

MINUTES

BOARD OF DIRECTORS MEETING

JULY 7, 2009, AT 7:00 P.M.

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

The invocation was given by Mr. Landon Trusty, 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, Cynthia Keheley, Carroll Weatherford, Rick Ramick, Tom Daniel, and Mike Bush, total 6. Absent: Director Elaine Jones.

2 Approval of Agenda

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

Upon discussion, City Attorney Brian Albright advised a resolution needs to be added to the agenda (Proposed Resolution No. R-09-179 Approving an Agreement with the Arkansas State Highway and Transportation Department Concerning a Signal Light at the Intersection of Mercy Lane and Higdon Ferry Road). He stated this is for the signal in front of the new crossings for Sam's Club. He said the City had asked for it months ago, and now the Highway Department needs it immediately.

A motion was made by Director Weatherford, duly seconded by Director Keheley, that the agenda be approved, as amended, by adding Proposed Resolution No. R-09-179; and upon roll call, the following voted "aye": Directors Maruthur, Keheley, Weatherford, Ramick, Daniel, and Bush, total 6. Absent and not voting: Director Jones; motion unanimously carried.

3 Approval of Minutes of June 16, 2009; June 18, 2009; and June 30, 2009 Board Meetings.

A motion was made by Director Maruthur, duly seconded by Director Ramick, that the minutes of the June 16, 2009; June 18, 2009; and June 30, 2009 Board Meetings be approved; and upon voice vote, the motion unanimously carried.

4 Recognition of Guests

Mr. Don Zimmerman, executive director of the Arkansas Municipal League, stated that Hot Springs was an excellent host to the 75th Annual Municipal League Convention, pointing out there was a record crowd. He mentioned on the opening banquet, they had invited several legislators they wanted to recognize and show appreciation for the good job they had done. He said he sent out the letters inviting them and invited Hot Springs' Representative Rick Saunders. However, when the plaques were handed out, there was not a plaque for Mr. Saunders. At this time, he presented the Arkansas Municipal League's Distinguished Legislator Award to Representative Rick Saunders. He spoke of the assistance he has given the City in the legislature within the last couple of years and expressed appreciation to him.

Representative Rick Saunders stated this is special for him because of his being able to work with the City and the Arkansas Municipal League. He expressed appreciation to Mr. Zimmerman and the Board.

5 Board of Directors Announcements

There were no Board of Directors announcements.

CONSENT AGENDA

The Consent Agenda consisted of the following:

6 Public Safety Report (June 16, 2009).

7 Budget Transfer - USGS Flood Warning Stations & MS4 Stormwater Sewer Mapping (\$17,501).

- 8** **Proposed Resolution No. R-09-162** Approving Certain Bid Awards Pursuant to Ordinance No. 5387 [Purchasing Ordinance] (a) 34 Laptop Computers - Police Department [Pursuant to COPS Grant].
- 9** **Proposed Resolution No. R-09-163** Authorizing the Filing of a Grant Application with the Arkansas Department of Parks and Tourism Outdoor Recreation Grant Program (Family Park).
- 10** **Proposed Resolution No. R-09-164** Approving Certain Street Names in the Timbercrest RV and Mobile Home Park.
- 11** **Proposed Resolution No. R-09-165** Awarding a Contract for Engineering Services to B&F Engineering, Inc. for 2009 Annual Water Line Improvements. **(Removed from Consent Agenda for Separate Consideration).**
- 12** **Proposed Resolution No. R-09-166** Awarding a Contract for Electrical Engineering Services to Brown Engineers, LLC for Various Utility Improvement Projects.
- 13** **Proposed Resolution No. R-09-167** Supporting the 2010 Census and Partnering with the U. S. Census Bureau in Achieving an Accurate and Complete Count in Census 2010.
- 14** **Proposed Resolution No. R-09-168** Adopting Updated Policies and Procedures for the Community Development Block Housing Rehabilitation Program; Repealing Resolution No. 7028; and for Other Purposes.
- 15** **Proposed Resolution No. R-09-169** Waiving the Facility Use Fees for Activities Associated with the Veterans' Memorial Located Within the Transportation Plaza on Memorial Day, Independence Day and Veterans' Day.

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

Upon discussion, Director Keheley requested that Item No. 11 (Proposed Resolution No. R-09-165 Awarding a Contract for Engineering Services to B&F Engineering, Inc. for 2009 Annual Water Line Improvements) be 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, Keheley, Weatherford, Ramick, Daniel, and Bush, total 6. Absent and not voting: Director Jones; motion unanimously carried.

NEW BUSINESS

16 Proposed Resolution No. R-09-170

A resolution entitled, "A RESOLUTION APPROVING ELAINE TERRACE PRELIMINARY SUBDIVISION PLAT FOR A RESIDENTIAL SIX-LOT SUBDIVISION ON 1.77 ACRES ON EMORY STREET BETWEEN FLEET AND ROBERTS STREETS," was taken from the agenda and read by title only. **(Appeal)**

Mayor Bush called for a motion to approve the resolution. There being no motion, City Attorney Brian Albright explained this is an appeal; and not to grant the appearance for the appeal would be to cut off the applicant's due process rights. He said if the Board would entertain a motion and second to approve this resolution, this would get it on the floor for discussion but does not mean it is for approval.

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

Director Ramick said that he would recuse himself from this item and left the Board Chambers at this time.

