

## **MINUTES**

### **BOARD OF DIRECTORS MEETING**

**FEBRUARY 3, 2009, AT 7:00 P.M.**

The regular meeting of the Board of Directors was held on Tuesday, February 3, 2009, at 7:00 p.m., Board Chambers, City Hall, with Mayor Mike Bush presiding.

The invocation was given by Mr. Leroy Johnson, 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 Ramick, duly seconded by Director Maruthur, that the agenda be approved; and upon voice vote, the motion unanimously carried.

#### **3 Approval of Minutes of January 20, 2009 Board Meeting**

A motion was made by Director Daniel, duly seconded by Director Jones, that the minutes of the January 20, 2009 Board Meeting be approved; and upon voice vote, the motion unanimously carried.

#### **4 Recognition of Guests**

Mr. Jeremy Townsend, of CitySmart, was recognized and thanked the City for its participation in the 2008 Entergy Arkansas CitySmart Program. He stated the CitySmart is designed for cities and school districts in the Entergy Arkansas territory to help them identify and become more efficient stewards of their Entergy dollars and to be better users of the taxpayers' dollars and reduce their energy consumption. He said that in

2008, they have gone through the benchmarking analysis as they have been benchmarking the buildings within the City and presented that report to the City as well as preparing a first draft of an Entergy Master Plan for the City to use to start to analyze and figure out ways to curb and curtail the energy use in the City. As a part of this program, the City replaced a few air conditioning units and also changed out some traffic signals from incandescent to LED and will receive an incentive check tonight in the amount of \$1,039 for participation in the program. He mentioned that it is Entergy's wish and hope that the City will participate in the 2009 program. He added there is over \$185,000 available for incentives for cities and schools for the 2009 program year. He then presented a check to Mayor Bush in the amount of \$1,039.

Director Maruthur introduced Mr. Wayne Roberts, who stated on behalf of the Mid-America Science Museum, everyone in the City and County, is invited to hear Mr. William Turbo, the closest living relative (grand nephew) of Nicoli Tesla on March 11, at 5 p.m., Mid-America Museum. There will be a reception from 5 p.m. to 7 p.m.

## **5 Board of Directors Announcements**

Director Maruthur announced that on February 24, at 7 p.m., the Park Avenue Community Association will hold its first meeting of the year at the Tower of Strength Ministries located at 315 Park Avenue. Guest speakers will be Ms. Cynthia Stone and Stephen Hitt, developers of the Majestic Hotel; and the contact number is 624-3887. Also, there will be an election of officers and some reorganizational issues; and all interested parties are invited to attend.

Director Jones announced that on Saturday, February 7, at 1 p.m., Webb Community Center, the Pleasant Street Association will have its first meeting of the year.

### **CONSENT AGENDA**

The Consent Agenda consisted of the following:

## **6 Rescheduling March 17, 2009 Board Meeting to March 24, 2009. (Removed from the Consent Agenda for Separate Consideration).**

- 7** **Proposed Resolution No. R-09-12** Approving Certain Bid Awards (a) Sulfur Dioxide - Utility Administration [annual supply contract awarded to Allied Universal]; (b) Sulfur Dioxide - Utility Administration (**Rescind Previous Bid Award**); and (c) Commercial Dumpster Side Pocket Installation - Sanitation [awarded to Tri-Lakes Ornamental in the amount of \$70,000].
- 8** **Proposed Resolution No. R-09-13** Approving Revisions to the 2009 Budget Regarding Staffing.
- 9** **Proposed Resolution No. R-09-14** Establishing the Compensation and Benefits of the City Manager.
- 10** **Proposed Resolution No. R-09-15** Authorizing the Mayor to Execute a Lease Agreement Between Hot Spring Municipal Airport and the City of Hot Springs, Arkansas, for Certain Property at the Airport.
- 11** **Proposed Resolution No. R-09-16** Accepting a Grant from the Arkansas State Highway and Transportation Department, Arkansas Recreational Trails Program, for the Valley Street Creekwalk Project (Phase 2).
- 12** **Proposed Resolution No. R-09-17** Authorizing Issuance of Bank Debit Cards for Limited Use Purposes to the City Manager and the Finance Director; and Repealing Resolution No. 4435.
- 13** **Proposed Resolution No. R-09-18** Revising the 2009 Budget by Appropriating Funds for Certain Prior Year Expenditures.
- 14** **Proposed Resolution No. R-09-19** Naming the Complex Located at 517 Airport Road as the “Bill Edwards Center” and Amending the 2009 Airport Budget.
- 15** **Proposed Resolution No. R-09-20** Supporting the Arkansas Municipal League’s Legislative Package and Certain Other Proposed Legislative Items. (**Removed from Consent Agenda for Separate Consideration**)

**16 Proposed Resolution No. R-09-21** Awarding a Contract to Camp, Dresser & McKee for Certain Engineering Services (Evaluation Study of Southwest Wastewater Treatment Plant). **(Removed from the Consent Agenda for Separate Consideration)**

**17 Proposed Resolution No. R-09-22** Authorizing the Mayor to Execute a Contract with FleetCor for Off-Site Fueling Services.

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

Upon discussion, City Manager Lance Hudnell stated there has been a request from several Directors to move Item No. 6 (Rescheduling March 17, 2009 Board Meeting to March 24, 2009) to the last item of New Business; citizens have signed to speak to Item 15 (Proposed Resolution No. R-09-20 Supporting the Arkansas Municipal League's Legislative Package and Certain Other Proposed Legislative Items); and there is a revised attachment that has been distributed in regard to Item No. 13 (Proposed Resolution No. R-09-18 Revising the 2009 Budget by Appropriating Funds for Certain Prior Year Expenditures). Regarding Item No. 13, he explained there was an item that had not had a purchase order issued for it, but the Board instructed staff to have it in the new budget, which was for the Math and Science School roof. He commented it was inadvertently left off because a purchase order had not been issued. However, that has now been corrected and is included on the list.

Director Maruthur said a request had been made of her that Item No. 16 (Proposed Resolution No. R-09-21 Awarding a Contract to Camp, Dresser & McKee for Certain Engineering Services [Evaluation Study of Southwest Wastewater Treatment Plant]) be removed from the Consent Agenda and considered under New Business.

Director Maruthur commented that under Item No. 14 (Proposed Resolution No. R-09-19 Naming the Complex Located at 517 Airport Road as the "Bill Edwards Center" and Amending the 2009 Airport Budget), the City is allocating \$20,388 for a sign and wanted it clarified and on the record. She said in previously discussing this item, it was described as a permanent sign; but it is sensitive to the area, which is the Bill Edwards Center. She asked how permanent the sign is, and City Manager Lance Hudnell replied that it is a normal, permanent-type sign. He said the complex will be known as the Bill Edwards Center and not the Financial Services Center because it will be the Bill

Edwards Center regardless of what is located there. He added that the City's portion of it will be the William J. "Bill" Edwards Financial Services Center, but the whole complex will be the Bill Edwards Center. Director Maruthur asked if this will be locking in the Finance Department at that location, and City Manager Lance Hudnell advised that it will not.

