

MINUTES

BOARD OF DIRECTORS MEETING

FEBRUARY 17, 2009, AT 7:00 P.M.

The regular meeting of the Board of Directors was held on Tuesday, February 17, 2009, at 7:00 p.m., Board Chambers, City Hall, with Mayor Mike Bush presiding.

The invocation was given by Mr. Dusty Diggs, 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, Carroll Weatherford, Rick Ramick, Tom Daniel, and Mike Bush, total 7.

2 Approval of Agenda

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

Upon discussion, City Manager Lance Hudnell pointed out there is a replacement resolution for Item No. 10 (Proposed Resolution No. R-09-25 Approving the Extension of Hot Springs Municipal Water and Wastewater Service to Cares Away Subdivision), which includes a name correction.

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

3 Approval of Minutes of February 3, 2009 Board Meeting

A motion was made by Director Daniel, duly seconded by Director Maruthur, that the minutes of the February 3, 2009 Board Meeting be approved; and upon voice vote, the motion unanimously carried.

4 Recognition of Guests

Police Chief Bobby Southard introduced recently employed Police Officers Troy Tucker (13 years with the sheriff's department of Clark County and 6 years with the Arkadelphia Police Department) and Kevin Franklin from UAMS, who was a sergeant in charge of a shift). Officers Tucker and Franklin expressed appreciation to the Board and Police Chief for the opportunity to serve the City.

Deputy City Manager of Public Works Steve Mallett stated that last year Mr. Chuck Daniels, Urban Forester for the City, accepted a position in his home state of South Carolina. After advertising for that position, Mr. Bob Lathrop was recently hired to fill that position and is an undergraduate with a Master's Degree in Forestry from The Ohio State University and is also a certified arborist. He then introduced Mr. Bob Lathrop.

5 Board of Directors Announcements

Director Maruthur announced that the Park Avenue Community Association will hold its first meeting next Tuesday, at 7 p.m., Tower of Strength Ministries. They will be featuring Ms. Cynthia Stone and Mr. Stephen Hitt, developers of the Majestic Hotel; and this meeting is open to anyone who wishes to attend. Also, this will also be a reorganizational meeting. She stated there is an account set up for the family of deceased firefighter Gene Yarbrough.

CONSENT AGENDA

The Consent Agenda consisted of the following:

6 **Public Safety Report** (February 3, 2009).

7 **Budget Transfer** - Appraisal Services - \$3,000 (236 Whittington).

8 **Proposed Resolution No. R-09-23** Approving Certain Bid Awards (a) Hot Mix Asphalt Paving - Public Works [annual supply contract awarded to Martin Marietta]; (b) Reroofing "Old Chapel" at ASMSA - Public Work/ASMSA [awarded to Industrial Roofing in the amount of \$98,840]; (c) Asbestos Testing/Abatement -

Code Compliance [annual supply contract awarded to A.C.E.S.]; (d) Title Search - Code Compliance [annual supply contract awarded to Hot Springs Title]; (e) 13 Crown Victoria Vehicles (marked) and 3 Chevrolet Impalas (unmarked) - Police Department [awarded to Bob Hurley Ford in the amount of \$309,881 from State Contract and Bale Chevrolet in the amount of \$57,234 from State Contract]; and (f) Hybrid Vehicle - Intracity Transit [awarded to Cardinal Chrysler Jeep Dodge from State Contract).

- 9 Proposed Resolution No. R-09-24** Approving the Extension of Hot Springs Municipal Water and Wastewater Service to Lake Valley Long-Term Care Facility Located at 600 Twin Points Road.
- 10 Proposed Resolution No. R-09-25** Approving the Extension of Hot Springs Municipal Water and Wastewater Service to Cares Away Subdivision. **(Removed from the Consent Agenda for Separate Consideration)**
- 11 Proposed Resolution No. R-09-26** Authorizing the Mayor to Execute an Agreement Between the City of Hot Springs, Arkansas, and Leads OnLine (Law Enforcement Automated Database Search).
- 12 Proposed Resolution No. R-09-27** Revising the 2009 Budget by Appropriating Funds for Certain Prior Year Expenditures.
- 13 Proposed Resolution No. R-09-28** Authorizing Revisions to the 2008 Budget.