Upon discussion, Ms. Kathy Sellman, Planning and Development Director, stated the appellant and developer is Mr. Robert McNanna, who is asking that the Board remove the Planning Commission's May 2009 condition that requires sidewalks on Fleet Street and Roberts Street. In May, this was the appellant's second request for preliminary subdivision approval of the subject parcel; and Mr. McNanna's representative attended the first Planning Commission hearing. However, Mr. McNanna did not attend; and the applicant's initial request, which was PS-08-0085, was approved with staff recommendation. The Planning Commission then amended the staff

conditions as follows: “A motion was made by Commissioner Clopton to approve with staff’s recommendation with the addition of Item No. 6 being that five-foot sidewalks be put, installed on Roberts, Fleet and Emory.” She advised a subsequent letter from the Planning Department summarizing Planning Commission’s action, which was sent by an employee who is no longer employed by the City, failed to include the revised condition as Planning Commission intended. Therefore, the notice in the letter requiring sidewalks, curb and gutter along the three street frontages did not go to the owner. She stated in order to reopen the sidewalk question, because the 30-day appeal period had expired, the applicant made a new application, which was heard by the Planning Commission in May; and that is what is being appealed tonight. She added the Planning Commission determined at the new hearing that, because this proposed single-family development was across the street from the high school, the five new residential lots would likely generate a higher level of pedestrian activity than the single, existing single-family home that is on the land now. Regarding a five-foot dedication along Emory, the Planning Commission accepted the preliminary plat (May item) without modifying improvements on Emory Street as drawn. She said the appellant’s plat clearly demonstrated the five-foot dedication with the sidewalk, which is what the Planning Commission approved. She mentioned the appellant failed to quantify through a traffic study or other data, such as an engineer’s report, the basis for his extraordinary hardship claim. Given that the Planning Commission’s discussion included the specific determination that requiring the sidewalk on Fleet Street and Roberts Street was in the public interest and finding that there is a reasonable connection between developing five additional residential lots and increasing pedestrian activity, especially where the neighborhood is within walking distance of a school, the Planning Commission made a requirement for the developer to construct sidewalks on both sides on both streets; and their requirement is both related to the project and reasonable in its scope. She stated the record demonstrates that the Planning Commission made findings in its action to require the sidewalks on Fleet Street and Roberts Street. Also, it demonstrates that the appellant provided no documentation in rebuttal of the Planning Commission’s conditions for the sidewalks; and it further demonstrates that the public health and safety are observed by affirming PS-09-0034 (May decision) with the Planning Commission’s and staff’s findings, recommend conditions one through five. Therefore, staff recommends that the Board deny the appeal resolution. She added that the Planning Commission saw all of the evidence and listened to everything and determined that this is a residential development; that it is near a school; that pedestrian activity is likely to be high in the area as a result of this subdivision; and requests that there be sidewalks on both Fleet Street and Roberts Street in addition to Emory where the developer has already completed a sidewalk.

Director Maruthur questioned if a “no” vote would be upholding the Hot Springs Code of Ordinances, and Ms. Sellman replied that it would.

Director Keheley questioned if the 500-foot requirement is a property line or building, and Ms. Sellman advised that the 500-foot requirement is not specific. She added the 500-foot requirement is not what is being invoked here tonight, and what is being discussed tonight is the Planning Commission’s authority in cases where it believes there is a basis for so doing to add a condition that the Code does not specifically call out. She stated the Commission made a finding that these conditions were such that they were necessary to deal with the impacts of this development.

Director Keheley questioned the waiver at Emory and Panama for the school district, pointing out they waived the sidewalks there. Ms. Sellman replied that situation is entirely different from this, noting this situation is one piece of land that is being divided into a number of lots and will introduce new homes into an area. She pointed out the school situation was the relocation of existing uses on the school campus into a new structure and a new location; and to cope with those impacts, interior sidewalks were provided on the high school site.

City Manager Lance Hudnell explained if the Directors vote “yes,” it is approving the appeal; if they vote “no,” they are denying the appeal. He stated a vote “no” is to go with staff and Planning Commission recommendation; a vote “yes” is to approve the developer’s request.

Ms. Janet Moore, 1427 Central Avenue (business), attorney representing Mr. McNanna, stated that the appeals from the Planning Commission can be heard in their entirety; and the Board is not bound by the Planning Commission’s decision. She said that she disagrees with the statement that this would be upholding the Code because she believes the Code has been incorrectly applied in this particular instance. She added there are two bases for the incorrect application. The sidewalks are being required on Fleet Street and Roberts Street, and neither of those is within 500 feet of a school building. She said Code Section §15-10-20, which was the basis for the Commission requiring the sidewalks, provides that streets that are within 500 feet of a school building should have sidewalks. She noted that Fleet Street and Roberts Street would not ordinarily be required to have sidewalks; and the preliminary plat that Ms. Sellman referred to was filed with a five-foot dedication, which then required a request for variance. She said the dedication was shown on the preliminary plat because her client was advised the City would not review his plat unless a five-foot dedication was put on the preliminary plat. She commented had there been no dedication, and no