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**

## **15 Proposed Resolution No. R-09-20**

A resolution entitled, "A RESOLUTION SUPPORTING THE ARKANSAS MUNICIPAL LEAGUE'S LEGISLATIVE PACKAGE AND CERTAIN OTHER PROPOSED LEGISLATIVE ITEMS," 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 Lance Hudnell advised that he received calls from citizens regarding the meaning of these Bills. He said he requested the Board include this item on the agenda and did not come from the Board. He added each year the Arkansas Municipal League goes through a lengthy process of receiving proposed Bills from mayors, councilpersons, and staff members, etc. around the State. He explained they have a rather elaborate process to come up with what they produce as their proposed legislative package for the 2009 General Assembly. He noted the Arkansas Municipal League will lobby these issues on behalf of cities before the League floor. He advised that, normally, staff would have presented this to the Board in December but is behind in getting this to the Board. He commented this resolution is endorsing city staff to be able to speak if they receive a call from a Representative or someone asking what the City thinks about a certain Bill, and staff could answer that the Board has seen it and has endorsed it for staff to speak in favor of it, as well as the Arkansas Municipal League. He stressed that tonight's discussion is not to frame a discussion to debate whether these are good or not good Bills, which is for the General Assembly. He stated there are a couple of other Bills listed in the resolution that are not in their package that staff was aware of later and wanted to get included. He mentioned there is only one Bill that is initiated by the City of Hot Springs, which relates to the residency of the City Clerk and City Treasurer in city manager cities only. He

said all of these Bills are from around the State; and if the Board has any concern about any one of them, he would encourage the Directors make a motion to remove that one from the packet; therefore, if staff receives a call, they will be able to say that the Board is not taking a position on that Bill.

Director Maruthur questioned as these issues come up, if the Directors would be asked on a case-by-case to endorse or not to endorse each item. City Manager Lance Hudnell stated they would not.

Director Maruthur questioned if it will be a collective "yes" if the Board affirms this; and City Manager Lance Hudnell said that is correct unless the Board pulls one out, which he would recommend if there was a concern.

Regarding the Bill that the City has proposed, City Manager Lance Hudnell explained that the city clerk, city recorder, and city treasurer are elected positions in the mayor/city council form of government; but they are an appointed position in the city manager and city administrator form of government. He mentioned there are only eight cities that fall within this area. In 1986, the Board combined the then city clerk position with an administrative assistant position creating a deputy city manager/city clerk. All of this time, Ms. Janet Heath has been the Deputy City Clerk and has done the work of a city clerk. He advised there has always been a question as to whether or not the city clerk, city recorder, and city treasurer in a city manager form of government have to live in the city. Staff polled the other eight cities and asked their city clerks if they live in the city and if they have to. With one exception, Siloam Springs said they require their city clerk to live in the city. He said all the others do not require their city clerk to live in the city, but most of them do. However, on occasion, there is a city clerk in the other seven cities who does not live in the city. He stated during the City's recent reorganization, it seemed inappropriate for him to continue to carry the title of City Clerk as well and makes more sense for that to be Deputy City Clerk Janet Heath. He added that other cities have appointed the city clerk whether they lived in the city or county. However, the City just wanted to be more clear since it is not clear in the statutes; and that was the sole purpose of the City's introduction of this Bill. He said Representative Gene Shelby has agreed to submit the Bill. He pointed out that would be a local option the way it is written. He added if the City wanted to require that particular office to be a resident of the city, they could still do that; and it would be a local option.

Director Daniel stated there is a Bill in the packet having the option to be able to add a one-cent sales tax concerning the promotion and development of city parks and recreation areas, which he would like to see eliminated.

A motion was made by Director Daniel, duly seconded by Director Jones, to remove the Bill concerning the promotion and development of city parks and recreation areas from the rest of the endorsed legislation; and upon voice vote, the motion unanimously carried.

City Attorney Brian Albright stated that the legislative packet, minus the Advertising and Promotion one-cent tax regarding parks, is now on the floor for consideration.

A motion was made by Director Maruthur that the City authorize the Bill concerning the residency requirement of city clerk, city treasurer and city recorder in city manager cities only.

Upon discussion, City Attorney Brian asked if the motion means that is the only one she would like to have included and the remainder omitted; and Director Maruthur said she did not want to give a carte blanc endorsement.

Mayor Bush called for a second to Director Maruthur's motion; and there being no second to the motion, the motion died for lack of a second.

Mr. Steve Webster, 122 Village Road, said he represents the Hot Springs Landlords' Association, and there were two items they were concerned with, which were put in as Bills as of yesterday. He stated it will be House Bill 1317, which would change the wording that would cause Hot Springs to fall under the one percent gross sales tax collection. He asked that the City not support that Bill nor House Bill 1316, which is a Bill to change the language from hotels, motels, and condominiums, and to add houses, cabins, bed and breakfast and other rentals. He stated they feel this may lead to an across-the-board sales tax on every rental property. He urged that the Board not support those two Bills.

Ms. Diane Silverman, 1404 Cedar Glades Road, pointed out the problem is that the Board is voting one way or the other and has not received input from anybody because no one knows about it. She stated some important issues are in this legislative packet that the Board is being asked to approve. She urged the Board to table this item and have time for a complete explanation in the newspaper of what is contained in the packet, what the ramifications are, and have at least three readings before this is approved. She stated an item such as raising the Advertising and Promotion Tax from three percent to four percent without public input is not appropriate.

City Manager Lance Hudnell responded that is why it would be debated at the General Assembly.

Ms. Silverman commented most of the citizens are unaware of what is in the legislative packet, but the Board is voting to let the Arkansas Municipal League know that the Board has approved it. She stated when the senators and representatives call, staff can say the Board voted to approve this. However, she said it would be approved without input from the public and is not the American way.

City Manager Lance Hudnell explained that is the reason he brought this to the Board because in past years, it was not brought to the Board at all. However, next year, staff will try to bring it much earlier. He pointed out if the City waits three weeks, the General Assembly will have debated and voted upon them. Ms. Silverman said that it needs to be said to the General Assembly to hold off because the citizens need to know. City Manager Lance Hudnell replied that he would encourage her to call her representatives and let them know her opinion. Ms. Silverman said she is encouraging the Board to let them know that. She commented the Board is representing the people and should let them know this is not appropriate. City Manager Lance Hudnell stressed that is why it is on the agenda. Ms. Silverman replied that all she has heard about are one or two items and questioned how much the Directors have studied this particular packet and how well do they know what they are approving. City Manager Lance Hudnell advised that four of the Directors were at the Arkansas Municipal League meeting and heard a briefing on each of the Bills. Ms. Silverman questioned why it was not in the newspaper, and Mayor Bush responded that the newspaper was not in attendance at the Arkansas Municipal League meeting. He said that he talked to a number of constituents. City Manager Lance Hudnell added that the City has heard from some who have requested that some Bills be pulled and that is why one was pulled. Ms. Silverman commented that the people who called her asked that she let the Board know that they did not support the Board voting on everyone of these Bills. City Manager Lance Hudnell said he appreciated her input because that is why it was brought to the Board.

Director Jones pointed out that Hot Springs is not the only city doing this, and City Attorney Brian Albright replied there are 500 cities in the State; but not every city is going to pass some type of resolution that endorses the Arkansas Municipal League's packet. He pointed out there are times when the Arkansas Municipal League brings issues forward that are not in the best interest of Hot Springs, and they are informed when that happens as well.

