBER 1, 2009, AT 7:00 P.M.

The regular meeting of the Board of Directors was held on Tuesday, December 1, 2009, at 7:00 p.m., Board Chambers, City Hall, with Mayor Mike Bush presiding.

The invocation was given by Mr. Doug Gulley, 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, Cynthia Keheley, Pat McCabe, Rick Ramick, Tom Daniel, and Mike Bush, total 7.

2 Approval of Agenda

Prior to approval of the agenda, City Manager Lance Hudnell advised that staff is recommending removal of Item No. 18 (Proposed Resolution No. R-09-277 Authorizing Support for the Arkansas School for Mathematics, Sciences and The Arts; and Repealing Resolution No. 7280) from the agenda. He stated there has been some discussion with the University of Arkansas officials today regarding additional wording that needs to be done. A motion was made by Director Maruthur, duly seconded by Director Keheley, that Item No. 18 be deleted from the agenda; and upon voice vote, the motion unanimously carried.

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

3 Approval of Minutes of November 17, 2009 Board Meeting

A motion was made by Director Daniel, duly seconded by Director Maruthur, that the minutes of the November 17, 2009 Board Meeting be approved; and upon voice vote, the motion unanimously carried.

4 Recognition of Guests

Mr. Larry Raney, Chairman of the Planning Commission, reported that the Commission was created in March 1955 by Ordinance No. 2494; and for 54 years, it has been providing planning in and around Hot Springs and in Garland County. The Commission is comprised of nine positions, one each in the six Board of Director districts, one citizen appointed at-large, and two from the County areas that lie within the City's planning authority. The meetings are held on the second Thursday of each month at 6 p.m. in the Board Chambers, and all Commission meetings are open to the public whether they are hearings or work sessions and urge the public to attend. The Commission receives daily staff support from the Planning and Development staff. Application processing, research, inspections, recommendations and monthly packet production are but part of that support. The Commission's objectives and duties are to carry out the provisions of a duly adopted Comprehensive Plan, Subdivision Ordinance, Zoning Code, and any other duties and responsibilities as authorized by state law. The functions of the Commission are to conduct planning and development regulation research and to attract trends in planning and development, to prepare planning and development-related plans, to make recommendations to the Board of Directors and to conduct and evaluate Subdivision Site Plan and Conditional Use Permit reviews. Three recently reviewed, approved and constructed projects in the City are (1) Fairground Crossing Commercial Center; (2) Oaklawn Park expansion; and (3) site plan for the Medical Plaza at Healthpark.

Mayor Bush expressed appreciation to Mr. Raney for his report and volunteerism, as well as the other members of the Commission.

5 Board of Directors Announcements

Director Jones commended Ms. Margaret Parris, executive secretary to the City Manager, who is on sick leave, for decorating the Board Chambers tonight.

Director Maruthur announced that on Wednesday, December 9, at 7 a.m., the H1N1 vaccine, which is free, will be given at the Hot Springs Civic and Convention Center beginning at 6:30 a.m.

6 Consider Acknowledgment of Financial Notice Statements for October 2009

Mayor Bush announced that the Financial Statements for October 2009 are on file in the Finance Department for review by the Board and public.

CONSENT AGENDA

The Consent Agenda consisted of the following:

- 7 Public Safety Report** (November 17, 2009).
- 8 Proposed Resolution No. R-09-267** Approving Certain Bid Awards (a) Vehicle - Pickup - Wastewater Treatment [awarded to Landers Ford in the amount of \$18,123]; (b) **Rescind bid Award** - Full-size ½ Ton Pickup Truck - Wastewater Treatment [awarded to Riser Ford in the amount of \$16,719] - Wastewater Treatment; and (c) Manhole Rings/Lids - Utility Administration [annual supply contract awarded to Deeter Foundry].
- 9 Proposed Resolution No. R-09-268** Extending an Agreement with AVFUEL Corporation for the Provision of Aviation Fuels at the Hot Springs Municipal Airport.
- 10 Proposed Resolution No. R-09-269** Authorizing the Mayor to Execute a Lease Agreement Between the City of Hot Springs, Arkansas, and Ring Media Group, LLC, d.b.a. Razor Fitness-Spa City MMA, for Space at the Airport (Building #4, Suite F, East of the Finance Building).
- 11 Proposed Resolution No. R-09-270** Authorizing an Agreement with Creative Outdoor Advertising of America for the Placement of Public Benches Bearing Advertising Within the City of Hot Springs, Arkansas.
- 12 Proposed Resolution No. R-09-271** Appointing David French to the Central Business Improvement District Number Three Board of Commissioners.

