

MINUTES

BOARD OF DIRECTORS MEETING

MARCH 2, 2010, AT 7:00 P.M.

The regular meeting of the Board of Directors was held on Tuesday, March 2, 2010, at 7:00 p.m., Board Chambers, City Hall, with Mayor Mike Bush presiding.

The invocation was given by Mr. Bryan Sligh, and Pledge of Allegiance to the Flag was led by Mayor Bush.

Mayor Bush called the meeting to order at 7:00 p.m.

1 Roll Call

Roll call was as follows: Present: Directors Peggy Maruthur, Elaine Jones, Cynthia Keheley, Pat McCabe, Rick Ramick, Tom Daniel, and Mike Bush, total 7.

2 Approval of Agenda

A motion was made by Director Jones, duly seconded by Director Keheley, that the agenda be approved; and upon voice vote, the motion unanimously carried.

3 Approval of Minutes of February 16, 2010 Board Meeting

A motion was made by Director Daniel, duly seconded by Director Maruthur, that the minutes of the February 16, 2010 Board Meeting be approved; and upon voice vote, the motion unanimously carried.

4 Recognition of Guests

Mayor Bush read a Proclamation proclaiming the third Monday in March as Arbor Day.

Mr. Bob Lathrop, City's Urban Forester, stated the City has been a Tree City USA for ten years and presented the ten-year award given to the City by the National

Arbor Day Foundation in recognition of the Board's support for all of its efforts in urban forestry.

5 Board of Directors Announcements

Director Maruthur announced that Clean Sweep will start on March 15. In District No. 1, it is bounded by Walnut on the west, Park on the south, Bower on the east, and to the city limits on the north. She stated there are approximately 400 households that will be helped. Week 1 (March 15 thru March 19, Neighborhood Services personnel will drop off informational packets door-to-door and identify any possible code violations.

Week 2 (March 22 through March 26), Sanitation will pick up and other departments will clean up. Week 3 (March 29 through April 2), Neighborhood Services personnel will follow up. She also gave an update on the Majestic Hotel stating the property is under contract for purchase by the ARC of Arkansas. She advised the renovation of this historic downtown property into 148 apartments is being financed by Berkadia Commercial Mortgage, LLC, which is a newly formed entity owned by Berkshire Halfway, Inc. and Leucadia National Corporation. She added Leucadia provides its clients with access to capital as the approved lender for the FHA, Freddie Mac and Fannie Mae, backed by the financial strength of Berkshire Halfway and Leucadia. She said Leucadia is well-positioned to provide its clients with solid, dependable commercial real estate financing and servicing solutions. She mentioned Leucadia, which is an affiliate of Warren Buffett, is providing \$13.5 million in a loan for the Majestic profit, with the balance of the project cost coming from historic and new market's tax credit equity and loans from the Arkansas Development Finance Authority. She added the architect is David French of Hot Springs, and the general contractor is Kinco Constructors of Little Rock. She advised they are expecting to close in April.

6 Acknowledgment of Financial Statement Notices for December 2009 and January 2010.

Mayor Bush announced that the Financial Statements for December 2009 and January 2010 are on file in the Finance Department for review by the Board and the public.

CONSENT AGENDA

The Consent Agenda consisted of the following:

7 Proposed Resolution No. R-10-43 Approving Certain Bid Awards Pursuant to Ordinance No. 5387 (Purchasing Procedures)- [a] Ford Compact Pickup-Utility

Administration (awarded to Landers Ford in the amount of \$12,937); [b] Dodge Compact Pickup Truck - Utility Administration (awarded to Landers Dodge in the amount of \$14,198); [c] Lead Based Paint Testing - All Departments (annual supply contract awarded to Lead Technologies); and [d] Title Search/Abstractor Services - All Departments (annual supply contract awarded to Hot Springs Title).

- 8 Proposed Resolution No. R-10-44** Authorizing the Mayor to Execute a Lease Agreement Between the City of Hot Springs, Arkansas, and X-Tra Lighting Manufacturing Partnership, LTD., for Space at the East End of the Terminal Building at the Airport.
- 9 Proposed Resolution No. R-10-45** Amending Resolution No. 6494, as Amended by Resolution No. 7092 (Approving Certain Revisions to Municipal Airport Property Management Policy), by Adopting a New Appendix "K" (Airport Property Rates).
- 10 Proposed Resolution No. R-10-46** Awarding a Contract for Real Estate Acquisition Services Related to the Higdon Ferry Road Improvement Project, Phase II (AHTD Job Number 061113), to Right of Way USA, Inc.
- 11 Proposed Resolution No. R-10-47** Approving Change Order No. 1 to an Existing Contract with Frank Manzer and Associates for Real Estate Appraisal Services Related to the Higdon Ferry Road Improvement Project, Phase II (AHTD Job Number 061113).
- 12 Proposed Resolution No. R-10-48** Authorizing Purchase of Twenty (20) Environment One Grinder Pumps from Jack Tyler Engineering Company of Arkansas in Accordance with Ordinance No. 5563 that Establishes Jack Tyler Engineering Company as the City's Sole-Source Supplier of Environment One Grinder Pumps.
- 13 Proposed Resolution No. R-10-49** Authorizing Revisions to the 2009 Budget.