Mr. Ted Burhenn, 318 Trapp Mountain, said he is against this packet because the public has not had any input; and there is no reason to endorse this because nobody knows about it. He commented that the language concerns him, as well as the one percent. He questioned how the language regarding rentals on homes would be enforced. He said that he spoke to a number of RV places today, and they are definitely against it because they have many people who live there on a monthly basis. He stated they just went from a two percent tax to an eight percent tax, which was an oversight since the State did not have it taxed properly; and now they have had to absorb six percent and now looking at another three percent. He said they are going to have to absorb that also and will have to absorb in their profits because they are not going to be able to pass it on. He stressed that he is against the entire packet.

City Manager Lance Hudnell commented that the City encourages anyone who has objections to any of these Bills to contact their legislator, and he has a website where people can track these bills.

Director Jones commented there are eight cities that have the city manager form of government but questioned what happens if 75 or 80 cities vote for this and the Board votes it down. City Attorney Brian Albright advised that the Board's vote means nothing in all of this but means this is something the Arkansas Municipal League can use in their lobbying effort to convince representatives and senators to vote a particular way. He explained within the packet that is included in the Board packet, 90 percent of the legislation that is proposed will not affect Hot Springs because it only has to do with mayoral/alderman form of government or with city administrator form of government. He stressed that he is not saying that is a reason to endorse or not to endorse.

City Manager Lance Hudnell reiterated that he felt uncomfortable as city manager speaking for the City without the Board having authorized him to do so. He wanted to be aware if there was anything that any of the Directors had concerns about regarding the package that will be debated at the legislature and has nothing to do with whether the City likes or dislikes a Bill. He stressed that he wanted the Board to be aware of them so the Board could authorize him to speak on behalf of the City. He advised this has not been done in the past and agrees with Ms. Silverman as far as bringing it earlier to the Board and wishes he had been able to get it together in December so the Board had more time to review it. He advised today is the last chance because it will be over in another couple of weeks.

Director Maruthur said there are issues in the resolution that she agrees with; but when the Board is going to vote comprehensively to authorize the City Manager to endorse this, she feels a responsibility in a collective or comprehensive manner not to endorse this as a package except the for the one that does pertain to Hot Springs that Representative Shelby is going to introduce.

Director Keheley stated she is concerned about the Board taking these case-by-case tonight and giving a blanket approval on the whole package. She added that many of these will never become Bills and are in draft form; therefore, the Board is endorsing something that is never going to happen.

Mr. Bob Driggers, 3 Stonegate, commented this vote means a lot to a lobbyist and Mr. Zimmerman, executive director of the Arkansas Municipal League, when a statement is made that Hot Springs is in support of this. He noted that regardless of who initiated this action, he would encourage the Board not to endorse it. He said he is concerned, disappointed, and appalled at several things; and his concerns stem with the fact that this was included as a Consent Agenda item. He said he was also concerned that the Board would omit informing or asking for public opinion, especially regarding another tax that could be approved without a vote of the people. He stated he hoped the Directors would go along with Director Daniel's recommendation that this piece of legislation be dropped but would encourage the Board to drop all of them. He commented he is very disappointed that the Board has not learned that the citizens do not want additional taxes without a voice or vote. He noted the wording in the agenda packet imposing an additional one-cent Advertising and Promotion tax for any city by removing the words "in which a city park of 1,000 acres," the public should be aware that the only two cities in the State that are now collecting three cents Advertising and Promotion tax are Hot Springs and North Little Rock. He commented now, that the 1,000 acres have been removed which they are referring to Burns Park in North Little Rock, that would be allowing the City of Hot Springs and North Little Rock another cent; and he hopes the Board will go along with Director Daniel in eliminating that one but should eliminate of all of them. He said he was appalled that any group could do such a poor job of demonstrating what representative government should be that is open to the public and representing the wishes of the people. He stressed that the City's agenda and its lobbyists should be adopted only after town hall meetings, public forums, and much public comment. He stated the public should know some of these items that are in the Board agenda packet; and they can go to the City's website and find them or their website ([hotspringstalk.com](http://hotspringstalk.com)). He pointed out that one item proposes that the words "be elected by a vote of the electors" be removed, which concerns vacancies on the Board of Directors.

City Attorney Brian Albright advised that the Bill he is referring to relates to the aldermanic form of government and that is not city manager form of government.

Mr. Driggers said his third concern was the Advertising and Promotion tax and the fourth one establishes selected residency requirements to some Board members but not others.

City Attorney Brian Albright pointed out that is in regard to city administrator form of government.

Mr. Driggers expressed concern with removing interest rate limits for bonds issued by the City. He asked if that applied to Hot Springs, and City Attorney Brian Albright advised that would apply to any city. Mr. Driggers then pointed out another Bill is to establish legal notification, which is for code enforcement, of a party by sending notification to the last known address.

City Manager Lance Hudnell explained that is law, and all they are doing is changing a word about priority lien. He added it was creating a typo from a previous law so that one is already law.

Mr. Driggers said this entire packet is filled with bad law and encouraged the Board not to consider endorsing the packet.

City Manager Lance Hudnell advised that he received a call from Mr. Jimmy Young who wanted him to relay that he has mixed feelings with regard to the increase on the short-term rentals because that would give the short-term rentals a stronger voice with the A&P, which he would be in favor of; however, in 2006, they lost their exemption for state sales tax so they went from paying the two percent tourism tax to paying ten cents because they picked up the eight cent sales tax. Therefore, adding them into the Advertising and Promotion tax now would be another three cents, and he was concerned with that.

A motion was made by Director Daniel, duly seconded by Director Maruthur, to remove House Bill 1316 and House Bill 1317 from the legislative packet; and upon voice vote, the motion unanimously carried.

Mayor Bush then called for a vote on the resolution, as amended; and upon roll call, the following voted "aye": Directors Weatherford, Ramick, and Bush, total 3.

Voting “no”: Directors Maruthur, Jones, Keheley, and Daniel, total 4; motion failed. Whereupon the resolution was declared failed.

## **18** Proposed Ordinance No. O-09-5

An ordinance entitled, “AN ORDINANCE ACCEPTING FOREST VIEW CIRCLE AND FOREST VIEW COURT AS PUBLIC STREETS; AND FOR OTHER PURPOSES,” was taken from the agenda for consideration.

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

Upon discussion, Mr. Denny McPhate, Operations Director for Public Works, advised that the streets in this subdivision were originally platted as private streets; and the width of the streets do not meet current city standards. He noted there are bad places in the streets that need repairs. He stated the acceptance of these two streets is a request from the Forest View Subdivision property owners, who have agreed to pay \$14,495 for the repair cost of the materials. He stated the acceptance of the streets is extraordinary in that the circumstances as they exist is beyond the control of the current property owners. He advised that the Engineering Department did an estimate on it and has estimated city equipment and labor cost to be around \$18,000. The request is that the City bear that burden and the property owners bear the burden of the materials. Upon receipt of that payment, the City would perform the work if approved by the Board.

Director Maruthur commented these were the first garden homes to be built, and she believes it is in their Bill of Assurance that there was no parking. City Manager Lance Hudnell said he did not recall if it is very plain in their Bill of Assurance, but Director Ramick has looked at their Bill of Assurance. Director Ramick replied it is not clear enough in the Bill of Assurance that there is anything that prohibits parking on the street.