request for variance would have been required. She said one of the purposes she and Mr. McNanna are here tonight is to determine and for the City to tell them to have the site plan reviewed is a five-foot dedication required. She stated that was part of Mr. McNanna's original appeal and questioned before the Commission, but that was never answered. She noted he only spent the money to prepare the preliminary plat and present it in that manner because no one would look at his site plan without it. Regarding Fleet Street and Roberts Street, she said the City appears to be interpreting that Code section to read that anything 500 feet from a school property should have a sidewalk, but that is not how the code section reads. She commented it says "building." She pointed out that attached to the appeal and all of the exhibits, no part of this development is within 500 feet of a school building. Regarding Emory Street, which is directly opposite the school building, she said Mr. McNanna has installed curb, gutter and sidewalk across that. She added it is the two parallel streets that run perpendicular to Emory that on which he is appealing this issue. She said neither street is within 500 feet of a school building, which is the City's code section. To uphold the City's code section, the City should apply it the way it reads, but the justification in the Planning Commission's decision was based on Code Section §15-10-1.7, which is defined to apply to commercial development and multi-family development. She pointed out this is not a commercial or multi-family development, multi-family being defined as four-plex or larger. She noted the City's code defines multi-family as being one building containing four or more units; therefore, they are applying another code section that does not apply to Mr. McNanna's development. She stated there is one sentence in that code section that states that the City may, when it deems appropriate, with commercial development or multi-family development, apply other street specifications to a project. She said she believes the language is vague, and it is her position that it is incumbent upon the City to show there would be increased traffic. She added Fleet Street will have two new houses, and Roberts Street will have three new houses. She pointed out none of them are within 500 feet of a school building; and all of them, but for that dedication required by the City, would have been in full compliance with the subdivision regulations on streets that did not require sidewalks. She advised that she has a correction to make in here appeal and apologized for an inaccurate statement. She mentioned that she had said the Planning Commission found the likelihood of substantial or material increase in pedestrian traffic, and that it was the Planning Commission that found that was unsubstantiated. She said that was an incorrect statement, and it was the staff report and recommendation to the Planning Commission that stated it was unsubstantiated there would be increased traffic. She commented her client is in the position of arguing that he should not have to put in a sidewalk where he should not have to put in a sidewalk, and she believes it is incumbent upon the City to show why he should have to put in a sidewalk when no code or ordinance

requires him to do so but for a misapplication; and she proposes an incorrect reading of two code sections. She referred to §15-10-1.7, which says: "Application to existing public streets. Any commercial or multi-family project and multi-family being four-plex or larger, a project or development located adjacent to an existing public street for which a building permit meeting new construction standards is required shall comply with the requirements stated in the street specifications." She pointed out her client has complied with the requirements for the street specifications for Fleet Street and Roberts Street. She noted the Planning Commission dropped down to the bottom of that particular code section and said the Commission may require compliance with additional provisions of these specifications as appropriate to the proposed development. She added there is no indication or evidence that two houses on Fleet Street or three houses on Roberts Street are going to substantially impact pedestrian traffic.

Mayor Bush asked if she did not think sidewalks are needed there, and Ms. Moore said that she does not think the Code requires it; and she does not think the City needs sidewalks there. She added that obviously the City did not when it passed the ordinances on the size streets that require sidewalks and the ordinance regarding buildings - 500 feet from a building.

Director Maruthur asked for an interpretation of §15-10-1.7 by the City Attorney. City Attorney Brian Albright advised that §15-10-1.7 appears to deal more with commercial developments. He pointed out that Ms. Moore misquoted § 5-10-20, and it is actually §15-10-24 (e). He stressed that it clearly says buildings so in order for him to answer the question, he asked Ms. Sellman what her feeling is about the word "building" in that code section as opposed to property line.

Ms. Sellman replied that it says a school, a church or any assembly building. She commented that given the way the Building Code is structured in that an assembly building can be any of a very broad group of uses, those uses are collecting people on one site typically. She would say that a church is a church property, a school is a school property, and an assembly building would be any type of building that falls into that category in the building code with its associated land; but that is obviously one definition and reasonable people often disagree on things such as this.

City Attorney Brian Albright said when Director Maruthur asked her earlier, she said she was not trying to enforce the 500-foot requirement anyway. It was a different section, and Ms. Sellman replied that was correct. City Attorney Brian Albright asked what section did she feel the Planning Commission was attempting to enforce, and Ms. Sellman replied that her understanding was the Planning Commission was looking

at §15-10-1.7, which is the section that gives them authority in certain conditions to make special determinations.

City Attorney Brian Albright asked if she thought that applies to residential development, such as this or if it was commercial and multi-family, and Ms. Sellman said she believes it refers to all developments. She pointed out it is not the most perfectly written piece of legislation, and there is a jumble of things in that paragraph. However, she believed that the final sentence gives the authority to the Planning Commission in those things which they are considering not to be limited to commercial or multi-family.

Director Maruthur questioned the word “assembly” and noted that the Fire Department goes around to places and checks things out according to exits. She said it has nothing to do with the size of the place, but they had to pay for an assembly permit; and the Board is assembled in this building tonight. She questioned if people can assemble in a single-family home, and Ms. Sellman replied that they can. However, the Building Code has a specific category, which is assembly and is those places such as theaters, etc. where people come together; and as the use occurs, there is a cluster of people there.

City Attorney Brian Albright explained that the particular section the Board is looking at is assembly building with a capacity of 100 or more, and that would be the criteria.

Director Keheley said it is her understanding from the information in the Board packet, the original staff recommendation did not include sidewalk construction. Ms. Moore stated that is correct. She added it recommended an acceptance without sidewalks on Fleet Street and Roberts Streets. She pointed out the cost factor of putting in \$10,000 worth of sidewalks because there is concern about substantial pedestrian increase in traffic from two houses on Fleet Street and three houses on Roberts Street.

Director Keheley asked if this was a unanimous vote from the Planning Commission and recommendation, and Ms. Sellman replied that it was.