A motion was made by Director Keheley, duly seconded by Director Jones, that the Consent Agenda be approved; and upon roll call, the following voted "aye":

Directors Maruthur, Jones, Keheley, McCabe, Ramick, Daniel, and Bush, total 7; motion unanimously carried.

NEW BUSINESS

14 Claim from Mr. Tim Winston and Mr. Max Balke Regarding the Burger King Development at the Corner of Central and Colombia Hills

Mr. Steve Mallett, Deputy City Manager for Public Works and Utilities, explained that the claim from Mr. Tim Winston and Mr. Max Balke in regard to the Burger King development at the corner of Central and Columbia Hills, is in the amount of \$11,579.68, which was submitted to the City on November 25, 2009; and according to the claim was filed as this work was forced to be bonded after approved plans to the site were completed and inspected. He advised that on June 12, 2008, the Planning Commission approved a lot split request from Shaw Construction, LLC, with amendment requiring sidewalk and curb and gutter on Central, Columbia Hills and Mangum; and the three sides of the property actually front a street. He noted the other side does not front a street. Sometime after that meeting, but prior to November 2008, it was sold by Mr. Shaw, the previous owner, to Mr. Max Balke. He said Mr. Balke purchased the property in order to construct a Burger King Restaurant. He advised that it is unknown to city staff if the conditions placed upon the lot by the Planning Commission were relayed to the new owner by the previous owner. In February 2009, plans for the Burger King development were received by the City's staff for review. These original plans included sidewalk on all three sides that bordered the property but only included curb and gutter on Central and Columbia Hills. He said curb and gutter on Mangum was not shown on the plans, and the plans were approved as submitted by the City at that time; and the building permit was issued. In May 2009, Mr. Denny McPhate, Public Works Operations Director, made a site visit and informed the contractor of the requirements for curb and gutter on Mangum Street. He said that was not listed on the previous plans as approved, but it was noted to the contractor at that time. It was also noted that the existing drainage ditch along Mangum would need to be modified to accommodate the curb and gutter. After some discussion, it was decided to install approximately 60 feet of 18-inch culvert along Mangum to alleviate the issue and install the curb. He said Mr. McPhate decided to allow this as a field change and

not require a modification to the plans in an effort to save the owner some money as far as the engineering costs. He stated that the timing of the notification was unfortunate; however, it was early in the construction stage; and the City staff feels it should not have had an impact in the overall completion of the project. Shortly after that, Mr. McPhate was contacted regarding water ponding on Columbia Hills due to the newly constructed curb on Columbia Hills. He mentioned there was a curb on Columbia Hills that was ponding water, and it was looked at by the city. City staff spoke to B&F Engineering, and they developed a plan to cut curb cuts to allow water to leave Columbia Hills and get into the ditch, which was done in June 2009. He said the approved plans for the revision by B&F Engineering were received by the staff in June; and on July 6, 2009, the contractor began work in accordance with those plans. Those plans, as revised, had all the changes that had been made up to that point, which included the curb and gutter on Mangum Street, the drainage on Mangum Street, and the curb cuts on Columbia Hills. In early August, after a heavy rainfall, it was noted by Mr. Denny McPhate, during a site visit, that the installation of the curb cuts on Columbia Hills were now causing erosion of the ditch. Therefore, that was an issue that had to be addressed by the contractor. In additional conversations with B&F Engineering, they agreed to install a concrete flume in the ditch to keep from having erosion and brought it down to the existing box, which was on August 3, 2009, when the contractor was informed of that field change to require concrete swale; and that was approved by the engineer. At that time, the contractor was aware of any and all plan revisions or field changes regarding that development. He stated they were planning on opening on Friday, August 7; and the City felt they had ample time to provide a bond for that in time to make the opening on August 7. On August 7, Ms. Kathy Sellman, Planning and Development Director, informed the developer that he did not have a Certificate of Occupancy as of that morning and could not open without addressing the outstanding items. He advised that a bond was posted for \$4,500 to cover the remaining work which was some drainage and sod requirements, but the City did not receive that bond until August 11. However, the City did allow them to proceed and have their grand opening without the bond in-hand. He noted this claim includes a portion related to the erosion issue and curb cuts which staff feels, regardless of the curb on Mangum Street that was pointed out to them after the plans were approved, and staff feels all that work would have been necessary as originally submitted. Regarding the \$3,000 to \$4,000 range, staff feels that amount should not even be considered as part of the claim since that work would have to taken place regardless because that was part of the original plans and had to be done to accommodate those plans. However, as far as the whole plan, staff admits to the unfortunate timing of the items not originally on the plans; but it is still staff's position that all of the expenses listed in the claim were necessary to construct the development in accordance with the requirements; and the

City should not award payment to the contractor for any of that work. He advised that in regard to the sidewalk that was placed on all three sides, the City did allow them to fill up over the property, which was a much less expensive option than staying along the curb line of Columbia Hills and Mangum Street. He noted that would require closing in all the drainage ditches and probably a retaining wall as those two slopes are very steep. He said to compromise and save the owner some money to facilitate the requirements of the plan, the City allowed them to take the sidewalk next to the parking lot and come down the back side at a substantial cost savings. Whereas, the City could have required them to put it along the curbside as it does other developments. He pointed out that the City feels like it has compromised with them on several items; and the fact that the City had the bond before it actually had it in hand so they could open, the City feels like it has been fairly accommodating throughout this entire process.