Director Maruthur commented she thought this was discussed earlier, and City Manager Lance Hudnell advised that it was clearly stated at the meeting with the property owners if they were accepted by the City, there would be no parking on the street.

Mr. Charles Ashley, 112 Forest View Court, said they believe if this ordinance is passed, it will make the area safer; and the Police Department will be able to patrol their area. He stated that he is treasurer of the property owners' association, and they have given him permission to write the City a check tonight for \$14,495 if this approved.

Ms. Barbara Crank, 107 Forest View Court, stated she has been a resident of Hot Springs for 28 years and 20 years living in the county on the lake. She said she decided to move to Forest View because of convenience to church, medical care, and shopping. She mentioned it was not until the street in front of her house started cracking that she investigated who was responsible for the repairs on the roads and was surprised to find that the POA was responsible. She stated 45 percent of the owners in Forest View are retired, widowed, single heads of households, and most on fixed incomes. She noted repairs on the roads were not figured into most residents' budgets. She pointed out they are not a gated community, and the roads are accessible to everyone. She said she would appreciate any help from the City in regard to street maintenance and repairs.

Mr. Jack Belin, 105 Forest View Circle, president of the POA, stated that the majority of the residents are retired and living on fixed incomes. He noted their streets are not gated and are open to the public. He said when he moved into his home, he saw nothing to indicate that he was buying into a property where they would have to maintain the streets. He mentioned they have had a number of meetings and tried to figure out what to do. He stated he has never been treated with such respect as he has been by Director Rick Ramick, who is his Director, and City Manager Lance Hudnell. He wanted the Board to be aware they have had unanimous decisions; and in their presentation, they talked about the inconvenience of parking when family or friends visit. However, the residents are more concerned about safety than comfort. He said the residents are asking that the Board consider their petition, and no one has complained regarding the amount of money; also, a lot of the money has been collected.

Director Ramick pointed out that the Board wants to make it clear if street acceptance is approved, there will be "no parking" signs installed; citations will be issued for parking; and there is the possibility of having cars towed. Also, if a fire truck is sent to this street and someone is parked there, the car will not stand in the way of that fire truck. Mr. Belin replied they have covered these issues and are fully aware what they need to do.

Mr. Bob Messersmith, 838 Bellaire Drive, commented that he has a retirement community out there; but they do not have this restriction. He said he told the residents in this subdivision whenever they bragged about the privacy they had, that it was not right and they would have problems. He stated these residents are innocent and bought into something they thought was good, and they are going to get bailed out. He pointed out he did not get bailed out when he put in his subdivisions.

Director Maruthur said she wants to make sure since there is not going to be any on-street parking, that the POA has a provision if they have an event or get-together, the neighbors are going to allow people to park in their driveways. She questioned if that has been discussed at the meeting, and Mr. Belin replied that it has been worked out.

Director Keheley stated that she is concerned that this does not happen again and questioned if there is any way the City can build in some written standards that it is built right the first time, and the City will not have to bear responsibility like this again. City Manager Lance Hudnell advised that the current Subdivision Code and the new Street Code address that. He noted the new Street Code requires that whether they are private or public streets, they have to be built to city standard. He noted the new Subdivision Code that is coming to the Board in the future also has a provision that if private streets are allowed, that it be clearly stated and the actual language for that is in the Subdivision Code that they must put it in their Bill of Assurances and on their plat so at least future owners would be aware. He pointed out in this particular case, they have to read between the lines to find it in the Bill of Assurance; but that will not be the case once the City adopts the new Subdivision Code, plus having the backup of the current Street Code.

Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted "aye":  
Directors  
Maruthur,  
Jones,  
Keheley,

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Daniel  
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**19 Claim from Ms. Katherine Jones Resulting from a Fall in the Exchange Street Parking Deck in the Amount of \$1,453.92**

A motion was made by Director Jones, duly seconded by Director Maruthur, to consider the claim of Ms. Katherine Jones.

Upon discussion, Mr. Steve Mallett, Deputy City Manager Public Works/Utilities, reported on January 21, the City received a claim from Ms. Katherine Jones, 933 Greenwood Avenue, who stated that she fell in the Exchange Street Parking deck on December 23 as she was leaving work. He said she was parked on the top floor; and as she was exiting the elevator, she fell and sustained injuries in the amount of

\$1,453.92, which was the amount of the claim. He commented the claim was denied under tort immunity clause.

Ms. Katherine Jones, 933 Greenwood Avenue, stated she was getting off work from her job at the Buckstaff Bathhouse and asked if the Board would consider her claim, pointing out that the parking garage was unsafe due to the inclement weather. She said as she came off the elevator, she had no idea she was going to fall.

Mayor Bush questioned what caused her fall, and Ms. Jones stated it was from the ice. She added this happened about a week ago to another person she works with at the Buckstaff who fell but did not report it.

Director Maruthur asked if this was the result of something the City did, and Ms. Jones replied that it was from something that was not done as far as alerting the people on the top level, and there could have been some sand put down.

Director Maruthur questioned if there was any type of equipment around, and Ms. Jones stated there was not.

Director Jones noted that she had mentioned a fall had happened recently to another person, and Ms. Jones said that it happened to another lady she works with, who fell and received a knot on her back.

Director Maruthur asked for clarification on tort immunity, and City Attorney Brian Albright advised that State law provides that it is declared to be the public policy of the State of Arkansas that all counties, municipal corporations, school districts, special improvement districts, and all other political subdivisions of the State or any of their boards, commissions, agencies, authorities, or any governing bodies shall be immune from liability from suit for damages except to the extent that they may be covered by liability insurance. He stated he has conferred with Finance Director Dorethea Yates, and there is no liability coverage for that particular building. He added according to Arkansas Code Annotated §21-9-301, no tort action shall lie against any such political subdivision because of the acts of its agents or employees. He advised that essentially this is a negligence claim, and it is a slip and fall because of the ice. He said that he sympathizes with the claimant; but if the City opens up all public property to slip and fall on ice, the streets were also icy last Monday.

A motion was made by Director Weatherford, duly seconded by Director Ramick, to deny the claim; and upon roll call, the following voted "aye": Directors Maruthur,

Ramick, Daniel, and Bush, total 4. Voting “no”: Directors Weatherford, Jones, and Keheley, total 3; motion carried to deny the claim.

## **20** Proposed Ordinance No. O-9-6

An ordinance entitled, “AN ORDINANCE ESTABLISHING THE MEMBERSHIP AND TERMS OF OFFICE OF THE HOT SPRINGS PLANNING COMMISSION; REPEALING CERTAIN ORDINANCES; AND FOR OTHER PURPOSES,” was taken from the agenda for consideration.

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

Upon discussion, Mr. George Pritchett, 640 Arkridge Road, said he tends to support what the Board is doing but cautioned the Board that by tying every planning position, except for the at-large, to a district, it appears more political than functional. He expressed concern that the City has gone several months with two openings on the Planning Commission and not responded to the public or to the applications. He stated these unfilled positions create an unfair burden on the others and denies representation from substantial areas of the populace. He said if the City does not have qualified applicants from a particular district, it needs to have a back-up plan to appoint members from another district or at-large.