Director Daniel stated if it was approved in the beginning without sidewalks on those two streets and a sidewalk was installed. Ms. Sellman explained at the first hearing, not the May hearing being appealed, the staff report did not recommend sidewalks on those two streets. However, in their review of land use items, the

regulations call for a public hearing and a determination by Planning Commission before the decision is final. She said the Planning Commission held a public hearing, entertained testimony; and at the point where they were making a decision, they had more information in front of them than they did when the staff wrote the staff report. She added they heard testimony from the public. Based upon that testimony, the staff report, and what the applicant had submitted, the Planning Commission's decision was that it was in the public interest to require sidewalks on Emory, which is not in contention tonight, and also on Fleet Street and Roberts Street. After the public hearing, they made that determination.

Director Daniel questioned if the applicant was led to believe when he left the first time, that the only place he needed a sidewalk was on Emory Street. Ms. Sellman advised that the applicant was not at the hearing, but the applicant's representative was; and the representative was present at the time an amendment was made to the recommendation to adding the sidewalks on Roberts Street, Fleet Street and Emory Street, which was at the first meeting. Director Daniel asked if he did not answer or was he not notified. Ms. Sellman replied that the letter that went out did not add that condition, which was an error and was wrong. However, that does not change what the Planning Commission's decision was. She advised the Planning Commission's decision was to add those conditions. Director Daniel pointed out it is difficult when an individual receives a letter from any government organization stating this is what needs to be done; and after they start, they are then told they were sent the wrong paper. Ms. Sellman replied that she is quite pleased that she does not have that employee anymore. Director Daniel said it makes it difficult to make a decision based upon an employee who did not do the right thing. Ms. Sellman commented that is why Mr. McNanna was advised to make new application for this preliminary subdivision so that all of the facts could be heard, and he would have an opportunity to attend with anybody else he wanted to bring with him. She noted the decision was made at that time that sidewalks were reasonable on Roberts Street and Fleet Street. She said she agreed that the letter was unfortunate, and she fully takes responsibility for that. Director Daniel said he does not want to place the blame on anyone, but he personally believes he would like to see sidewalks. He said what he thinks is justifiable and the right thing to do in this case, may not be that. Ms. Sellman pointed out this is not that original decision that is being appealed but is a new decision where everybody was aware of what was going on.

Director Maruthur stated the error that happened the first time with the employee was remedied, and Ms. Sellman replied there was an opportunity to rehear the entire item. She said it was reheard, a new decision was made, and that is what is being

appealed tonight. Director Maruthur questioned how many people at the public hearing did not want a sidewalk there. Ms. Sellman replied that she did remember neighbors being there testifying. Director Maruthur said that she had mentioned the public, and Ms. Sellman explained that it was in the public interest. Director Maruthur said she thought the public wanted the sidewalks, and Ms. Sellman stated that the public had an opportunity to testify at the public hearing; and there was public at one hearing but not the one that is being appealed tonight. She stated that she did not recall anyone from that neighborhood being there. Director Maruthur asked if at the first public hearing, there were people from the neighborhood who were asking which way, and Ms. Sellman advised there was a request from one person, who was provided the verbatim transcript from that first hearing.

Director Keheley pointed out that the City wants to welcome new construction and wants to welcome the contractors. She stressed that the City does not want to turn them away and has to have a policy of being user-friendly and providing correct advice and correct recommendations from the staff, which she does not feel happened in this instance. Mayor Bush said that he disagreed. He said that he believes sidewalks are needed over there, which is his personal opinion. He pointed out it is across the street from the high school. He stated just because someone said something in a hearing, he did not believe that should be held against them, which is also his personal opinion.

Director Maruthur commented that she wants to do what is legally right and questioned the procedure that was followed. City Attorney Brian Albright advised there was not an appeal of the initial determination; but the appeal is for the second determination, which required sidewalks and is the issue before the Board. He advised that the Board has to decide whether or not the code provisions require sidewalks; and if so, if the Board wants them there. Director Maruthur asked what his legal interpretation is of what was discussed tonight. City Attorney Brian Albright said if she is asking him whether or not the 500-foot requirement applies to property lines or buildings, the only guidance he sees within the code provision is buildings. He said he cannot tell her what the measurement is from the building lines, but it would appear that it is more than 500 feet from a building. He said it may be is closer than 500 feet from the property line, but Ms. Sellman has indicated that is not the section the Planning Commission was trying to enforce anyway. He noted it was the other catch-all provision which appears to him to deal mainly with commercial and multi-family and not single-family residential. He commented if she is asking for a technical ruling, the code does not seem to require it. However, with the Planning Commission's recommendation

that it is in the public interest, that it serves the health, safety and welfare of the citizens, then she is within her right to affirm that decision by denying the appeal.

City Manager Lance Hudnell pointed out that the Planning Commission approves preliminary plats, not staff. He stated those preliminary plats come to the Planning Commission with a staff recommendation, but it is the Planning Commission that makes the determination. He said they can take into consideration staff recommendation, but staff does not have authority to approve preliminary plats.

In reply to Director Daniel regarding the first hearing, City Manager Lance Hudnell explained that with regard to the first one, the staff recommendation was that it not have sidewalks; but the Planning Commission at their hearing determined that it should have. He said they did not necessarily go along with that portion of the staff's recommendation and approved it with sidewalks. He pointed out when the letter went out, it failed to make it clear in the letter that the sidewalks were required. Therefore, it came back again for clarification at the second Planning Commission meeting, and they heard it all over again and basically the same decision again.

Ms. Sellman stated they did, and there was no error in the letter that went out the second time.

City Attorney Brian Albright advised that a "yes" vote grants the appeal which would waive the requirement of the sidewalks on Roberts Street and Fleet Street.

Mayor Bush then called for a vote on the motion to adopt the resolution; and upon roll call, the following voted "aye": Directors Daniel, Keheley, and Maruthur, total 3. Voting "no": Directors Weatherford and Bush, total 2. Director Ramick was out of the Board Chambers and did not cast a vote. Absent and not voting: Director Jones; motion failed. Whereupon the resolution was declared failed.