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

Upon discussion, Director Ramick requested the Item No. 10 (Proposed Resolution No. R-09-25 Approving the Extension of Hot Springs Municipal Water and Wastewater Service to Cares Away Subdivision) be removed from the Consent Agenda and considered under New Business.

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

NEW BUSINESS

14 Presentation of Ambulance RFP Options

A motion was made by Director Daniel, duly seconded by Director Jones, to consider the ambulance RFP Options.

City Manager Lance Hudnell reported that the City has extended its current ambulance franchise until June 30, 2009. However, the City needs to proceed with the selection process, and Fire Chief Ed Davis will present some options, as well as the one recommended by City staff. At the end of the presentation, a motion will be needed from the Board as to how staff should proceed.

Fire Chief Ed Davis advised that staff recommendation is to do some minor editorial and procedural changes as far as the wording the RFP, and the RFP would be reviewed by a five-member citizen review committee. He stated the committee would be as follows: (a) Position 1 would be a local business person; (b) Position 2 would be an emergency medical manager, which could be from a retired hospital administrator to someone who has experience in the management of ambulance service; (c) Position 3 would be a physician or medical administrator, which is not associated with the two local hospitals; (d) Position 4 would be a local citizen at-large; and (e) Position 5 would be a healthcare professional, which could be an RN or some other type of specialty person from the medical field. He stated he would act as the staff liaison but would not have any voting privileges.

Director Maruthur questioned how the local citizen at-large would be selected; and Fire Chief Ed Davis explained if the Board empowers him to do so, he will seek persons to sit on this committee, which will be through the newspaper and local radio stations. He would take names and ask the person to provide information concerning their background and then present the names to the Board to select them.

Mayor Bush commented he has received calls on this matter; and at the present time, the City has LifeNet extended to June 30, 2009. City Manager Lance Hudnell explained staff has until June 1, 2009, to present the contract to the Board, which is no later than the first meeting in June.

Fire Chief Ed Davis said that he will also be providing benchmarks, which means certain criteria staff would want to achieve by certain dates to keep on schedule with this committee.

A motion was made by Director Keheley, duly seconded by Director Ramick , to approve the empanelment of an ad hoc committee to review the responses to the Request for Proposals for the provision of ambulance service.

Upon discussion, Director Maruthur questioned for equity on both sides, if there is anything in place after the assessment is done and the information is taken, which would avoid the situation as before. Fire Chief Ed Davis advised there is, pointing out they will provide the information up-front to the prospective responders, which may be three companies. He said it will not be subjective in any way.

Mayor Bush then called for a vote on the motion; and upon roll call, the following voted "aye": Directors Maruthur, Jones, Keheley, Weatherford, Ramick, Daniel, and Bush, total 7; motion unanimously carried.

15 Proposed Ordinance No. O-09-10

An ordinance entitled, "AN ORDINANCE WAIVING REQUIREMENTS OF COMPETITIVE BIDDING AND AUTHORIZING AGREEMENTS WITH VENTURE SYSTEM SOURCE FOR CERTAIN COMPUTER HARDWARE AND SOFTWARE MAINTENANCE; AND FOR OTHER PURPOSES," was taken from the agenda for consideration.

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

16 Proposed Resolution No. R-09-29

A resolution entitled, "A RESOLUTION AUTHORIZING A CONTRACT FOR SERVICES WITH THE GARLAND COUNTY ECONOMIC DEVELOPMENT CORPORATION (GCEDC) FOR RETIREMENT RELOCATION PROGRAM; AND REPEALING RESOLUTION NO. 7048," was taken from the agenda and read by title only.