Mr. Pat Patterson was recognized and introduced Mr. Bob Messersmith and Mr. Doyle Shirley, who were in attendance with him at the podium. He mentioned that they all have served in one of the positions that the City presently has and had hard decisions to deal with, such as the City was broke and was unable to meet its fiscal obligation. However, they made the decision in the best interest of the City. In less than a year, he said they met all of the financial problems and had \$2 million in surplus. He stated they are opposed to this ordinance, and it does not encourage public volunteers but sends a message to the people that the City does not need their help. He added they believe there should be regular visits to each of the commissions and committees, and they all should be handled equally. He pointed out there are commissions at the present time who continue to have the same faces. He said they are not saying the City should not, on occasions, fine tune the commissions or even remove a person should

their action warrant it. However, this will be hindering the public process and, therefore, causing it to be undemocratic. He urged the Board to reject the ordinance.

Mr. Ray Owen, Jr., 209 Hobson, encouraged citizens to serve on the commission. He stated citizens do not have to be a planning expert to serve on the Commission but need to be able to make good, logical decisions. He then read the qualifications to serve on the Commission, the responsibilities, and the specific duties. He mentioned there is a well-trained professional planning staff in the City, and they work with people who are proposing developments and come up with a recommendation that they submit to the Planning Commission for its consideration. He stated that the Commission members should take a look at the recommendation and consider it very carefully. He mentioned the City has an excellent planning staff, and their recommendation should carry heavy weight when it goes before the Planning Commission unless there are objections from the community that are present at that time. He encouraged all citizens to give back to the community.

Director Maruthur asked if Mr. Owen is representing a client, and Mr. Owen said that he was not. Director Maruthur asked if he had a position on this, and Mr. Owen replied that he has no position on this issue.

Mr. Ken Carney, 111 Blueridge Place, stated he ran for election to the Board of Directors and congratulated Director Tom Daniel for being elected. He said when he was running for the Board, he had stated he would never vote to suspend the reading of the rule unless it was an emergency. He commented he would not vote to suspend because it has the appearance of "railroading" issues. He pointed out there are two types of power - the power of position and the power of influence, and the latter is the greater. He added the power of position is used to manipulate things and whether it is right or wrong, when that power of position is used, it appears it is manipulation for the benefit of a few people. He stated motivation is for the benefit of everybody, and the power of influence is motivation. He said he believes leaders have the responsibility of influencing a community and setting the tone for them to volunteer to do things that are important. He mentioned when he was running for office, he met hundreds of citizens, who were concerned about the appearance of "railroading" issues through. He pointed out if it is a good ordinance, it can stand the test of time and tenacious scrutiny, and also the newspaper should be able to present both sides of that. He asked that the Board to do everything it can to build the unity of community.

Mr. Gary Threadgill, Chairman of the Planning Commission, mentioned on the comments that were sent to him in the mail, it said this was for the best interest of the

public when there has been nothing put forward to the public. He questioned why the City is getting rid of the Planning Commission, the Historic District Commission, and the Board of Zoning Adjustment, pointing out there will be over 20 vacancies and wanting to fill them in less than 60 days when the Commission has been waiting three months for two applicants. He pointed out that he was appointed by the Board of Directors to serve as a volunteer, and the Commission's position is to follow the ordinances. He added the Commission does not have the ability to waive the ordinances and that is why the Board hears the appeals. He pointed out the Board approved the ordinances; and if the Board does not like the way they are written, then they can change it. He stressed all the Planning Commission is doing is upholding the ordinances as the Board has approved them. He mentioned that on numerous occasions, staff has made recommendations to approve; but even the ordinance says "no." He stressed that the Planning Commission has to abide by what the ordinance says. He questioned why staff was not present tonight and was told not to come because they did not want to answer questions.

Director Daniel stated he did not appreciate his comment that someone told staff to stay at home. Regarding the sign at Lakeside School, he said it was not so much they were turned down by the ordinance but the way they were turned down. Mr. Threadgill replied that they were tabled. Director Daniel stated they were tabled with undue respect for those students who did not have the opportunity to make a presentation and had worked hard putting that together but were not allowed to make their presentation when the Planning Commission tabled it. He added that he was not present at the meeting but was told what had happened. Mr. Threadgill said that he was chairman of that meeting and a motion was made to table after they listened to all the discussion. As a chairman, he said his responsibility was to call for a second; and a second was made to table, which was the end of discussion. He told those people when they kept trying to come to the podium, that the issue had been tabled; and it was the end of discussion. He pointed out he has to abide by what the parliamentary procedures are.

Mr. Threadgill questioned who told Planning and Development Director Kathy Sellman to stay home, and City Attorney Brian Albright advised that no one told her to stay home. Mr. Threadgill asked who told her not to come to the meeting tonight, and City Attorney Brian Albright stated that no one told her not to come to this meeting. Mr. Threadgill posed his question to City Manager Lance Hudnell, who responded that he did not tell her not to come; but she asked if he wanted her to come. He told her it was her decision; but as far as he was concerned, she did not have to be there because it was not an issue that involves staff. Mr. Threadgill stated that Director Weatherford

has left the Board Chambers because he has been telling people for three or four weeks he was going to fire him. He said if he is the problem that the Board does not like on the Planning Commission, then the Board can get rid of him because there is no reason to eliminate of 20 people for no reason.

Director Weatherford pointed out that he cannot fire Mr. Threadgill.

Director Daniel said there is a misrepresentation that needs to be clarified. He stressed that no one is firing 20 people and no one is sending these 20 people home; and no one is saying they cannot be back on this commission, the Historic District Commission, or the Board of Zoning Adjustment. What he understands this is doing is changing the criteria as far as term limits and reorganization, which means that Mr. Threadgill can submit his application, along with the 19 others. He pointed out what Mr. Threadgill said is not true.

Mr. Threadgill commented the Board approved them. He mentioned in the letter that was sent to the commission, all 20 positions, as of March 31 become vacated and new ones will be reappointed April 1. He said that sounds to him that on March 31, he is without a job; and if he wants it back, he will have to reapply.

Mr. Bob Driggers said he is not sure this is going to encourage every volunteer to step forward to serve. He added that the Board can establish rules and regulations for these commissions without getting rid of all of them. He asked that the Board consider applying the same rules and regulations to them if they are applied to the Planning Commission. He said that he is ashamed that the Board would consider treating the volunteer board members as disposable, unappreciated people but should be thanking them. He questioned what Director had the items placed on the agenda reorganizing the Planning Commission, the Board of Zoning Adjustment, and the Historic District Commission.

City Manager Lance Hudnell advised there was a discussion at the recent Board retreat with regard to boards and commissions in general. He stated there was a discussion among the Board as to how they wanted to treat term limits and other issues with regard to these three commissions in particular. He stresses there was not a particular Director who gave instructions to him and the City Attorney other than it was the consensus of the Board. He pointed out the Directors cannot take a vote at a retreat; however, it was a consensus at the retreat that an ordinance be drafted and brought forward for the Board's consideration as a result of about an hour's discussion on that topic.