17 Presentation of Condemnation Resolutions

Mr. Bart Jones, Neighborhood Services Administrator, gave a slide presentation of the following condemnation resolutions.

17a Proposed Resolution No. R-09-171

A resolution entitled, "A RESOLUTION CONDEMNING CERTAIN REAL PROPERTY PURSUANT TO ORDINANCE NO. 4623 (202 BEARD)," was taken from the agenda and read by title only.

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

Upon discussion, Mr. Bart Jones, Neighborhood Services Administrator, reported it is an open, vacant structure and has major structural damage.

City Attorney Brian Albright asked if he obtained service on the property owner, and Mr. Jones advised that he did not, explaining this one had to go through the attorney ad litem process as prescribed in the ordinance. City Attorney Brian Albright asked if it was published and if he received proof of that publication, and Mr. Jones said that he did.

City Attorney Brian Albright asked if there was anyone present to speak in opposition to the condemnation; and there being none, Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted "aye": Directors Maruthur, Keheley, Weatherford, Ramick, Daniel, and Bush, total 6. Absent and not voting: Director Jones; motion unanimously carried. Whereupon the resolution was declared adopted.

17b Proposed Resolution No. R-09-172

A resolution entitled, "A RESOLUTION CONDEMNING CERTAIN REAL PROPERTY PURSUANT TO ORDINANCE NO. 4623 (103 GIBSON)," was taken from the agenda and read by title only.

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

Upon discussion, Mr. Bart Jones, Neighborhood Services Administrator, advised this is a dilapidated structure; and he received written proof of notification to the owner and has had personal conversations with the owner.

City Attorney Brian Albright asked if there was anyone present to speak in opposition to the condemnation; and there being none, Mayor Bush then called for a

vote on the motion to adopt; and upon roll call, the following voted “aye”: Directors Maruthur, Keheley, Weatherford, Ramick, Daniel, and Bush, total 6. Absent and not voting: Director Jones; motion unanimously carried. Whereupon the resolution was declared adopted.

17c Proposed Resolution No. R-09-173

A resolution entitled, “A RESOLUTION CONDEMNING CERTAIN REAL PROPERTY PURSUANT TO ORDINANCE NO. 4623 (201 GREENWOOD),” was taken from the agenda and read by title only.

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

Upon discussion, Mr. Bart Jones, Neighborhood Services Administrator, stated it is an open vacant structure; and he had to do the attorney ad litem process. He reported the owners have not been responsive so he advertised and received proof of that notification. He noted there is structural damage, and people are going in and out of this structure.

City Attorney Brian Albright asked if there was anyone present to speak in opposition to the condemnation; and there being none, Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted “aye”: Directors Maruthur, Keheley, Weatherford, Ramick, Daniel, and Bush, total 6. Absent and not voting: Director Jones; motion unanimously carried. Whereupon the resolution was declared adopted.

17d Proposed Resolution No. R-09-174

A resolution entitled, “A RESOLUTION CONDEMNING CERTAIN REAL PROPERTY PURSUANT TO ORDINANCE NO. 4623 (325 LEONARD),” was taken from the agenda and read by title only.

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

Upon discussion, Mr. Bart Jones, Neighborhood Services Administrator, stated this was recently boarded up as part of a nuisance case by the Hot Springs Police

Department and Property Maintenance Department. He said the structure is secure at the present time, which is due to the Drug Task Force securing it. He pointed out there is one hole in the side and structural damage to the structure. Staff is recommending condemnation and wants to be in a position if the owner does not repair it within the allowed time, that the City can do something with the structure. He mentioned that he receives numerous calls from the adjacent neighborhood on this property.

City Attorney Brian Albright asked if the owner received independent notification of this condemnation, and Mr. Jones advised that they did.

City Attorney Brian Albright asked if there was anyone present to speak in opposition to the condemnation; and there being none, Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted "aye": Directors Maruthur, Keheley, Weatherford, Ramick, Daniel, and Bush, total 6. Absent and not voting: Director Jones; motion unanimously carried. Whereupon the resolution was declared adopted.

17e Proposed Resolution No. R-09-175

A resolution entitled, "A RESOLUTION CONDEMNING CERTAIN REAL PROPERTY PURSUANT TO ORDINANCE NO. 4623 (327 MISSISSIPPI)," was taken from the agenda and read by title only.

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

Upon discussion, Mr. Bart Jones, Neighborhood Services Administrator, stated this is an open, vacant structure and has been vacant for several years. He stated there is major structural damage, and the Police Department has run people out of this structure on numerous occasions. Also, someone was cooking meth in the structure at one time. He said the City has been nonresponsive from the owner and had to go through the attorney ad litem process, which he has proof of publication on that.

City Attorney Brian Albright asked if there was anyone present to speak in opposition to the condemnation; and there being none, Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted "aye": Directors Maruthur, Keheley, Weatherford, Ramick, Daniel, and Bush, total 6. Absent and not voting: Director Jones; motion unanimously carried. Whereupon the resolution was declared adopted.

17f Proposed Resolution No. R-09-176

A resolution entitled, "A RESOLUTION CONDEMNING CERTAIN REAL PROPERTY PURSUANT TO ORDINANCE NO. 4623 (601 RAYMOND)," was taken from the agenda and read by title only.

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

Upon discussion, Mr. Bart Jones, Neighborhood Services Administrator, stated this structure is open and in bad shape. He said he has proof of notification to the owner and spoke to the owner today, who understands it needs to be torn down but does not have the money to do it.