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

Upon discussion, Mr. Dave Byerly, president of the Garland County Economic Development Corporation, stated this was a contract that the Board approved in January. He explained that during the last four years at the Chamber of Commerce, they have been amending projects and programs, creating programs that need to be created, eliminating programs that no longer need to be there, and shifting things around. He said they would like for the City to continue its commitment to the retirement relocation, which is now referred to as residential recruitment, and transfer part of that program, specifically the marketing part that the City supports, to the Garland County Economic Development Corporation. He pointed out this is a contractual partnership the City has had since 1990 and has been a partnership with the City of Hot Springs, Garland County Economic Development Corporation, the Chamber of Commerce, and private business people, along with the Board of Realtors. He advised that it takes between \$100,000 and \$120,000 to administer this program every year, and the City's part has traditionally been \$12,500. He said that they are asking that instead of this contract provider being in the Chamber of Commerce's name, that it now be in the Garland County Economic Development Corporation's name to better align itself with some of the program changes they have done.

Director Maruthur said this has been looked at for a couple of years and asked why this was happening now and if it is related to the Political Action Committee. Mr. Byerly replied that it is in no way related to the Political Action Committee. He added over the last four years, they have restructured the majority of the programs that are underneath their umbrella and has nothing to do with the creation of a Political Action Committee underneath the Chamber's umbrella.

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

17 Proposed Resolution No. R-09-30

A resolution entitled, "A RESOLUTION AUTHORIZING A CONTRACT FOR SERVICES WITH THE GARLAND COUNTY ECONOMIC DEVELOPMENT CORPORATION (GCEDC) FOR ECONOMIC AND BUSINESS DEVELOPMENT; AND REPEALING RESOLUTION NO. 7049," was taken from the agenda and read by title only.

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

Upon discussion, Mr. Dave Byerly, president of the Garland County Economic Development Corporation, stated this is a \$2,500 contract the City has traditionally had with the Chamber of Commerce. He said this program is being moved to the Garland County Economic Development Corporation for the same reason as the previous one and more closely aligns itself with the mission and priorities of the Garland County Economic Development Corporation. He pointed out the contract is for providing economic development services, but the specific services they are asking for is to use the \$2,500 to offset the costs of housing a small business development center and keeping them operational in the community. He pointed out that a business does not have to be a Chamber member or a GCEDC supporter to take advantage of their services, and it is a free service to the public. He explained that anyone who owns a business and needs business counseling or is considering starting a business may schedule an appointment to get free counseling to create that business. He mentioned they also do a number of events at the Chamber of Commerce throughout the year where they host seminars in the evening to try to help small business owners be more efficient and more profitable. He said as they look at trying to provide business counseling to business people, they think that is a pure creation of a small business, pure creation of jobs, and most closely aligns itself with the things that GCEDC would be doing. Therefore, they are asking that instead of the City having the contract in the Chamber's name, they make that service provider GCEDC also.

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

10 Proposed Resolution No. R-09-25

A resolution entitled, "A RESOLUTION APPROVING THE EXTENSION OF HOT SPRINGS MUNICIPAL WATER AND WASTEWATER SERVICE TO CARES AWAY SUBDIVISION," was taken from the agenda and read by title only.

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

Upon discussion, Mr. Steve Mallett explained this request is located in the County on North Ross Maddox Road. He advised that the developer will be required to extend the facilities to his development, install the utilities in accordance with the City's specifications and will also be responsible for all costs related to installation of water and wastewater utilities. He stated staff has reviewed the request with the respect to the City's ability to serve the property and confirms that the City's system can facilitate such a request.

Director Keheley questioned who is going to inspect the construction and certify that it meets all of the city standards and if there will be a certification on file if there is ever a question in the future. Mr. Mallett explained that one of the City's engineering utilities inspector will do that, and they document on a daily basis and place it in the file whenever they are completed so it can be referenced. He advised there is also a one-year workmanship warranty on everything that is installed.

A motion was made by Director Ramick, duly seconded by Director Daniel, that the resolution be tabled to the March 3, 2009 Board Meeting; and upon roll call, the following voted "aye": Directors Maruthur, Jones, Keheley, Weatherford, Ramick, Daniel, and Bush, total 7; motion unanimously carried.

