

MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ MAY 11, 2021 ~ 6:00 P.M.

FORT SMITH CONVENTION CENTER

The meeting was called to order by Mayor George McGill, presiding. Invocation was given by Director Jarred Rego, followed by the Pledge of Allegiance led by Director Andre' Good.

On roll call the following members of the Board were all physically present: Directors Jarred Rego, Andre' Good, George Catsavis, Kevin Settle, Robyn Dawson, and Neal Martin; Director Lavon Morton - absent. The Mayor declared a quorum present.

The Mayor inquired if any Board member had any item of business to present that was not already on the agenda. There was none presented.

The minutes of the April 20, 2021 regular meeting was presented for approval. Settle, seconded by Good, moved approval of the minutes as written. The members present all voting aye, the Mayor declared the motion carried.

Item No. 1 was an ordinance to ratify and confirm the rescheduling of the Board of Directors May 4, 2021 regular meeting to May 11, 2021 (*City Clerk*).

City Administrator Carl Geffken briefed the Board on the item advising there were severe storms the evening of May 3, 2021 whereby the National Weather Service confirmed that two (2) tornados rated as EF-1 hit the River Valley on said date. Such resulted in multiple power outages throughout the area for extended periods of time whereby the Fort Smith Convention Center was without power in the afternoon of May 4, 2021. Due to the meeting location having no electricity, Administration recommended the

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May 4, 2021 regular meeting of the Board of Directors be canceled and rescheduled for 6:00 p.m., Tuesday, May 11, 2021, at the Fort Smith Convention Center, 55 South 7th Street, Exhibit Halls A1 and A2. The Board of Directors provided unanimous concurrence to the recommendation; therefore, a media release indicating same was distributed at approximately 3:26 p.m. on Tuesday, May 4, 2021. The dates, time, and location of regular meetings of the Board of Directors are set by ordinance; therefore, the proposed ordinance ratifies and confirms the cancelation and rescheduling of the May 4, 2021 regular meeting as aforementioned.

Martin, seconded by Settle, moved adoption of the ordinance. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance by caption for its readings. There being no director commenting and the members present all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 42-21.

Item No. 2 consisted of items regarding appeal of the Planning Commission's denial of Conditional Use Request to operate a technical or trade school for truck driving (5111 Rogers Avenue / appeal of CDL Academy - TriState Career Center) (Planning):

- A. Resolution affirming the action of the Planning Commission's approval denial of the Conditional Use for a technical or trade school (truck driving) at 5111 Rogers Avenue
- B. Resolution approving an appeal of the Conditional Use for a technical or trade school (truck driving) at 5111 Rogers Avenue

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Director of Development Services Maggie Rice briefed the Board on the item advising that on March 9, 2021, the Planning Commission considered a Conditional Use application from CDL Academy for a truck driving school with drive training occurring in the southeast portion of the Central Mall parking lot adjacent to Rogers Avenue at 5111 Rogers Avenue. The request was denied by a vote of zero (0) in favor and seven (7) opposed. Upon re-application for a truck driving school at the same location, the applicant re-established drive training to be held in a different location, i.e. the northeast portion of the Central Mall parking lot adjacent to South Waldron Road. The Planning Commission considered the second application at its April 13, 2021 meeting whereby such was again denied by a vote of zero (0) in favor and nine (9) opposed. The denial was based on the Unified Development Ordinance (UDO) evaluating factors for a Conditional Use. The UDO states the following factors should be considered when evaluating Conditional Use requests:

- a. The design, location and operating plans for the use shall ensure that the safety of the public is protected.
- b. The proposed land use shall not adversely affect nearby properties.
- c. The size and shape of the site in relation to the size shape and arrangement of structures (maximum lot coverage and applicable setbacks) meets the minimum requirements of this chapter.
- d. The entrances and exits, internal street systems, off-street parking and loading facilities and pedestrian walkways are adequate for the proposed purpose.
- e. Nearby properties shall be protected from fumes, lighting, noise, glare, dust and odor.

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- f. The landscaping and screening required to meet the intent of this section shall be provided.
- g. Open space shall be maintained by the property owner.
- h. Signage shall conform to the requirements of this chapter.

Mr. Max Avery, agent for the CDL Academy, filed an appeal of the immediately aforementioned Planning Commission denial with the City Clerk's office on April 15, 2021.

Rego, seconded by Catsavis, moved adoption of Item No. 2B. Prior to the vote, Director Rego spoke in favor of the proposed conditional use to allow the drive training to occur in the Central Mall parking lot citing such is an empty lot that can be put to good use. He further cautioned the Board on "*rubber-stamping*" the decision of "*unelected people*" citing the proposed is providing a much-needed training in the area. He cautioned that Board denial of the Condition Use request could send a negative message that the City is not business-friendly and encouraged members to carefully consider same.