City Attorney Brian Albright asked if there was anyone present to speak in opposition to the condemnation; and there being none, Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted "aye": Directors Maruthur, Keheley, Weatherford, Ramick, Daniel, and Bush, total 6. Absent and not voting: Director Jones; motion unanimously carried. Whereupon the resolution was declared adopted.

17g Proposed Resolution No. R-09-177

A resolution entitled, "A RESOLUTION CONDEMNING CERTAIN REAL PROPERTY PURSUANT TO ORDINANCE NO. 4623 (908 RECTOR)," was taken from the agenda and read by title only.

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

Upon discussion, Mr. Bart Jones, Neighborhood Services Administrator, stated this structure has been in the same condition for about three years. He said in 2007, the owners pulled a permit and were going to put a footer under the building. However, they have not done any work; and the City has contacted them on numerous occasions

advising they need to come back and get started again. He said they have not done so, and the structure is getting worse. He stated the City would like to be in a position to tear it down. He reported he has talked to them and does have written proof of notification.

City Attorney Brian Albright asked if there was anyone present to speak in opposition to the condemnation; and there being none, Mayor Bush then called for a vote on the motion to adopt; and upon roll call, the following voted "aye": Directors Maruthur, Keheley, Weatherford, Ramick, Daniel, and Bush, total 6. Absent and not voting: Director Jones; motion unanimously carried. Whereupon the resolution was declared adopted.

18 Proposed Resolution No. R-09-178

A resolution entitled, "A RESOLUTION APPROVING CHANGE ORDER NO. 1 TO THE CONTRACT WITH MATRIX IMAGING FOR CERTAIN PROGRAMMING SERVICES RELATED TO ELECTRONIC BILL PAY AND PRESENTMENT SERVICES," was taken from the agenda and read by title only.

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

Upon discussion, Finance Director Dorethea Yates explained several months ago the Board approved a contract with Matrix Imaging to allow the City to begin implementation of the electronic bill pay and presentment services. She said in order to implement the convenience fees that were needed would require more programming by Matrix Imaging; and based on the City's purchasing guidelines, staff needed to return to the Board and request permission to make a change to the original contract, which was around \$15,500. She added the cost of this program is approximately \$5,300; and the cost of processing fees for credit card, electronic bill pay and presentment will vary based on the amount of usage received from customers and will cost between \$45,000 and \$60,000 a year. She mentioned that Ms. Lisa Vargo, customer service manager, is present and has done a lot of research on this; and they both feel passionately that it is not a good decision for the City to charge its customers a fee even though the costs are very high. She then presented the advantages of electronic bill paying presentment and paying by credit card, pointing out that paying online or over the phone hopefully will reduce traffic and thereby contribute to the City's green initiatives. If customers pay by credit card, over the phone or internet, it will free up the customer service representatives for other services. She pointed out customers

have the option to choose online bill pay presentment, which reduces postage and paper costs. She stated the City will not actually be mailing a bill to them. Also, this will provide a convenient service that customers have been requesting for the past few years; and the cashflow will be improved and availability of cash will increase. She added that over time, credit card usage will reduce the processing costs. She noted it will increase it to begin with; but over time as more and more people use this service, it will decrease the processing costs. She mentioned that based on research, online bill payment is becoming the method of choice for many customers, especially among the younger generation. She said that she had a problem with putting in a program that is giving a service to the customers that they have requested and will provide advantages to her department and then tell the customers they are going to have to pay more money in order to use this service. She explained that the disadvantages of charging those credit card fees is that assessing a fee would discourage some customers from using the electronic bill pay or IVR features. She noted that currently some of the customers will come by the office to avoid the cost of a \$.44 stamp, but they certainly are not going to pay \$2.00 for a credit card fee in order to pay online or to pay over the phone. She said the City currently charges a fee, and customer service representatives often spend valuable time listening to customers complain about that fee. She pointed out that credit card fees cannot be charged a face-to-face transaction due to regulations by VISA, and the cost of service to those customers would increase with no offsetting revenue. She mentioned that some of the credit cards, such as MasterCard, American Express and Discover, will allow companies to charge a face-to-face fee; but she believes it will be very confusing for them to say to the VISA customer that they do not have to pay a fee. However, the MasterCard customer does have to pay a fee. She said if the City is going to charge fees, it does need approval of these extra programming services. She stressed that she wanted the Board to look at it one more time and make sure that is what the Board wants to do.

Director Maruthur said she is not in favor of this at all; and at a work session, she questioned what other cities did, such as Bentonville, Bryant, Fayetteville, and Fort Smith. She pointed out that Fort Smith has no convenience fee charged, and they have 32,000 bills per month. Also, Bentonville has no convenience fee charged either. She stated there was a water and wastewater rate review in 2003, and the City is about to embark on another one. She commented if the City should increase its rates, there will be enough revenue for the City to absorb this, and the Board can be there for the people. She emphasized that she cannot justify charging a fee for the people who are struggling to pay their bill. She mentioned that the Finance offices have moved to Airport Road, and it is difficult to be face-to-face if customers have to take a bus or walk. She said that is the reason for discussing different locations to pay. She stated

she personally does not consider this to be customer-friendly. She noted if it is spread out on a \$30 water bill, it would come out about \$.05 for the water and about \$.10 for a sewer increase, which is not per customer but spread around the city. She stated she is not going to vote for this because she does not think it is right to do this change order.

Director Daniel asked if Ms. Yates was not making the presentation for the Board not to charge. Director Weatherford pointed out that the City is charging now, and he thought this was discussion on not charging. Ms. Yates said that she is making the plea for the Board that she would not like to charge.