Mr. Ray Owen, Jr., attorney representing Mr. and Mrs. Max Balke, said his office address is 209 Hobson. He stated this property is located at Central Avenue and Columbia Hills, and the back of the property abuts Mangum Street. He noted the Master Plan for the City does not require any curb and gutter or sidewalks to be put on Mangum Street under a typical development. He mentioned this property and adjacent property were previously owned by Shaw Construction. In 2008, they sought to have the property divided into two separate tracts and went to the Planning Commission to request a lot split. The Planning staff report made the recommendation to approve the lot split with no conditions. At the Planning Commission meeting on June 12, 2008 (former Planning Commission whose members no longer serve on the Commission), one of the commissioners whose home is located on Columbia Hills, Mr. David Campbell, moved to approve the lot split on a condition that curb and gutter and sidewalk be placed on Mangum at the rear of the property despite the fact that the Master Plan does not call for that; and that motion was approved by the Planning Commission. Later, Mr. Balke purchased this Burger King site for the location of the new restaurant; and he was unaware that condition was placed upon the approval of the lot split. After he purchased the property, he hired B&F Engineering to draw up a set of plans; and it covers the detail of the building, the grading, the outside drainage, etc. He mentioned while these plans were being developed by B&F Engineering, Mr. Felenz, of B&F Engineering, told him that he regularly met with members of the Planning staff (Rick Stauder and Jeff Griffin); and they helped him develop this plan to where it would be appropriate. Based on these meetings, the final plans were supplied to the City in January 2009. After review by many department heads and their staff, including a specific review of these plans according to the permit review comment by Planning, Engineering, and Stormwater, they all reviewed these plans very carefully. With very

minor comments, the plans were approved; and the permit was issued. At that time, Mr. Balke had a set of approved plans and was ready to go forward with his permit. He took bids, based on the plans that had already been approved, and was ready to start construction, which he did. He pointed out the problem is the plans because B&F Engineering was not aware of the lot split condition either and did not contain any curb and gutter requirement for Mangum Street. He commented someone called that to the City's attention that the curb and gutter was not being put in. He added there is an e-mail in the Board packet from Mr. David Campbell, who said they were not doing it. He advised that the City said even though it had already approved these plans, it was going to require that he put in curb and gutter on Mangum Street, which is not on the plans. He added they also had the additional 18-inch reinforced concrete pipe that had to be added even though that was not on the approved plans and a concrete swale on Mangum which was not on the approved plans. He mentioned the question is whether or not that was even necessary because rainwater had been draining naturally along Mangum to Columbia Hills for many years. The plans approved by the City show natural drainage along Columbia Hills and along Mangum to the existing drainage box, which is to be modified slightly to accommodate the changes. However, they had to make more modifications to that box which were expensive as a result of these supplemental additions to the approved plans. He mentioned there is a new retaining wall along Columbia Hills, and all the drainage from the site goes to the back and to this new retention pond; and that is where the drainage that originates on that site goes. He added it slowly seeps into a discharge after it has been held in the proper amount of time there and goes into the existing box at the corner of Columbia Hills and Mangum that has already been there. He said there is no new runoff caused by the development of this site other than what is going through that retention pond. He mentioned there were threats that he was told from time-to-time that a Certificate of Occupancy would not be issued unless these things were done.

Mayor Bush questioned who had made such a threat, and Mr. Owen replied they did not come to him. He said he did not get involved in this until last December, but his understanding is that it came to someone who worked for the contractor or maybe the contractor himself who was working for Mr. Balke doing the work on the site.

Mayor Bush pointed out that is a serious statement, and he did not like to hear that unless he has some proof. Mr. Owen replied that he was stating what he was told. He said he realized if he was in a court of law, it would be hearsay; but he was disturbed by that comment as well.

Director Ramick stated he was looking at a series of e-mails between Mr. Tim Winston, Mr. Steve Mallett and City Attorney Brian Albright. He then read some of the e-mails. Mr. Owen said he could not respond to what some of the e-mails meant and is representing Mr. Balke, who is the developer of the site and is the person who put the money up and had to pay the extra money because of the changes that were made. He pointed out Mr. Balke has been hurt by the changes that were made after the plans were reviewed and approved by the City, and the City caused the changes to be made; and it cost Mr. Balke money out of his pocket after he had already planned on a budget of a certain amount.

Director Ramick said he does not know if Mr. Winston was trying intimidate the Planning Department, but he does not think he was trying to get along with them.

Mr. Owen replied that he is not here tonight to defend Mr. Winston but is here to ask the Board to do what is right for Mr. Balke.

Director Maruthur commented that she read the e-mails, and there were many complaints about City staff. She mentioned that Mr. Owen is being paid to get \$11,479.68 from the taxpayers of the City. Mr. Owen replied that he is being paid to make a presentation to the Board, explain why the claim is being made, and why he believes the claim is appropriate. Director Maruthur asked if the condition was ever removed, whether someone was on the Planning Commission now or was on the commission, even though the engineering company did not mention it. Mr. Owen replied that the engineering company did not know the condition was there, and they submitted plans based upon not having the requirement of that condition in the plans. He pointed out every city department reviewed those plans or had the opportunity to review those plans. He added there was approval on them as they were, and that is what his client depended on when he went to get the money to do the construction. He pointed out an approved set of plans is what is taken to various bidders, and he bid this job and took that set of plans. He commented that later, the City began to make changes to what it had previously approved.