Mr. Larry Raney, 4131 Spring Street, stated that he serves on the Planning Commission and represents the County and the ETJ and has served on the commission for about 1½ years. He said from his own personal experience, it takes a strong commitment of time and energy to study these ordinances and figure out how they interact within each other so they can make intelligent decisions. He commented that he is speaking as an individual and private citizen, not as a member of the Planning Commission, and commended the Board for bringing this issue to light from the standpoint that he thinks every citizen has the right to assume they are going to be represented by any board or commission that represents actions that could be taken in their neighborhood. He said this is one way to achieve it by having representatives by district. He mentioned there are pitfalls that come with that kind of situation: (1) it cuts the pool of volunteers down drastically if they are chosen from a particular district; (2) if there are no volunteers that come forward within that district, then the City is going to be forced to recruit individuals, which has problems in that if citizens are actively recruited, there may be a tinge of politics that comes involved in that; and (3) at times volunteers who are recruited do not necessarily commit themselves as deeply or as firmly as those who volunteer to start off with. He said that he has gained from his own experience in having served on a board in Texas and on the Planning Commissions in three different states.

Mr. David Campbell asked that the Board delete the wording in the three ordinances where it is vacating all of the commission positions and add the wording that the five remaining positions on the BZA and Planning Commission that expire beyond 2012 be shortened to expire in 2012. He said doing it this way, the Board will accomplish the goals it has set now in the proposals in a three-year timeframe. As far the requirements for the district representation on the Planning Commission, he said it can be accomplished by March 2010. He noted there are two districts currently with two commissioners that have been appointed (District 3 and District 5). Commissioner Lauri Ames' (District 3) term expires March 2009; and his term (District 5) expires in March 2010. He mentioned there are two vacant positions that have been open since October. Doing it this way, he pointed out all districts would be represented by March 2010, and there is a vehicle in the ordinances to remove commissioners. He stated he is the one position that would hold the Planning Commission to 2010; and the Board could have him removed by its next meeting and could have in a couple-month period all six districts and at-large position represented.

Director Maruthur said she has a statement to read which is directed to the Board and the City and she takes it seriously. She stated the Board did discuss changing the composition of the commissions, and she has a lot of concerns. She then read the following statement: "It is my personal opinion that the sudden change regarding our Planning Commission is nothing more than a veiled attempt to remove specific commissioners. It looks fair, and we are starting fresh and cleaning house across-the-board but is that the intent? If we were to have a Planning Commission that merely echos the desires of the Board Members, it might really look good in public because then it would result in less reversals but wouldn't the City Board be micro-managing the City? We could save a lot of money, and we could have the department heads just be run by the City Board. The City Manager could just listen to the City Board. The City Manager and the City Attorney do serve at the pleasure of the Board. For no reason at all, we could just let them go if they don't do as we say. We are elected to protect our community, not to call the shots. We are elected to make policy to protect the people who have elected us and to protect this community. There are few requisites needed to be a good planning commissioner. No. 1 and the most important happens to be time. A lot of people would like to do this, and there might be a knee jerk to just say I will do it; but it is labor intensive. This is something that was brought out before. Then after the pool of people that have time, we have the people who really need to have an interest in working hard as a volunteer, no pay, and in going through hours and hours of meetings besides the preparation and their willingness to learn, like Mr. Owens said, and to retain and continue learning new information. We used to have the Southern Building Code. Now, we have an International Code. We have a limited pool of people in each district that have the time and the interest. It is easy to say "yes" and then resign. We have begun the process of interviewing the Planning applicants and the No. 1 question is, Do you have time? The answer is yes. We have seen people leave. We have seen resignations. To me, it was a real issue when I asked the question; and they spoke of their other activities. I really care about every corner of the City. As we have learned from the economic situation that we are now experiencing, if you just protect your little corner, it will eventually come back to you; and the bottom line, if you want it to be money, does not work. I am going to refer to Mr. Ken Lay, the Enron guy. He led people to believe that everything was okay. They kept investing; they kept their stock. They did a lot of things and if you look at the bottom line, perhaps the people that he cheated out of their incomes would not have helped the economy as much as he did. He built many homes. In fact, his vendors probably made a lot of money and the builders probably made a fortune. He was buying things left and right and that was the bottom line and people were quiet. People on Wall Street have been quiet, and we are a microcosm of those people. We cannot allow, in my personal opinion, to have the City Board politically align the commissioners

for the Planning Commission to serve our needs, which could lead to micro-managing and expect the City to prosper. We are all in this together. If Hot Springs does well, we all do well. We have all been hit by the economy. I don't think there is a meeting that we go to that we don't refer to the economic situation. This will require learning local codes, building specs; and we do have the right to do what we want but is it right? That is the question. We make enough innocent mistakes through misunderstanding just like the motion that was made tonight by Director Weatherford. He made the motion, but yet the question still is was it the affirmative? Is it a yes or no? We err all the time; but when we know what we are doing, while we recognize what the problems are, I feel we have a responsibility to the people that have placed us in this position of power to use that power, not to misuse that power. Another thing that was brought up tonight was about guidelines. I would like to make a motion to direct our City Attorney to draft a set of behavioral guidelines, decorum standards, a provision that would also address absenteeism. One of the things that happens on the Planning Commission is once a commissioner realizes how labor intensive, how much time this takes away from their family and from their business and from everything, they don't attend; and it is a symptom. I noticed that in the request that was made by Director Keheley; and I really appreciate that question to our City Attorney; he alluded to §14-47-109(a)(2). It is a State law that our City Board can reorganize under the city manager form of government; and it appears that we, in my personal opinion, are picking and choosing what is convenient that is going to serve this City Board for what could be micro-managing and changing this city from prospering. It is a short fix but to take people that are very knowledgeable that understand what is going on and to 'throw the baby out with the bath water,' I think is a big error; and like I said, I would like to make a motion to direct the City Attorney to draft the guidelines decorum and to be very specific with the removal of a commissioner rather than just wipe them out and limit it to a pool that might not be out there. It is going to be a process, and we have to be very up-front about it and really take the heat on this. There is nothing wrong with making a mistake. It is learning from your mistake. With that, a motion is on the floor."

Mayor Bush stated there is a motion on the floor to direct the City Attorney to draft behavioral guidelines, decorum and absentee policy. Mayor Bush questioned if this was for everyone, and Director Maruthur replied this is for the Planning Commission and to be very specific about if people cannot conduct themselves in a proper manner and attain a certain decorum, then the Board should have the right to let them go.

City Attorney Brian Albright advised that the Board has that right now, and Director Maruthur commented the Board has not been exercising it. She mentioned

when Director Weatherford left the room the other day, she and he were in complete agreement about the absenteeism.

Director Weatherford replied that the Board has already discussed that previously and decided the Board already had that as part of an ordinance that they could address most of the things except for absenteeism. He pointed out the Board decided at that point that it did not want to address absenteeism.

Director Maruthur stressed that he wanted to; and Director Weatherford replied that he did; but the other Directors said they should not address absenteeism. He commented that she and he must have been at a different meeting on Sunday at the Board Retreat at the Embassy because she was vocal about the Planning Commission and the Historic District Commission, but what she is saying tonight is not what she said at that meeting. He commented in 1983, there was another form of government; and Mr. Pat Patterson, Mr. Bob Messersmith, and Mr. Doyle Shirley were part of the people who wanted to overthrow that government and did not want that form of government any longer. He said they worked to overthrow that; and within less than five years, they did away with the Water and Sewer Commission. However, since that time, those three gentlemen have worked hard to turn the government back the other way again. He said they do not like what the present Board is going to do, but they have done the very same thing in previous years.

Mayor Bush commented there is a motion on the floor by Director Maruthur.