- 13 Proposed Resolution No. R-09-272** Extending a Franchise Agreement for the Operation of a Specialty Transit Service (Hot Springs Carriage Company).
- 14 Proposed Resolution No. R-09-273** Awarding a Contract to Garver Engineers for Engineering Design Services (Wastewater Pump Stations and Collection System - Mazarn and Fairwood Areas).
- 15 Proposed Resolution No. R-09-274** Awarding a Contract to Garver Engineers for Engineering Design Services Related to the Methane Gas Project and Updating the City's Technically Based Local Limits at the Wastewater Treatment Plant.
- 16 Proposed Resolution No. R-09-275** Authorizing the Mayor to Execute an Addendum to the Agreement for Reimbursement Between the City of Hot Springs, Arkansas, and Entergy Arkansas, Inc. (EAI).
- 17 Proposed Resolution No. R-09-276** Authorizing Filing of Grant Application for American Recovery and Reinvestment Act (ARRA) Funding Through the Energy Efficiency and Conservation Block Grant (EECBG) Competitive Round.

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

NEW BUSINESS

- 18 Proposed Resolution No. R-09-277** Authorizing Support for the Arkansas School for Mathematics, Sciences and The Arts; and Repealing Resolution No. 7280 (**Removed from the Agenda**).
- 19 Proposed Ordinance No. O-09-43**

An ordinance entitled, "AN ORDINANCE BANNING AND REGISTERING CERTAIN BREEDS OF DOGS AND ANIMALS WITHIN THE CITY LIMITS OF HOT SPRINGS, ARKANSAS," was taken from the agenda for consideration.

A motion was made by Director Maruthur, duly seconded by Director Keheley, 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 Maruthur, that the ordinance be passed as read. There being no second to the motion, the motion died for lack of a second. Therefore, the ordinance was not considered.

20 Proposed Ordinance No. O-09-44

An ordinance entitled, "AN ORDINANCE AMENDING THE ZONING CODE OF THE CITY OF HOT SPRINGS, ARKANSAS, BY REZONING PROPERTY LOCATED AT 2815 MALVERN AVENUE FROM R-1, RURAL RESIDENTIAL DISTRICT, TO C-TR, COMMERCIAL TRANSITIONAL DISTRICT; AND AMENDING THE FUTURE LAND USE MAP BY RECLASSIFYING CERTAIN REAL PROPERTY AT 2815 MALVERN AVENUE TO OFFICE CENTER," 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 Keheley, duly seconded by Director Jones, that the ordinance be passed as read.

Upon discussion, Ms. Kathy Sellman, Planning and Development Director, explained that the applicant is Genevieve Townley and property owner Fabern James, who are seeking Commercial Transitional zoning for 2.97 acres. The property is located in District 6; and as the requested new zone is C-TR, Commercial Transitional, specific Planning Commission approval of any development plan, through the conditional use procedure, would be required prior to any redevelopment occurring. The land is located generally at the northwest corner of Malvern and Fairplay Drive and currently has a single-family dwelling. The Planning Commission advertised this application and considered public testimony at their November 12, 2009 meeting. They accepted the staff findings and voted 9-0 to recommend that the Board approve this zone change along with an amendment to the Future Land Use Map to Office Center for

the subject properties because with those changes, the application will demonstrate compliance with the required Hot Springs Code.

Attorney Ray Owen, office located at 209 Hobson, spoke on behalf of Mr. Fabern James. He said this is a small house on a 2.97-acre tract of land across from the Ram's duplexes, which are on Malvern Avenue; and the intent is to create a high-class photographic studio by a property owner who bought a lot and is in the process of getting ready to build within the adjacent subdivision behind this property. He said he believes it will be a benefit to the community and asked that the Board support 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, Keheley, McCabe, Ramick, Daniel, and Bush, total 7; motion unanimously carried. Whereupon the ordinance was declared passed.