Director Maruthur questioned if they read the minutes of the meeting where the condition was placed on there for the curb, gutter and sidewalk. Mr. Owen replied that he does not think they probably read that because he did not think they were aware of those, at least Mr. Balke was not aware of them. He commented when the plans were submitted and reviewed, the plans without the curb and gutter on Mangum Street were reviewed by the Planning Department that signed off and approved them. He stressed

they approved a set of plans without a condition that had been set by the Planning Commission itself; and the Planning staff did not catch that.

Director Maruthur asked if it was withdrawn, and Mr. Owen advised that it was not.

Mr. Owen pointed out there is a retaining wall along Columbia Hills; and when those cuts had to be made in there to alleviate some ponding, it was probably already occurring to some extent before the curb and gutter was put in. He explained that Columbia Hills has a slope on it at first and then flattens out, and he is sure there has been sheeting, as a sheet of water, for years during heavy rainstorms. When that happened, they had to do some cut-ins through the new curb and gutter, and then the City said that they had to go through and excavate out this drainage ditch better. When they did that, it exposed the new retaining wall to possible erosion. He said they had to put in geotextiles material and spend additional money to do that, which was not planned in the beginning. Also, after the plans had been approved, the City required the addition of stainless steel catch baskets on all drainage structures on site even though the original plans did not provide for those. He advised there were some problems on the last day because the contractor and owner thought there would be a Certificate of Occupancy issued on Friday before noon because Burger King required Mr. Balke to have that store open at noon on August 7. The evening before, the contractor met with the Building Department of the City; and the contractor was of the opinion there was a Certificate of Occupancy that was essentially issued. He said the Planning Director came out the next morning and advised they did not have a Certificate of Occupancy, and he could not open. He stated that Raymond Haynie Insurance issued the bond to Mr. Balke, who told Ms. Sellman that he would have the bond in her hand as soon as he could get it from the insurance company. She then authorized the release of the Certificate of Occupancy.

Mayor Bush asked if it was normal that original plans that are approved are changed after the fact, and Ms. Sellman replied that during the period of time when there was a lot of development activity going on in the City because they work with a limited number of local engineers, many things were done on good faith that should have been documented. She mentioned there was a note on the final plat (the recorded document) with regard to the sidewalk requirement. She pointed out it was not necessary for anyone to read any minutes or anything else.

Director Daniel questioned what individuals had a copy of the recorded plat, and Ms. Sellman replied that it is a document of public record; and she has no way of knowing who had a copy of it.

Director Keheley questioned if she stated somewhere in the documents submitted to the Board that this was not a commercial subdivision, and a lot split does not require curb and gutter on all streets; and then in the middle of the project, it was changed by the Planning Commission. Ms. Sellman replied that she did not. She added if that is the way it came across, then that was inartfully stated. She advised the requirement came from the Planning Commission at the time the lot split was done, and the lot split could not be approved over the counter because the lot was a double frontage lot and did not meet the requirements for a simple split. Therefore, it went to the Planning Commission. At that time, the condition for the sidewalk was placed on the project and became of record when it was recorded in a specific note on the plat.

Director Keheley asked if the lot split exempted those requirements of a commercial, and Ms. Sellman replied that it does not. She added it did not come in as a specific commercial lot split. Director Keheley asked if the Planning Commission could supersede, and Ms. Sellman advised that the Planning Commission has authority to determine, based on site-specific conditions and considering the type of project that is proposed, whether additional requirements are appropriate. In this case, she said there is something in the Code that says if people are within 500 feet of a church, school or other assembly place, then a sidewalk should be required. She advised it was not in the staff recommendation, but it could have been. She commented when it was added, the other Planning Commissioners approved the motion; and it became a part of the project.

City Attorney Brian Albright pointed out on June 12, 2008, the Planning Commission placed those conditions; and those conditions run with the land. He said whether the Board would agree or disagree with the findings of the Planning Commission, that decision was not appealed.

Director Maruthur commented when Ms. Sellman said the plat had a note on it, anybody who would be doing the construction or doing the research would have the burden of looking at the final plat before they do it. She stressed they are being paid, and this has nothing to do with the Balkes. She stated these are the people who were paid to do the project, and a notation was on there; and the June 12 decision was not appealed.

Mr. Ray Owen stated that the Balkes own and operate two Burger Kings inside the city limits and in Hot Springs Village, Arkadelphia, Malvern and Hope. He advised they estimate this Burger King will produce between \$1.6 million and \$1.7 million in gross revenue each year, which translates into \$16,000 to \$17,000 per year in sales tax to the City and \$50,000 in tax to the Convention and Visitors Bureau every year. He emphasized they had to pay money they did not expect to pay to do additional construction work over and above what was provided. He said in addition to the curb and gutter on Mangum, there were a lot of other issues that were added which were not part of these conditions: (1) the 60-foot extension of the 18-inch reinforced concrete pipe along Mangum; (2) 24-foot swale along Mangum; (3) excavation of the natural drainage ditch; (4) placement of the swale in that ditch; (5) additional excavation causing the developer to have to install the geotechnical material; (6) stainless steel baskets; and (7) modifications to the existing box structures. He pointed out that is probably \$8,000 of the \$11,000 anyway, and the City's actions in this case have cost Mr. and Ms. Balke this additional money. He said it is only fair to allow them to be reimbursed for this expenditure they did not expect to have to pay on the front-end based on the fact that the City approved those plans. He emphasized the City approved those plans even though the conditions that were required were not in there. He said this additional amount they had to spend (\$11,579.68) was as a result of the fact that the City did not require additional or whatever they needed to do if they were going to do it, they should have done it. He said he did not believe this sends a good message to other people.