City Manager Lance Hudnell explained if the City spends this \$5,300, it will charge. He pointed out this \$5,300 is for the programming in order to allow the City to charge the fee. He advised that Ms. Yates asked him before the \$5,300 was spent, she wanted to be certain again that the Board wanted to charge the fee. He said if the Board does not want to charge the fee, then the City does not have to spend \$5,300. Director Weatherford pointed out that the City is charging now. City Manager Lance Hudnell replied for those that are taken through the other system, that is correct. Director Weatherford commented that Ms. Yates has brought it back up because he had several complaints. He advised that a lady called him and had paid her bill with a debit card, which is the same as walking in with a check; and she was very upset that the City charged her the \$2 fee.

Ms. Yates clarified until they get this up and running, that fee will continue to be charged because it is charged through the State.

Director Weatherford reiterated that the Board approved her to be charging sometime ago.

City Manager Lance Hudnell explained if the Board does not want to spend this \$5,300, then staff will come back with an amendment on charging the fee. He said staff wanted to make sure the Board was aware of that before it cast a vote. He explained if the Board votes "no," then staff will come back later with an amendment to the policy to eliminate the fee. If the Board votes "yes," then staff will proceed with the programming and continue to charge the fee like it has been.

Director Maruthur pointed out that Bentonville has budgeted money and that would be her recommendation that the City absorb the cost because the Board is looking at wastewater and water increases. She commented whatever has been done, things have really changed; and the Board needs to be there for the people.

Director Weatherford pointed out that is what they are trying to do.

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

City Manager Lance Hudnell advised with that vote, staff will at a subsequent meeting revise the policy.

19 Proposed Ordinance No. O-09-26

An ordinance entitled, "AN ORDINANCE NAMING AND ACCEPTING A CERTAIN ALLEY AS A PUBLIC ALLEY (BETWEEN WARD AND GARLAND IN JODDS SUBDIVISION); 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 Daniel, duly seconded by Director Keheley, that the ordinance be passed as read.

Upon discussion, Mr. Steve Mallett, Deputy City Manager for Public Works and Utilities, stated the adoption of this ordinance would approve staff's recommendation to accept Aly 09-001 in the Jodds Subdivision for maintenance. This alley runs west to east from Summer Street to Seventh Street between Ward and Garland Street. He said there are numerous utilities in this right-of-way, including sewer, phones, sanitation, etc.; and it is of general benefit to the public as a majority of the property owners access their property through this alley. He advised it is in need of some minor repairs and some vegetative control; and in accepting this, the City would take care of that for the residents.

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

20 Proposed Resolution No. R-09-179

A resolution entitled, "A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF HOT SPRINGS, ARKANSAS, AND THE ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT FOR THE CITY OF HOT SPRINGS, ARKANSAS, TO MAINTAIN SIGNAL AT MERCY LANE AND HIGDON FERRY ROAD (STATE HIGHWAY 88)," 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 for Public Works and Utilities, advised as customary with all traffic signals that are installed in the City and Garland County that are maintained, the City has to execute an agreement with the Arkansas State Highway and Transportation Department to state that the City will accept the maintenance and all the costs related to the maintenance for those traffic control signals. He stated this is an agreement that was sent to the City for the Mercy Lane and Higdon Ferry Road (State Highway 88) traffic signal in front of Sam's Club, and they will have it up in a matter of days.

Mayor Bush questioned the opening of Sam's Club, and City Manager Lance Hudnell advised that August 6 is the official opening. Mayor Bush asked if the light will be installed by then, and Mr. Mallett replied that it would.

Director Maruthur questioned why this could not have been included in the Board packet and had to be added at the meeting. Mr. Mallett advised that the Highway Department did not deliver it to the City in time to include it in the Board packet. He explained for construction purposes, the light needed to be installed and in

place. City Manager Lance Hudnell advised that the City received it Thursday afternoon.

Mayor Bush pointed out they have been discussing this for sometime.

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

11 Proposed Resolution No. R-09-165

A resolution entitled, "A RESOLUTION AWARDING A CONTRACT FOR ENGINEERING SERVICES TO B&F ENGINEERING, INC. FOR 2009 ANNUAL WATER LINE IMPROVEMENTS," was taken from the agenda and read by title only.

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

Upon discussion, Mr. Steve Mallett, Deputy City Manager for Public Works and Utilities, advised this would approve staff recommendation to award a contract to B&F Engineering in an amount not to exceed \$88,000 based on their fee schedule for engineering services related to the design and construction of the general 2009 water line improvements project. He stated the City tries to stay ahead of the paving program and repair all of the water lines that need to be repaired so it would be on St. Louis, Hobson, Winans, South Patterson, and Forest Hills Road and would consist of replacing old two-inch mains with six-inch mains and fire hydrants.

Director Keheley commented this is a 2009 water improvement program and project, but the Board is just now getting it in July 2009 and is going to be considering the engineering portion. She commented that means it will result in construction during the winter months causing weather delays, which will extend the disruption to the citizens. She questioned why this has been so late in being presented to the Board. Mr. Mallett responded that he believes the City will be done in the October timeframe and is probably a

two-to-three month timeframe. He said that she was correct in that staff could have presented it a little earlier, but sometimes they may not know until the paving program is approved for the following year, exactly what streets they are going to do.