21 Proposed Ordinance No. O-09-45

An ordinance entitled, "AN ORDINANCE AMENDING THE ZONING CODE OF THE CITY OF HOT SPRINGS, ARKANSAS, BY REZONING PROPERTIES AT LOT 6, BLOCK 16, FAIRDALE ADDITION, FROM R-3, LOW/MEDIUM DENSITY RESIDENTIAL DISTRICT, TO C-4, REGIONAL COMMERCIAL/OPEN DISPLAY DISTRICT; AND LOT 4, BLOCK 36, FOREST HILL ADDITION, FROM R-4, MEDIUM/HIGH DENSITY RESIDENTIAL DISTRICT, TO C-4, REGIONAL COMMERCIAL/OPEN DISPLAY DISTRICT; AND AMENDING THE FUTURE LAND USE MAP TO DESIGNATE THE PROPERTIES LINEAR COMMERCIAL CORRIDOR," was taken from the agenda for consideration.

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

Upon discussion, Ms. Kathy Sellman, Planning and Development Director, advised that the applicant is Mr. Chris Polychron of Polychris Properties, LLC; and there is a request for a C-4, Commercial Display zoning for two separate lots. They are generally south of Highland Street, west of Sellers Street, north of Bellview Street, and east of the Oaklawn Jockey Club. The Future Land Use Map designation at the present

time is residential and, therefore, the request to redesignate that. The area is located in Board District 5. In November 2008, there was a similar request for multiple lots in the immediate vicinity to be rezoned to C-4; and that was recommended for approval by the Planning Commission and was approved by the Board. She explained the reason these two lots were not included with the original request is that they were not in the ownership of the applicant at that time; and now that they are in his ownership, he is requesting to complete the rezoning of the area. This would be an extension of the large area of C-4 zoning that exists to the west and south, including the Oaklawn Jockey Club property. The Planning Commission advertised this application, considered public testimony at their November 12, 2009 meeting. The Commission accepted the staff findings and voted 9-0 to recommend that the Board approve the rezoning; and amend the Future Land Use Map to designate the property 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, Keheley, McCabe, Ramick, Daniel, and Bush, total 7; motion unanimously carried. Whereupon the ordinance was declared passed.

22 Proposed Ordinance No. O-09-46

An ordinance entitled, "AN ORDINANCE AMENDING THE ZONING CODE OF THE CITY OF HOT SPRINGS, ARKANSAS, BY REZONING PROPERTY LOCATED IN THE 100 BLOCK OF LAKESHORE DRIVE DESCRIBED AS BLOCK 1, LOT 1, OF IRIS SUBDIVISION FROM R-2, SUBURBAN RESIDENTIAL DISTRICT, TO C-3, OFFICE/NEIGHBORHOOD COMMERCIAL DISTRICT; AND AMENDING THE FUTURE LAND USE MAP BY RECLASSIFYING CERTAIN REAL PROPERTY IN THE 100 BLOCK OF LAKESHORE DRIVE," 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.

Upon discussion, Director Daniel questioned the location of this property; and City Attorney Brian Albright advised that it is the mounded section of property between the loading dock of Sam's Club and the church.

Ms. Kathy Sellman, Planning and Development Director, advised that the applicants and property owners on this request are Robin Uzick, Cynthia Fisher, Cathy Pucket, and Bobbie Wheeler, who are seeking C-3, Office/Neighborhood Commercial zoning for Lot 1 in the Iris Subdivision. It is located generally on the south side of Lakeshore Drive about 650 feet to the west of Higdon Ferry between Sam's Club and Lakeshore Drive Christian Church. The remaining vacant Iris Subdivision to the east and south has a zoning classification at this time of C-3, and other nearby developments include all of Fairgrounds Crossing, a pharmacy, and the St. Joseph's Medical Campus. The nature of the area at this time is nonresidential. The Planning Commission advertised this application and considered public testimony at their November 12, 2009 meeting. The commission accepted the staff findings and voted 9-0 to recommend that the Board approve the rezoning, along with an amendment to the Future Land Use Map to Community Commercial Center.

Director Daniel asked if it takes in the piece of property that is listed on Higdon Ferry from the end of the church going east, and Ms. Sellman replied that it did. Director Daniel stated that it actually gets Lakeshore Drive and Higdon Ferry Road, and Ms. Sellman noted that it did not. City Attorney Brian Albright advised that the section being rezoned does not touch Higdon Ferry but is contiguous to the other properties that are part of the same tract. Ms. Sellman added that part of it is already zoned C-3 at this time. City Manager Lance Hudnell commented the only thing showing on the map in the Board packet is the part being rezoned.