Director Daniel stated they have been very good corporate citizens of Hot Springs. He said that he goes back to the contractor, and he was on top of it everyday. He commented he did not know if Mr. Balke was there everyday, but most of the time they are not and rely on the developer and contractor to do those things. He pointed out that Mr. Max Shaw got the property from Mr. Earl Williamson, and they just kept filling it in; and probably in three or four years, there were some problems that set up that nobody knew about. He stressed that the contractor knew about it through the entire process and should have been present tonight. He said that he did not have a problem with the \$3,500 but could not see paying \$11,000 because he believes the contractor should be present tonight explaining why he did not keep them abreast and aware of all the things that were taking place.

Mr. Owen stated the plans were drawn by B&F Engineering before the contractor was even involved in it; and they were approved by the City and all of those departments in getting the permit before the contractor was even involved. He said it was only after the approval that they did the bidding process, and all of this happened

before the contractor got there. With regard to the \$3,500, he said that is what he would guess would be the cost for the curb and gutter down Mangum. He stated the other \$8,000 is the amount he is estimating the Balke's had to spend for the rest of those items which were not shown on the approved plans and are not part of the condition; and the City determined they had to be done. However, they were in addition to and over and above what was an approved plan already by the City. He said it was money the Balke's had to spend that they did not anticipate having to spend.

Director McCabe said it does not seem that Mr. Balke was well-served by professionals in advance of coming to the City, and there was a previous owner of the property. He stated when he has property, he always fill out a disclosure statement and whether that disclosure could address that or not, he is not uncertain. He noted if there was a requirement that the City placed on the property, perhaps if he had the property, he would have disclosed that. He pointed out that possibly the previous owner had some responsibility and maybe the realtor who was representing the Balke's might have some responsibility to have thoroughly checked this. He mentioned those are players in this picture well before the City gets involved, and he believes it is premature to come to City to ask for restitution when there are other players involved in advance of the City's being even brought into the picture. He said there may be a reason for the City to reimburse some portion of this, but he is not certain the City is at that point now because he believes there are some other players who would need to be addressed or looked to for some assistance in that area.

Ms. Carol Scholp, 301 Stearns Point Road, said she has no interest in this property; but when a person buys a property from someone, it is their responsibility to disclose to the conditions on that. She noted there was a permit of \$757,000 pulled on this property; and in another letter, either from Mr. Winston or Mr. Balke, it said \$1.5 million. She questioned the difference in the cost of a \$757,000 permit versus a \$1.5 million permit. She also asked if that has that been collected by the City.

Director Daniel explained that the City does not collect that.

Ms. Sellman explained that the fee that was paid was based upon the \$757,000 figure, and it is the duty of the person pulling the permit to accurately disclose the value of the project because that is the basis of the fee that is charged for the permit.

Director Ramick asked who pulled the permit, and Ms. Sellman replied that she did not know.

Ms. Scholp asked if there was some way she could find out what the difference is between a \$757,000 and a \$1.5 million, and Mayor Bush requested that City Manager Lance Hudnell check into that.

Ms. Scholp said she believes this could have been avoided if the City had a system whereby when a person applies for the permit application, that the rules and regulations and the Planning Commission conditions are included so that individuals can then direct their questions properly and a cover letter that says "no one under any circumstances will be granted any exceptions to these rules."

Mayor Bush said he did not believe the City could do that by law. Ms. Scholp commented if the City has governing conditions and those regulations are printed by the City, they have to be legally adhered to.

Director Keheley said she first visited the Burger King project last year when the issue came before the Board and then she visited again last week when the claim was presented in the Board packet. She stated the site development for the restaurant was wonderful, but the public improvements consisting of those curbs, gutters, storm drainage, the flume, there were assortment of changes covering the whole construction period. She pointed out how a project could end up like this is a cause of concern. She said from what she has learned, there is certainly enough blame to go around. She noted this construction did not enhance the investment of Mr. Balke and what he has done for the project. She mentioned the Board received 40 pages in our Board packet, memos, e-mails, and other records attempting to explain all of these actions, and Mr. Mallett stated that staff admitted the timing of the notifications to the owners were unfortunate. She added it is very clear that better communications between the city departments and all of the staff could have prevented some of the issues before the Board tonight and also from those two Planning Commissions. She stated it is also clear that the simple act of following the City's own requirements of proper engineering of all public improvements before a project begins will greatly reduce the circumstances of this claim. She apologized to Mr. and Mrs. Balke for the breakdown in the development process. She stated since this project was completed, the City hired a city engineer to be in charge of looking after public improvements in Hot Springs and hopefully we can avoid this happening in development. She mentioned that she believes all of the Directors are advocates for building and developing business opportunities in Hot Springs and want Hot Springs to be a development friendly city. She stressed that everyone should join efforts to find some ways to improve the user friendliness in all of the business development activities.