City Attorney Brian Albright explained there is a motion on the floor to adopt the ordinance reorganizing the Planning Commission; and the Board is participating in discussion on that ordinance. Director Maruthur made a subsequent motion, which is a different motion that is not timely at this point. He advised the only motions that could be considered while the existing motion is on the floor would be a motion to table or a motion to amend. He said at the present time, the Board is considering Proposed Ordinance No. O-09-6 which is the discussion on the floor. He advised if Director Maruthur has something that pertains to that particular ordinance, then she can move to do that. Once the Board is through with this agenda item, if she wants to make a motion to direct him to do something else, that would be appropriate.

Director Maruthur commented that she is opposed to Proposed Ordinance No. O-09-6.

Director Keheley stated she attended that Board Retreat, and she thought the focus was on term limits, which she supports. She expressed concern with vacating 21 volunteers or citizens and commission members that the Board appointed all at one time. She said she believes the City will lose some continuity, knowledge, and experience, especially for some upcoming cases that might be coming before the Board in March and April. She pointed out the knowledge and training that the City has invested in all of its volunteers and members will be lost, not to mention the negative impact that she has heard tonight and throughout the community in getting replacements that the City can find people who will be committed. She said she believes it would be better for the City if the process is spread out and establish some term limits with staggered terms. As an example, she suggested 1/3 of the commission have at least one more year; and those who serve the longest, go first. She pointed out if all members on all three commissions are released, the City may face some negative impact on economic development issues that come before the Planning Commission and the staff, and the Board may make some uninformed decisions. She stressed that she will support term limits and thought that was the focus at the retreat.

Director Maruthur commented it was clearly stated at the retreat that the commissioners should reflect the people who are on the Board and that should be tied together. She said she believes the City needs to keep the people who are experienced and that the Board can take care of some of the behavioral problems by either using what is in place but not just doing a clean sweep so it appears that the Board is just doing a clean sweep when it is losing experience and people who have been dedicated.

She stressed to do a clean sweep is not right, and she will not be a part of it and never said she would. Regarding term limits, she stated she does not support people being on a commission forever, but the City does not have to just remove all of these people who volunteer. She commented the City cannot find a pool of people to take these people's places, and she agrees with Director Keheley that the Board needs to do something else. She stressed that she is totally opposed to this ordinance.

Director Daniel said he understood that Director Maruthur wanted to go from citywide to districts, and Director Maruthur replied that was not correct. She stated the bottom line is a good decision and a good recommendation from the Planning Commission and is not about which district they are in. Director Daniel stated that her opinion at the retreat was that she wanted to see a change from citywide to district, and Director Maruthur replied that was not correct. She stressed she was opposed to that concept. Director Daniel questioned why it was changed, and Director Maruthur said she did not agree with it. She said it was determined that most of the commissioners or a majority of the commissioners happened to live in District No. 6;

and they were doing very well. She stated she cares about the decision, the recommendation, and the work that is done.

Director Ramick said he does not see any that live in District 6.

Director Daniel commented earlier tonight the Garland County Good Government Group made a statement if the City goes to the districts, that is being able to fix and do what the City wants when it is a whole lot easier to fix it if it is open citywide and the City can get them all from one area. He questioned where this is doing away with 20 people, who can reapply the next day.

Director Maruthur replied what he is saying will not work.

Director Jones made a motion, duly seconded by Director Maruthur, to table the ordinance for one month.

Upon discussion, Director Jones said the Board needs to review it further.

Director Daniel questioned what part of the ordinance needs to be reconsidered, and Director Jones said that she does not want someone from Director Maruthur's district coming in District 2, and she wants a representative from District 2 to serve in District 2. Director Daniel stressed that is what this is about. Director Jones commented the way Director Maruthur is turning it around, she does not care if someone comes from District 6 to work on District 1. Director Maruthur stated if they are all from District 1, that would be great. She added it does not make any difference; and if there is a limited pool of people that have the time and interest, that is just a reality.

Mayor Bush then called for a vote on the motion to table the ordinance for one month; and upon roll call, the following voted "aye": Directors Keheley, Jones, and Maruthur, total 3. Voting "no": Directors Daniel, Ramick, Weatherford, and Bush, total 4; motion failed.

City Attorney Brian Albright clarified that the proposed ordinance does provide for a representative from each district, which is one of the purposes of the ordinance.

Director Jones commented if it remains as it is, the City will not have anybody. City Attorney Brian Albright explained someone from District 2 currently is permitted to apply; and the City is not saying they cannot. He added it is just under the proposed

ordinance, there would need to be a representative from Districts 1, 2, 3, 4, 5 and 6, one at-large from the City, and two from the County, for a total of nine members.

Director Daniel pointed out that the representatives from the County are welcome to reapply. He stressed that everybody was complaining about not having representation; therefore, representation was included in the ordinance. He added they were complaining about term limits, and now there are term limits in the ordinance. He asked if the Board wants to put all of that aside and go back to the beginning.

Director Keheley said there was a question on the County appointments, and there are two positions. She questioned if the City has to go back to the County Judge and ask for the six names and then select two. City Attorney Brian Albright advised the way the ordinance is written does ask the County Judge to submit nominees. Director Weatherford commented he has two authorities serving, plus a list that was already there to begin with. However, they can go back to the County Judge and ask to be part of that procedure.

Mr. George Pritchett, 640 Arkridge Road, reported he applied to the Planning Commission three times over nearly three years, and there are vacancies that have not been filled. He mentioned each time the City advertises for vacancies, it has advertised by district. He stated he has moved which has allowed him to apply in more than one district during that period. He said he would like to serve the City and asked what provision is being placed in this ordinance if the City does not get an applicant because he has heard from several Directors that the City did not have qualified applicants from some districts and would consider applicants from another district to fill that position. He asked if there is a provision if the City does not get an applicant from a district to fill that position.

City Attorney Brian Albright advised that currently there is not a provision within the Planning Commission ordinance, but there is such a provision within the Historic District Commission ordinance, which could easily be adopted by the Board and incorporated within that ordinance.

Mr. Pritchett said that Director Maruthur had commented tying a Director and a Planning Commission member to a particular district, which is not something that needs to be "joined at the hip." He said he did not think if he served on the Planning Commission that he would be governed by what any Director wants, but they are going to be governed by what the statute says. He stated if he understands correctly what the requirement is, he is to study those, give the best opinion he can, make the best

recommendation he can with that, and the Board gets to make the changes. He added the Planning Commission does not make policy. As a member of the public, he would like to know before the Board votes on it how it proposes to do that and thinks it should be included in the original ordinance.

Director Ramick pointed out that the Board is not trying to tie a commissioner to a Director. He said the Board is trying to more align and have every district represented on the Planning Commission. He noted they will not be tied to a Director and “joined at the hip.”

Mr. Pritchett said he agreed with that, but what he is saying is it has been advertised in the past and is stated that the City has an opening in a certain district. Director Daniel pointed out that different commissions do. Mr. Pritchett said the Planning Commission has asked that because every time when he has inquired about it, they wanted from specific districts.

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

## **21** Proposed Ordinance No. O-09-7

An ordinance entitled, “AN ORDINANCE REORGANIZING THE HISTORIC DISTRICT COMMISSION; REPEALING CERTAIN ORDINANCES; AND FOR OTHER PURPOSES,” was taken from the agenda for consideration.