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

OTHER BUSINESS

23 Board of Directors Items for Discussion

Director Maruthur announced there is an account set up for the Mutter Family at Summit Bank. She said that she would like to address the pit bull ban. She stated that

she is very disappointed that even though under the state statute, the number one thing under Title No. 10 (Public Safety) is Animal Control. Yet, the concerns of those who have been injured by this breed, which is a specific breed, have been ignored by the Board. She mentioned the Animal Control Director from North Little Rock, Mr. Billy Grace, made a trip to Hot Springs; but he was not extended the courtesy to give testimony as to how the ban has worked. She said an individual was attacked this spring, and he spent five hours in the emergency room. Also, there were two young ladies on Spring Street who were mauled, and one lost an ear; but they do not think it is going to stay attached. She pointed out that a Ms. Young, a relative of the young lady, was present tonight. She added since this has been brought up, there was a death in Prescott, Arkansas; and the dog does not know whether it is in Garland County, Prescott, or in a specific area. She stated there is an individual who knows how to research the internet, and she found out that the individuals who were present tonight were all sent a note to be present and take action. She pointed out these people were not at the water/wastewater meeting, which is very important nor were they at the budget meeting or any of the Board's meetings. She commented they are one-issue people. She advised that Little Rock, North Little Rock, Maumelle, Russellville, and many countries have banned pit bulls. As representatives of the people of Hot Springs, she stressed it is the Board's number one obligation to take whatever steps necessary to ensure the health, welfare and safety of the citizens. She then read the breakdown of the bites, which were included in the Board packet – Chow - 2.2 percent bites; German Shepherd - 4.0 percent bites; Rottweiler - 3.4 percent bites; Mastiff - .5 percent; Pit Bull between January 8 and July 2009 is 21.2 percent bites. She commented the people present tonight are opposed to this breed-specific ordinance, mostly likely because they either own them, or they are a part of a network club. She said they come from different backgrounds, are female and male, come from all walks of life, and are diverse in everything in their life. She pointed out that people cannot be regulated, and many have family dogs that they sleep with and say they would not hurt anyone. However, Mr. Tom Wilkins was in fear of his neighbor's dog and goes to court on that issue. She stated that Mr. Milton Duke, who is unable to be present tonight, said a lot of things; but apparently the Board did not want to hear this. She commented that she feels a responsibility to read the following statement: "The people that I represent are the people of Hot Springs. They are not organized. These people that I spoke to are very afraid of this breed. They are comprised of engineers, many city employees, people that I have met in restaurants, grocery stores, construction workers, people I have met in a hotel lobby, legislators. One legislator at a legislative meeting that we all had a few weeks ago, his granddaughter was at the Greenway, and there was a young lady and the dog was pulling her. She could not control the dog, and they took their granddaughter; and they removed the granddaughter from the bicycle, and they left

immediately. This is a serious situation. I have already talked about the two teenage girls that were attacked. One had a breast mauled, and her ear was bitten off; and the other girl had injuries to the shoulder. My vote tonight would have been to protect the letter carriers, the people that I have spoken to at the cleaners, everywhere I go. In fact there was one individual that I was working with today that was telling me that all of the countries that they knew that had banned the pit bull, and that has to do with the breeding. There is a magazine here called Atomic Dog; and in this magazine, there is a story called "Bulletproof Bully." They are bragging about how this dog was shot twice and nothing happened as a result of it. It was shot directly in the head. This magazine was given to me by Animal Control. I believe it was extended to everybody on the City Board. I also went to a couple of funerals where people approached me and said I am so glad the City is going to do something about the pit bull situation. No, it's not the dog's fault; but you can identify the dog. You can't identify a diversity of people. If you are trying to place an ordinance holding the owners responsible, you are coming after the owner and that is after the bite, the mauling, or the death. The owners, as I said before, are all kinds of different people. They can't be identified. Many people are abusing these animals, and this is not the 1950's. Concern has been expressed about passage of this ordinance. Most of the e-mails that I got were from people all over the country. There weren't that many, but they were very scripted and a lot of them started out 'I am a responsible dog owner.' But that isn't what this is about. This is about the trigger that can be set off by a breed that has been changed. A pit bull goes after -- and it is a Staffordshire Terrier. This dog has been bred with other dogs to be aggressive and to have had two to three times the size the original dog that we know as the pit bull. I also received a lot -- I got on a radio station one day, and Mr. Antoine shared a lot of concern about if they pass it in the City, what are we going to do in the County? I said apparently you think there is a problem. He said what are we going to do, and I said there is a problem; and I referred to his friend, Tom; and he said he didn't know anything about it. Tom told me to share some things because he apparently knew all of the details and about the court and everything. Mr. Bugg has consistently come before the City Board and attested to the growing population of these poor dogs that are cast aside once they are no longer needed, and they are being put to sleep. They used to adopt them out, but he found that it would just be a revolving door. After they were adopted out, he would find almost all of them abused and starving and beaten somewhere; so, they stopped adopting them out. Like I said, Mr. Grace was going to attest to the change in the amount of bites because of their ban, and we are not reacting to fear. What we are doing is responding to the reality of what we are seeing and what we are hearing from all over the county and the country. Is your dog going to be safe at the Bark Park with pit bulls or at the Greenway or downtown. That is another thing I have heard from several people downtown that there are people who are not