Director Maruthur said she agreed with that statement and pointed out that Mr. Steve Mallett, Deputy City Manager for Public Works and Utilities, has recommended that the Board deny the claim from Mr. Winston and Mr. and Mrs. Balke because of the way things were handled and the consequences that have been suffered. She stated it would be the taxpayers who would have to pay the bill for the people who did not look at the documentation and follow the proper process. She said the people who did the work did not follow the rules and regulations that were set forth on June 12, 2008; and nothing was appealed and nothing was changed. She stated as a representative of the people, she recommends improving communications and do what the staff recommends.

Director Daniel said it was brought up about checking into the difference in the permits and if the City is going to do something about this if the appeal is denied. He added it will be six months before it can be considered by the Board. He pointed out if the issue were tabled and get the questions answered, then it could be brought back at the next meeting. He stated that the Mayor gave a directive to the City Manager; and if the Board votes on it tonight, then there is no reason for his checking out anything, which will be after the fact.

Director McCabe pointed out that is a different issue, and Director Daniel stated it still pertains to that project; and the Mayor asked the City Manager to do it.

Director McCabe said he understands what Director Daniel is saying, but they are two different issues.

Director Jones commented she would like to see the Board take some kind of action. She said that she believes in Ms. Sellman and has a lot of confidence in her, as well as Mr. Mallett. She said she feels the City is as much to blame as Mr. Winston. She suggested tabling this issue and arrive at some solution.

Director McCabe stated that Mr. Balke may not have been well served by professionals in advance of coming to the City, and that is where he believes that initial restitution should be looked at. He said he believes the Board could table this and let that process proceed, but right now it is early coming to the Board.

Mr. Owen said he could get B&F Engineering to do a computation as to how much it would have cost to install curb and gutter on Mangum Street, and the City could deduct that from the \$11,500, which would solve the problem that Director McCabe had

with regard to the curb and gutter on Mangum Street because there are five or six other issues.

A motion was made by Director Maruthur, duly seconded by Director Jones, to table this issue to the May 4 Board Meeting; and upon roll call, the following voted "aye": Directors Maruthur, Jones, Keheley, McCabe, Ramick, Daniel, and Bush, total 7; motion unanimously carried.

15 Proposed Resolution No. R-10-50

A resolution entitled, "A RESOLUTION AUTHORIZING A CONTRACT FOR SERVICES WITH THE HOT SPRINGS AREA COMMUNITY GARDEN NETWORK," was taken from the agenda and read by title only.

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

Upon discussion, Ms. Jean Wallace, Parks and Recreation Director, stated that the recommendation from staff is to enter into a contract for services with the Hot Springs Area Community Garden Network to provide the City's community garden program. She said this organization desires to provide a community garden program for the public and will operate currently under the umbrella of another local nonprofit while they are applying for a nonprofit number. She noted the first property they would like to garden is at 120 Palm Street and is a city-owned lot behind the Convention Center parking lot. She stated their proposal includes leasing the property, designing and building the garden plots, and educating the public on the value and the benefits of gardening, which is a very important component of their organization. She mentioned they have asked that the City provide compost several times during the year, provide a water supply, and pay the monthly water bill, which is estimated on an annual basis of \$250. She then introduced the vice president of the Master Gardeners, Ms. Sharon Dent, who recognized two other Board Members, Mr. Bob Byers and Ms. Denise Parkinson, and others citizens interested in the project.

Ms. Sharon Dent, vice president of the Master Gardeners, stated that the new president for the Network is Mr. Bill Staton. She explained that community gardens around the country is a force of interest because people are concerned about the quality

of food, but many people cannot afford the fresh vegetables and fruits that they hope to be able to provide on a wide scale to people who are willing to come out and learn about how to produce their own food. She mentioned they have set up a rental scale that is comparable to what people in this market can pay, and it will be reviewed on an annual basis. She explained that people join the Network by paying an annual fee and from that are elected board members and from that are elected officers from the board. She said there are people who will be appointed to manage each of the garden plots in addition to the oversight. She stated each garden plot will have communal areas where everybody can work on them together, and there will be individual plots where people can grow their own food. She advised that their second garden is most likely going to be at the Quapaw Community Center, and they have started negotiations and building a group at Roanoke Baptist Church on Whittington Avenue and are excited about the possibility of an edible landscape frontage on Whittington. She commented they hope as soon as they can finally get this plot up and get some experience, they will possibly be able to move onto the Airport with a larger plot. She said they will be back to the Board in less than a year to ask for an extension on their contract beyond the one-year period and to look at additional sites. She noted they will submit annual reports as specified in the contract.

Ms. Carol Scholp spoke in support of the program and said programs such as this have been started all over the country. She noted that Ms. Alice Waters, from California, started a program all over the country and invested \$500,000 in New Orleans after Hurricane Katrina to do gardens like this. She mentioned she applied for a grant with one of the larger corporations here to do it for the Boys and Girls Club and the Childrens' Home.