City Attorney Brian Albright reported in 2005, he presented an issue concerning some property the City thought it owned and had asserted ownership rights north of Lake Ricks, which is just south and north of Walnut Valley. He advised the property in 1947 went through a condemnation proceeding with Circuit Judge Clyde Brown, and the City took thousands of acres for the purpose of constructing Lake Ricks, which the City has used for a number of years as a fresh water reservoir and water treatment facility. Over the course of the last 62 years, he stated there have been deeds of transfer of ownership among various parties and occupied by various parties made up of the Graves Family. He said it has gone over multiple generations; and in 2005, the Board authorized him to file an action for a Quiet Title and to eject any occupants on the property. He noted this has gone on since that period of time; and trial is scheduled for February 26, 2009. Approximately three weeks ago, he, City Manager Lance Hudnell, Deputy City Manager Public Works/Utilities Steve Mallett, and Operations Manager Ron

Wacaster met with Attorney J. E. Sanders, who represents the Graves Family, along with representatives of the Graves Family, at his office for the purpose of trying to decipher what to do should the Graves win or should the City win. He stated a proposal of settlement was discussed, and the terms were preliminary because that is something the Board must approve. However, preliminarily they came up with terms that would allow the Graves Family to continue to occupy the property until the death of Wayne and Roger Graves; but the Order would recite that the ownership of the property is vested solely in the City's name; and that would no longer be a potential problem. There was a pretrial conference with Judge Williams, who is now the assigned judge for the case with the new roles between he and Judge Switzer. He advised the pretrial conference was last Thursday, and the court gave its blessing on this agreed settlement pending the approval of the Board tonight. Because of the trial dates involved and because they did not have the court's blessing until this point, he is bringing it to the Board tonight instead of an item at the next meeting because the Board will not have another meeting before the trial. He explained the terms of the settlement would be as follows: (1) that the title would be vested in the City; (2) that no other entities or persons would have any claim whatsoever in the ownership to the property. However, the Graves Families that are occupying the premises now would be able to continue to do that until the death of Wayne Graves and Roger Graves, plus a period of three years; (3) upon the death of Wayne Graves and Roger Graves, the remaining occupants would have three years to vacate the subject property; (4) in and all personal property would have to be removed from the subject property prior to the expiration of the three-year period; and (5) the following restrictions would apply to any period of occupancy: (a) the right of occupancy to any portion of subject property is not to extend to any other party or entity or their immediate families; (b) no additional structures, whether manufactured or stick-built, residential or otherwise would be permitted on the subject property; (c) no structure upon or parcel within the subject property shall be let, rented, or leased to any individual or entity; (d) the harvesting of timber, minerals, dirt, gravel, and other substance from the subject property is prohibited; (e) all occupants shall comply with any and all applicable federal, state, and local laws rules and regulations; and (f) any violation of these restrictions enumerated herein shall result in the immediate ejectment of the ascending occupant. He stated that anytime he discusses pending litigation with the Board, he does not want to get into what they feel like the facts would be in the pursuit of the trial nor what the other parties' alleged facts would be, but this would be a resolution of disputed facts in favor of the City with respect to ownership but would continue an occupancy by the present occupants for the duration of Wayne and Roger Graves, plus three years. He stated it is his opinion that it is a fair settlement and has been approved by the signature of the Graves' attorney. He asked him to do that, and he was agreeable to do that so the Board would know that

its approval of this settlement would not require any further acceptance on the part of anyone else. He said if the Board approves this tonight, then he will present it to the court on February 26, which is the trial date; and this matter will be resolved after 62 years.

Director Maruthur asked if this proposal would, in essence, be a life estate; and City Attorney Brian Albright advised that it is a life estate for the life of another and would extend with the various occupants now. He added it would be an agreed Order of Quiet Title that would from this point forward alleviate and finally adjudicate any disputed rights of occupancy or ownership that may have existed since 1947.

Director Daniel commended City Attorney Brian Albright on this issue and said he has been working on this for sometime, and he thinks it is more than fair to the Graves Family. He expressed concern if there would be any problem to Lake Ricks; and Mr. Steve Mallett, Deputy City Manager Public Works/Utilities had commented that he did not believe there would be any problem with any runoff or anything into the lake and has not been for all of these years.

City Attorney Brian Albright advised that is correct, and that is the reason there is a provision in there that all of the federal, state, and local laws and regulations would have to be filed. He noted that would include any ADEQ issues and any environmental concerns; and if there was ever any problem, that would be a violation of the agreement and would be ground for ejection.