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

Upon discussion, Ms. Diane Silverman, said she recalled when the City was looking for applicants for the Civil Service Commission, she spoke about the nepotism on that particular selection. She stated her suggestion at that time was that advertising needs to be a lot more full than it has been. She mentioned one person who wanted to

serve on that commission was highly qualified but because she did not know about it, she did not have the opportunity to apply in time. She said that she has attended many of the Historic District Commission meetings and found that the group very carefully studied the issues brought before them and diligently tried to follow the rules set out by the National Historic Commission that authorized the Hot Springs Historic Commission. She said the current members went to New Orleans for an intensive training and does not see any good reason why all of them should have been summarily dismissed by the City. She commented it appears to be a power grab even if it is not meant to be. Regarding the letter that was sent to the commissioners, she had asked to see the letter; and in her opinion, it was curt, terse, nasty, and a slap in the face that no way truly acknowledged the time and effort and the good following of the rules that those people strove to understand. She stated there was not even an apology mentioned or calling the people in to have a discussion with them. She said that needs to be corrected because the Board is leaving a bad scar by the way this matter was handled. She suggested that the Board explain itself to those people unless there is a good reason to disband the Historic District Commission.

Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted "aye": Directors Jones, Keheley, Weatherford, Ramick, Daniel, and Bush, total 6. Director Maruthur was out of the Board Chambers and did not cast a vote; motion carried. Whereupon the ordinance was declared passed.

## **22 Proposed Ordinance No. O-09-8**

An ordinance entitled, "AN ORDINANCE REORGANIZING THE BOARD OF ZONING ADJUSTMENT; AMENDING ORDINANCE NO. 5158; AND FOR OTHER PURPOSES," was taken from the agenda for consideration.

A motion was made by Director Daniel, duly seconded by Director Weatherford, that the rules be suspended and the ordinance be read for the first time by title only; and upon voice vote, the motion unanimously carried. The ordinance was then read for the first time by title only; and upon the question "Shall the ordinance be passed as read?" and upon motion of Director Jones, duly seconded by Director Weatherford, that the ordinance be passed as read; and upon roll call, the following voted "aye": Directors Jones, Keheley, Weatherford, Ramick, Daniel, and Bush, total 6. Director Maruthur was out of the Board Chambers and did not cast a vote; motion carried. Whereupon the ordinance was declared passed.

## **16 Proposed Resolution No. R-09-21**

A resolution entitled, "A RESOLUTION AWARDED A CONTRACT TO CAMP, DRESSER AND McKEE FOR CERTAIN ENGINEERING SERVICES (EVALUATION STUDY OF SOUTHWEST WASTEWATER TREATMENT PLANT)," was taken from the agenda and read by title only.

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

Upon discussion, Mr. Steve Mallett, Deputy City Manager Public Works/Utilities, advised that the contract is for \$69,184 and is for an evaluation study of the new Southwest Wastewater Treatment Plant. He reported there are 15 items listed, and four of which are related to a sludge disposal system that was not included and was not anticipated to be needed. At the plant, staff has found since it was started up that the sludge production is much greater than anticipated, and there is not a system in place nor was one designed to be able to handle that so that will have to take place regardless. In addition to that, he stated there are some other issues that the City is dealing with; therefore, the City is asking the same firm to also look at a list of items that they may go all the way through. They may go through the first few and realize what the issues are and then provide the City with a report if it is an operability, design, or construction issue or why the City is not able to operate the way it needs to. Based on that, the City can plan a project to repair the deficiencies and possibly seek restitution from the responsible party if it is necessary.

Director Keheley stated by changing the engineering firm, the City is going to another firm, and questioned if this will in any way jeopardize the City's ability to recover any costs or any corrective actions due to any errors or omissions by the original engineering firm or contractor. Mr. Mallett replied that the study is going to be able to give the City the basis to be able to do that. Having an engineering firm come in and evaluate their contractor's work, staff thought probably was not the best scenario; and the work needs to be done. He stated if there is a plant that can be expanded, in short order, the City is looking probably five to ten years down the road and knew it would not be a long period of time before it would have to expand it. However, the City may be looking at it sooner than expected, which would affect the upcoming bonds. He said the City needs to know the timeframe for that expansion as well, which will be looked at based on the flow. He noted that is one of the reasons the City is doing this so it can get an unbiased evaluation of what it has and why it is not operating properly. He

explained if the City needs to seek restitution for these costs and other costs due to that, it will have the basis to do that with.

Mr. Ted Burhenn, 318 Trapp Mountain, said he is not against having a professional engineer come in and evaluate this and believes it is necessary. However, the responsibility should go back to the engineers who messed it up in the first place. He said the City has the staff to monitor this. He reported when he went out and inspected it from the standpoint of the Fire Department, which is mandated by the State Fire Department, it did not meet the City's Electrical Code requirements. He stated that he is not an electrical inspector but is a master electrician and electrical engineer and was a senior electrical engineer for Kaiser. Therefore, he knew what he was looking at and knew it was wrong. He commented the people who built that and the people who monitored the construction did not do their job. He said he asked the Building Inspector to send out an inspector. They agreed, but they had never looked at the building. He noted there is no requirement to have the City's employees inspect it own properties. He mentioned there were violations, and people were operating equipment with switches turned off; they were not locked out; and there was no master disconnect switch, which is something that cannot be done in the County. He said he believes the City needs to hold the first engineer accountable.

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 adopted.

## **6 Rescheduling March 17, 2009 Board Meeting to March 24, 2009**

City Attorney Brian Albright stated that the week of March 24 is spring break; and when the Board's original calendar came out, the meeting was scheduled for March 17. He said that he has a family vacation scheduled for the week of March 24, but Deputy City Attorney Trent Daniels will be in attendance.

Director Weatherford stated that he will not be at the meeting on March 24.

A motion was made by Director Weatherford, duly seconded by Director Daniel, that the March 17, 2009 Board Meeting be rescheduled to March 24, 2009; and upon a show of hands, the motion unanimously carried.

### **OTHER BUSINESS**

## **23 Board of Directors Items for Discussion**

There were no items from the Board for discussion.

## **24 City Manager's Report**

City Manager Lance Hudnell gave the following report:

1. Mr. Jim Bryant, of Townsquare POA, wanted the Board to know that Mr. Larry Merriman assisted him in a very effective manner with regard to some wastewater problems and reported that to Director Ramick, who asked that this be announced tonight.

2. Ms. Sikorski, on Ironwood, commended the leaf and mulch crew in the Sanitation Department stating they are a group of "classy guys."

3. There will be a meeting on Tuesday, February 24, at 5:30, in the Board Chambers, dealing with the Hanamaki trip for any citizens who are interested in participating in that. It is at their expense and is not a Board issue other than just to allow the citizens to know that there is a meeting being scheduled, and the Sister City Coordinator wanted the citizens to be aware of that.

4. There is a meeting on February 17 that some of the Board Members may have wanted to attend with one of the foundations for a dinner the Board had been invited to; however, that is the next regular Board Meeting. He wanted to be certain the Board was aware of that and if there was any concern with regard to that conflict.

## **25 ADJOURNMENT**

There being no further business to come before the Board, the meeting adjourned at 9:20 p.m., to meet again on Tuesday, February 17, 2009, at 7:00 p.m.

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

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

Mayor Lance Hudnell, City Clerk

Mike Bush,