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

16 Proposed Ordinance No. O-10-18

An ordinance entitled, "AN ORDINANCE WAIVING THE REQUIREMENTS OF COMPETITIVE BIDDING FOR THE REPAIR OF CERTAIN SOLE-SOURCE ITEMS (ENVIRONMENT ONE GRINDER PUMPS); AND FOR OTHER PURPOSES," was taken from the agenda for consideration.

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

Upon discussion, Mr. Steve Mallett, Deputy City Manager for Public Works and Utilities, stated that Ordinance No. 5536 establishes Jack Tyler Engineering as the sole-source provider of Environment One pumps. He said this ordinance does not address the repairs of these pumps so the City had an existing backlog of pumps at the Adams Street facility and could not keep up. He said staff is asking that the Board waive competitive bidding for the repair service on these same pumps with the same company that is the sole-source provider of these pumps and also request to proceed with the repair of 40 pumps at a cost of \$800 per pump. He said any future repairs in excess of \$20,000 would come back to the Board for approval.

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

17 Proposed Ordinance No. O-10-19

An ordinance entitled, "AN ORDINANCE WAIVING THE REQUIREMENTS OF COMPETITIVE BIDDING AND AUTHORIZING A RENEWAL AGREEMENT WITH CGI COMMUNICATIONS, INC. FOR CERTAIN WEB-BASED STREAMING VIDEO PROMOTIONS," was taken from the agenda for consideration.

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

Upon discussion, Ms. Terry Payne, Public Information Director, stated this is for the acceptance of a three-year renewal of a contract which took place in 2006, when the City entered into an agreement with CGI Communications, Inc. for an updated web

streaming video promotional package. She said people can go to the city's website (cityhs.net) and click on the CGI icon, which is currently entitled, "Community Video Showcase" but are renaming it "Community Movie Tour Book Agreement." It involves hotlinks to a series of ten locally produced videos on Hot Springs that showcase Hot Springs assets to residents, visitors and businesses who might be interested in relocating to Hot Springs. She noted the first one is the welcome video with footage by Mayor Bush and a number of other videos that showcase various aspects of Hot Springs, and they are all locally shot. She commented the Public Information Department oversaw the production of these videos in 2006, but it is time to consider a renewal of this program and at the same time an upgrade. She pointed out in satellite fashion around the hot links to the ten videos on Hot Springs are also videos showcasing various types of businesses who are the sponsors that actually pay for this program. She explained there is no cost to the City in the past, and there will not be in the future. She added this is a program that is completely funded by the local business sponsors; and currently, there are ten custom videos; and the City has complete control over the video content of those videos. CGI's package currently provides video storage and streaming on a dedicated server, but they also take care of the recruitment of local business sponsors and the production of the sponsor videos. She said this updated package being considered tonight will give a new look to what is being seen. She stated anything on the web has a short shelf life, and it needs to be updated and will have a new modern interface. She added there will be new production in online posting of all the ten videos that showcase Hot Springs. There will be better video quality through flash technology and also a detailed visitor tracking package that will allow the City to be able to better judge who is coming to visit these videos and what their interests might be. She noted since the City signed on in 2006, CGI has grown from a company with 50 employees to 260 employees serving 2,000 communities nationwide as their customers. CGI is additionally endorsed by the National League of Cities, as well as the U. S. Conference of Mayors.

Director Keheley questioned how the business sponsors are chosen, what the criteria is, if there are any restrictions on these business sponsors, and the cost. Ms. Payne advised that CGI completely takes care of the recruiting, and the City does not select the businesses. She mentioned in the Board packet is an introductory letter from the City Manager that CGI uses and takes to local businesses if this package is approved for renewal, and it explains the services that CGI has to offer. She said they take care of the recruitments, and the City has no knowledge of the cost that is assessed to the businesses nor does the City recommend businesses to recruit. She mentioned this is completely taken care of by CGI Communications.

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

18 Proposed Resolution No. R-10-51

A resolution entitled, “A RESOLUTION AUTHORIZING EXTRAORDINARY MEASURES AND ACTIONS RELATED TO THE 2010 APPLE BLOSSOM INVITATIONAL,” 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, City Manager Lance Hudnell pointed out there is a substitute resolution which has been distributed that added the sanitation rates that failed to be included in the resolution. This resolution takes some extraordinary actions in several different areas, and the first is in regard to the Transportation Code to allow the local transportation providers to equip themselves better to take care of this event. He pointed out this is being treated as a once-in-a-lifetime event. The second is the street and parking regulations which allow for anyone in the City to provide parking just for those two days in support of this event assuming they do not block the street. Also, staff is asking the Board to declare a moratorium on special events which will be on city property or in the entertainment districts or areas that the City controls and not on private property. He said the reason for that is the resources will already be stretched and do not want to deal with any other events that are on the Transportation Plaza, the Exchange Street Parking Facility, in the entertainment districts, or closing a street and having a block party during these days. Regarding transient merchants, the City does not allow transient merchants within the City except in certain specific categories. Anyone who happens to meet one of those specific categories should have their application in by March 26. The private parking is in regard to parking on other areas within the City that are not normally allowed. Regarding sidewalk obstructions, the City requires various businesses, etc. to come on a case-by-case basis and request to put out tables, chairs, etc. He pointed out this is a blanket approval, particularly for the downtown area for tables and chairs in support of dining and entertainment facilities. Regarding shrubs, flowers and other plants, the Downtown Merchants have some things going with regard to that and trash receptacles, etc. Regarding sanitation rates, there are some community-wide efforts underway for clean-up in advance of this event. He said this is not for individuals or individual merchants or businesses; but this is if it is

a cooperative effort such as downtown or a particular neighborhood. The City would then place a dumpster there at no charge.