Director Kehelley said her second concern is the term of the engineering contract is not very specific, and it only states it will continue in effect until the work is completed or terminated by either party. She said what is a reasonable time for completion should have been negotiated and put into the contract, which would allow the City to move forward in a timely fashion. She said that she was concerned that it might extend. She expressed another concern pointing out two years ago, she noticed that one of the streets involved, Hobson Avenue, was torn up. She questioned if there was any way the City could coordinate to where it does not tear the street up and then tear it up again in two years.

Mr. Mallett explained that basically the intent of this contract is to alleviate that. He added sometimes the City may miss a spot, or it may have an issue with a new line and has to go in and repair it. However, that is exactly what the City is trying to mitigate with this. He said Director Kehelley is correct; and this probably is a two-month design; therefore, it will probably be late August or early September before work actually begins. He stated considering two to three months, it will be October or November before completion, and the deadline is before the City starts paving next year; therefore, there is some leeway. He said they had rather not be doing it in the winter months because it could create some delays.

Director Maruthur asked if it is Forest Hills Road or Forest Hills Trail, and Mr. Mallett advised that it is Forest Hills Road, which is off Malvern Avenue.

City Manager Lance Hudnell advised that the City has a Utility Coordinating Committee that works on trying to keep from tearing the streets up.

Mayor Bush said that he is waiting on the Lakeside/Malvern intersection and is sure it is on the 2009 paving list. Mr. Mallett advised that it was funded in 2008, and the City is in the process

of acquiring the right-of-way and finalizing the plans to get that done.

Director Weatherford questioned the status of Panama, and Mr. Mallett advised that he was out there today with Mr. Denny McPhate; and due to the heavy rain on Tuesday, they had to bring in more fill to reset the base.

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

OTHER BUSINESS

21 Board of Directors Items for Discussion

Director Daniel announced that the Downtown Merchants' Association's fifth annual Spa Rib Cook-Off will be July 25 at the Downtown Parking Plaza on Exchange Street, and tickets are \$5. If there is anyone who would like to be a judge, he needs to enlist a couple more judges.

Mayor Bush commended Director Daniel on the fireworks displays over July 4.

Director Maruthur announced that anyone who wants to sign up for the CodeRED Program, which is a program that will alert people to any inclement weather, disasters, or delay in Sanitation pickup, may call Paula Brown at 321-6861. She reported there is an account set up for deceased firefighter Gene Yarbrough at Regions Bank. She said for anyone who has tried to reach her, she has had a problem with her internet and telephone; but that has been remedied.

22 City Manager's Report

City Manager Lance Hudnell gave the following report:

1. The water public hearing on the site location will be on July 28 at the Hot Springs Civic and Convention Center. There will be publicity on that hearing.

2. He expressed appreciation to those involved with Spa Blast, which was a success and thanked Director Daniel, the Police Department, Fire Department, and others who were involved.

3. The Board has received notification that Seaport agreed to the FAA request with regard to the service in Hot Springs and will begin in October 2009. They have accepted the FAA's counteroffer with regard to the subsidy.

4. He expressed appreciation to Mr. Craig Stevens and Mr. Tony Burks for their work in regard to odor control at the pump station sites. The City was noted in the Water World magazine as one of the leading places in the country with regard to odor control.

5. The Arkansas Department of Corrections assisted the City with cleaning of Hot Springs Creek and other locations, which saved the City about \$20,000 in labor costs. Urban Forester Bob Lathrop was able to coordinate that activity.

6. The 2009 Facility of the Year Award was received for Entergy Park.

7. There was a group of students who assisted with the Civic Center Parking lots and sent a thank-you with regard to the wonderful time they had in Hot Springs. They had stopped in a number of cities and said Hot Springs was their favorite city and particularly wanted to thank Brian Fisher with the Parks and Recreation Department for serving as their tour guide for their afternoon off.

8. SAILS organization does great work with the disabled community and wanted to thank the Parks and Recreation Department for the fishing derby again this year.

9. A thank-you was received from a number of coaches who have been involved in the activities at the Family Park with regard to softball tournaments and other tournaments commending Nathan Neighbors in the Parks and Recreation Department.

10. An e-mail was received from a lady in Iowa, who came to Hot Springs and is looking to retire here and spent some time on the Greenway. She said they were concerned about coming here that the City might not have as much concern with bikes and trails. She was pleased to note the City was progressing with regard to the trails program and is passing that on to her friends and neighbors who are also looking for a place to retire.

11. A thank-you was received from April Champion with regard to the customer service provided by Lisa Vargo and customer service staff in water and sewer. He said he appreciated the Board's efforts in allowing them some extra training this year.

12. Ms. Edith Small, 417 Henderson, expressed appreciation to Eric Turner, Leo Turner and Ryan Wehunt, who assisted her with her trash receptacles.

13. He has been asked by the Arkansas Municipal League to serve as chairman of the public safety advisory committee, which also requires serving as a member of the steering committee of the Municipal League Defense Program, as well as sitting in on the executive council meetings. He wanted to make sure the Board did not have any problems with his acceptance of that before he did so because it will involve some travel and being out of the office from time to time. There were no objections from the Board.

14. On the Consent Agenda, the Board approved 34 laptop computers for the Police Department pursuant to the COPS Grant and is one more step forward in implementing the mobile data terminals within the units which will improve the efficiency of the officers in the field. A grant was filed for the Family Park and passed a resolution partnering with the U. S. Census Bureau for the 2010 Census. The Board approved waiving fees for the Veteran's Memorial and expressed appreciation to those who participated this past Saturday in the dedication of the memorial, as well as Director Daniel.

23 ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 8:20 p.m., to meet again on Tuesday, July 21, 2009, at 7:00 p.m.

ATTEST: _____

APPROVED: _____

Lance Hudnell, City Clerk

Mayor

Mike Bush,