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

OTHER BUSINESS

18 Board of Directors Items for Discussion

Director Daniel complimented the City of Hot Springs in general for the outstanding weekend and said it showed the City could take care of a large group of people because the Hot Springs Civic and Convention Center was busy, as well as the race track, and downtown. He complimented the City staff, the Hot Springs Civic and Convention Center, and all of the public safety people for a great weekend.

Mayor Bush expressed appreciation to Human Resources Director Minnie Lenox, Executive Secretary Margaret Parris, and Sanitation Director Bill Burrough for the Employee Awards banquet, which was outstanding and had a great crowd. He mentioned the City awarded some special people with some special recognition, but one of the comments he always receives from the citizens, as Mayor, is the professionalism of all of the City employees. He thanked the committee who made this a success and hoped it can be done again in the future.

19 City Manager's Report

a. State of the City Report

At this time, City Manager Lance Hudnell gave the State of the City Report, as required by Arkansas Statutes, which requires within 60 days after the end of each fiscal year, the City Manager prepares and submits to the Board of Directors a complete report of the finances and administrative activities for the City for the previous year. He then read the highlights and accomplishments of the past year in addition to outlining the challenges and opportunities for 2009.

Mayor Bush questioned if the State of the City Report is available to the public, and City Manager Lance Hudnell advised that it is available on the City's website, as well as through Executive Secretary Margaret Parris or Public Information Officer Terry Payne. He mentioned there are attachments to the report that list individual goals and challenges for each department.

b. Other Items.

1. City Manager Lance Hudnell advised that a letter was submitted to the Arkansas State Highway and Transportation Department today requesting the immediate construction of the light at the Fairgrounds Crossing project. It was submitted along with a report from Mr. Peters justifying the need for the light and before the actual traffic counts are available.

2. The City continues to work on the economic stimulus package and had a meeting today with its Congressional offices to see what they knew about it. There will be some applications on the next agenda from the Transit System, which may receive as much as \$1 million.

3. The Chamber of Commerce Banquet will be held on Thursday, February 19. If any Director has not given Margaret Parris, executive secretary, their order for tickets, they need to do that as soon as possible.

4. He thanked Ms. Margaret Parris for her work on the Employees Awards Banquet, which was a long-term dream of hers and expressed appreciation to the Board Members for their attendance.

5. The City was honored last week by the Arkansas Parks and Recreation Association during its conference. A Facility of the Year plaque for Entergy Park was first awarded and for the facilities greater than \$500,000 category. The City also received a Program of the Year plaque for the Du for the Parks in the tourism, recreation, and administration category. This makes the fourth consecutive year that Hot Springs has received an award by that organization for something related to its parks.

6. This weekend, February 20 through February 22, the City will host the First Annual Spa Classic at Kimery Park. This is the NCAA women's fast-pitch tournament and will bring in regional teams from Texas, Missouri, Oklahoma, and Arkansas. Last week, Kimery Park was the site of the Deep Freeze Classic, which brought 15 teams from around Arkansas so the softball complex continues to receive good use; and the City is looking forward to the NCAA Tournament being held there.

7. He received a complimentary letter from Mr. Martin White, instructor at the National Park College, commending City Attorney Brian Albright for the superior job he always does in lecturing his criminal justice students at National Park Community College. He stated that Mr. Albright has provided this service for the past several semesters and has never lost his enthusiasm. His lectures are well-organized and very professional.

8. He announced the December sales tax report is in the Directors' mailboxes and ended the year with a four percent increase in sales tax over 2007.

9. The City is accepting applications for all the boards and commissions, but in particular for the Planning Commission, Historic District Commission, and the Board of Zoning Adjustment until February 27. There have been many citizens pick up applications and would like to encourage anyone else to contact his office or the Public Information Office. That information is also available on the City's website, and Ms.

Terry Payne, Public Information Officer, has produced a very nice fact sheet summarizing the requirements.

10. He thanked Ms. Terry Payne, Public Information Officer, for the slide show tonight.

20 ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 7:45 p.m., to meet again on Tuesday, March 3, 2009, at 7:00 p.m.

ATTEST: _____

APPROVED: _____

Lance Hudnell, City Clerk

Mike Bush,

Mayor