very large that have these dogs, and they don't seem to be able to control them; and the dog is driving the person. If that dog gets away, somebody could be seriously injured. A lot of things have happened; and there have been many, many meetings that I haven't received a second. There was one about a cell phone going hands-free. Well, the State took care of that. There was another one, which was smoking in restaurants. They took care of that, too. As far as your rights go, because of drug use, we now cannot get pseudoephedrine in your cold medication, which is the effective ingredient because of the abuse. You cannot buy Vicks Vaporub with the effective ingredient because somebody is extracting it and using it to make drugs. Well, there is a new one; and this one disturbs me, Tincture of Iodine; and it has been pulled from the shelf.

Mayor Bush questioned if this has anything to do with Pit Bulls, and Director Maruthur said that it did. She said many things have been changed because of modern-day society. She stressed that she is here to protect the health, welfare and safety of the citizens. She pointed out the PSI (pounds per square inch) in a bite for an average dog is in the 30's, but the PSI on a pit bull or Staffordshire Terrier is between 300 and 1,000. She commented there a certain amount of days until this can be brought up again, but she would like to know the people who have been making the comments and hoping the Board would do something to protect the public. She explained that her motion did not receive a second, and she was very sorry.

Director Maruthur announced that citizens may sign up for CodeRED by calling Paula Brown at 321-6860 or 321-6861. She stated there is another article in this week's Time Magazine, regarding pit bulls and talks about after they have been bred and raised and terrorized, they have learned to kill four-legged creatures. She pointed out sometimes, children are identified by an animal as a four-legged creature, and that is what happened in Prescott.

Mayor Bush said she mentioned the Bark Park, and most of his calls concern when it is going to be opened. He added the City is working on the dog park and will see what happens at that time.

Director Jones announced that on Saturday, December 5, the Pleasant Street Neighborhood will have its monthly meeting; and the Christmas Parade will be held on Monday night, December 7. She added the Directors should be in that parade.

24 City Manager's Report

City Manager Lance Hudnell gave the following report:

1. Monday, December 7, at 4:00 p.m., there will be a budget work session.
2. Tuesday, December 8, at 3:40 p.m., there will be the leadership class panel followed by the agenda meeting, followed by the Mayor's Youth Council.
3. A thank-you note was received from V.E. Linder for the rapid response in cleaning up the brush and debris and weeds on Cedar Street. This project is under the direction of Mr. Bob Lathrop, Urban Forester; and the crews involved were Jimmy Willis, Lee Williams, Jackson Keener, Jeff Blackmon, Edwin Hughes, Freddy Padilla, and Leon Bates. A thank-you was also received from Ms. Cook, 204 Noxon, expressing appreciation to the residential, recycling and leaf and mulch crews, which consisted of John Mutter, Sr.; John Mutter, Jr.; John Williams; Lonnie Patman; Kelly Tadlock; Winder Curry; and Jared Mutter. He announced that the Mutter Family suffered the passing of their young child and grandson, and expressed condolences to the family on behalf of the Board and the City. He said he wanted the Board to know that among the Mutter Family (grandfather, uncles, great uncles, and cousins), there are nine employees associated who were all at work on that day; and because of their dedication to the City and knowing what a bind it would put the City in if they were not at work. He stated he wanted to make the Board aware of their commitment to the City and their job and expressed appreciation to those employees.

25 ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 7:40 p.m., to meet again on Tuesday, December 15, 2009, at 7:00 p.m.

ATTEST: _____

APPROVED: _____

Lance Hudnell, City Clerk

Mike Bush,

Mayor