Director Daniel pointed out that the State of Arkansas has a sales tax requirement on seasonal parking, and those who have parking lots around the race track pay a sales tax each year on that where a year-around business does not. He requested that in the notifications that are made, the owners be notified that they have to pay any state and federal taxes.

Mr. George Pritchett, 125 Carl Drive, stated that the City Manager and staff are doing a great job; and in getting ready for this is a big event, he commended the newspaper, the Board, and everyone involved. He mentioned that phone calls are being received from all over the country from people looking for a place to stay, and the highest one he has heard of is a limo service and chef around the clock for \$35,000 for the week.

Director Maruthur stated she received by e-mail an Apple Blossom Invitational talking points bulletin from the Advertising and Promotion Commission, which placed all the information on one page and expressed appreciation to the Advertising and Promotion Commission for providing it. She said she has sent this to 75 people and plans to send it all over the country.

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

OTHER BUSINESS

19 Board of Directors Items for Discussion

Director Jones reminded everyone that Saturday is the Pleasant Street Neighborhood Association meeting at 12 noon for board members and 1 p.m. for the public meeting. She announced that she has two friends visiting from Boston, Massachusetts, Mary Francis Mitchell and her sister Ora.

20 City Manager's Report

City Manager Lance Hudnell gave the following report:

1. He urged everyone to fill out their Census forms as it is important to the City that those are all returned.

2. During the budget discussion, one of the items that was discussed was cutting back on the "City in Progress" newsletter that goes out to all of the citizens via the utility bills. The Public Information Department has created a new document that is now totally web-based and allows the department to do more with it, and citizens can sign up for an e-subscription on the City's website.

3. Employee awards banquet will be held on April 15, and the Directors need to let Margaret Parris, administrative secretary, know if they will be attending because she has some special slots for the Directors on the program.

4. Because of the cut-back in some training, the Animal Control Department held training in Hot Springs on behalf of other animal control departments. There were three cities that participated in remote chemical capture that was led by Elgin Simmons, Animal Control Field Supervisor, and expressed appreciation to him. Animal Services also had a home booth show and adopted out nine animals.

5. There was a Street Department crew that removed ice off the roof of City Hall during the ice storm and expressed appreciation to them. They worked about ½ day getting the ice off so the leaks would stop.

6. The City's Urban Forester, Mr. Bob Lathrop, has been appointed to the Arkansas Urban Forestry Council Board of Directors. This is an advisory group to the Arkansas Forestry Commission and expressed appreciation to him for doing that.

7. Regarding the advisory committee appreciation dinner, this will not be held this year. It was not really a budget issue since the City had determined sometime ago that it wanted to start doing that every other year in order to coincide when the members rotate off so the banquet can be a little more special and honor those who have served and are rotating off every other year.

8. The City received early notification that it received the Certificate of Excellence for the 2008 Financial Report, and there will be a presentation at a later Board Meeting.

9. A thank-you was received commending the Police Department for assisting with the Dr. Cooper family funeral recently, and thoughts and prayers continue to go out to that family, as well as to the family of Dr. Martin Draper.

10. The Fall City Collegiate Classic NCAA Women's Fast Pitch Tournament was held last weekend. There were eight teams from four states and 150 players. The players were from all over the United States, but the universities were from Arkansas, Texas, Oklahoma, and Missouri. Mr. Nathan Neighbors, Recreation Supervisor, is doing a good job in attracting those types of high-quality events.

11. Apple Blossom preparations continue, and there have been several staff meetings in regard to that. He has a weekly phone call with the principals involved. He noted there is a special website (AppleBlossomInvitational.com), and there is a transportation page, news page, update page, lodging, and is being handled by the Advertising and Promotion Commission. He expressed appreciation to Mr. Arrison and his staff in assisting with this.

12. He met with the Finance Committee of the Quorum Court last night, and they have agreed to recommend to the full Quorum Court that they increase the Animal Control contract for this year to provide some additional support to the Sheriff's Office that the City had to cut out. They are going to add about \$33,000 of funding which will allow the City to give a dedicated officer back to the Sheriff, and this will be a County issue.

13. A display case has been placed in the foyer, and the plaque received tonight will be added to that case.

14. If the Directors see any of the City's Congressional delegation, they need to encourage them to pass the continuing resolution on the transit funding soon because until they do that, the City cannot submit any more grant requests. The Transportation Bill is re-authorized every six years, and this has been expired for a while and they have been doing a series of Congressional resolutions. He stated this does impact the City's transit funding should they not pass that.

Mayor Bush questioned when the SunBelt Conference starts, and Director Ramick replied that it is March 6 through March 9.

21 ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 8:35 p.m., to meet again on Tuesday, March 16, 2010, at 7:00 p.m.

ATTEST: _____

APPROVED: _____

Lance Spicer, City Clerk

Mike Bush, Mayor