There was very lengthy discussion with each director conveying multiple inquiries and comments.

In summary, Director Dawson requested confirmation that the Planning Commission has denied two (2) requests that would allow the school and inquired of the reason for the denials. She further submitted multiple inquires to the owner, Dennis Sights, who was in attendance. Regarding the location of classroom training, she further questioned if a rezoning at the current school classroom location would allow for the drive training or if another location would be considered, etc. It was acknowledged that such is a hard decision to make specifically denoting understanding of the Planning Commission's denial

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due to the proposed location; however, it is her desire is to ensure the school remains in place, and in Fort Smith, to provide the much needed training citing a reasonable solution must be determined to accommodate same.

Director Settle spoke in opposition to the proposed measure on the floor citing such devalues the surrounding properties, and the location for the drive training in a shopping center parking lot, which is not what's "*best for the city.*" He further questioned the distance of all surrounding property owners that were notified of the proposed, and if the parking lot is asphalt or concrete conveying concern that if asphalt, big trucks will create or expedite damage to the parking lot.

Director Good indicated that at first thought, he was apprehensive in allowing drive training to occur in the parking lot and, in general, reversing Planning Commission decisions; however, after hearing various comments, he spoke in favor of allowing the Conditional Use. Regardless, he questioned if any objections to the proposed has been conveyed.

Director Catsavis spoke in favor of the motion, but requested confirmation that Central Mall and Dillard's Department Store maintain no objection to the drive training and inquired if a lease has been executed. He further questioned if there's a CDL driver shortage; the class length; and, the anticipated salary for graduates.

Director Martin requested confirmation regarding the Planning Commission's denial whereby Mrs. Rice reiterated actions taken. He's "*not wild*" about drive training in the Central Mall parking lot; however, he conveyed no direct opposition to the proposed citing, upon approval, he prefers such occur in the location farther away from Rogers Avenue. He

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further noted that comments at the recently held Strategic Workshop indicated desire to do something to enhance shopping at Central Mall; therefore, he noted that such is an important aspect to consider prior to voting on the matter.

Mrs. Rice responded to all inquires reiterating and confirming the matter was denied twice by the Planning Commission. With regard to the reason for denial, the Planning Commission felt that maneuvering of trucks in the Central Mall parking lot was an incompatible use for the area. All property owners within three-hundred (300) feet of the entire parcel, which includes the Central Mall facility and all adjoining parking lots, were notified of the proposed; therefore, much assurance was conveyed that proper notification was provided to all interested parties. Regarding any objections received, Attorney John Alford is only individual to convey objection to the proposed Conditional Use request.

Dennis Sights, owner of CDL Academy, also responded to the multiple inquiries confirming that classroom training will soon be relocated to the Central Mall location. With regard to drive training in the parking lot, he conveyed much assurance that such is not destroying property alleging it's a very safe location as the drive training area is blocked off and contains an area of approximately 1.5 acres. The parking lot is asphalt; however, he conveyed no concern that such will create any damage to same. He further noted that neither Central Mall nor Dillard's Department Store has conveyed any objection. Regarding the potential for rezoning of the existing classroom training location or selection of another location, he posed no objection; however, he has signed a two (2) year lease with Central Mall to accommodate both the classroom location and drive training in the parking lot. It was confirmed that there is a CDL driver shortage; however, the training is a four (4) week

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course whereby it was noted that the school is working with J.B. Hunt to provide drivers, with some starting positions receiving anywhere from \$40,000 to \$75,000 annually.

Dawson, seconded by Rego, moved to amend the resolution to grant the conditional use for a period of two (2) years. The members present voted as follows: ayes - Rego, Good, Dawson, and Martin; nays - Catsavis and Settle. The Mayor declared the motion carried and the resolution stood amended.

The main motion remaining on the floor, as amended, the members all voted affirmatively with the exception of Director Settle who voted "no." The Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-59-21.

Item No. 3 was an ordinance zoning identified property and amending the zoning map (*from Transitional (T) to a Planned Zoning District (PZD) by classification at 3223 Old Greenwood Road*) (*Planning*).

Mrs. Rice briefed the Board on the item advising such is per the request of Brett Abbott, agent for Laura Hutchinson. The subject property is located on the east side of Old Greenwood Road, south of Dallas Street and north of Gary Street, and contains an area of 0.37 acres. The purpose of the rezoning is to allow the existing building to be utilized as an antique jewelry shop and to allow other uses listed within the land use chart. The Planning Commission held a public hearing on April 13, 2021 with no individual present to speak either in favor or opposition to the request. The Planning Commission voted nine (9) in favor and zero (0) opposed to recommend the matter to the Board of Directors for consideration.

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Settle, seconded by Martin, moved adoption of the ordinance. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance by caption for its readings. Prior to the vote, Director Dawson questioned the current zoning classification and the actual physical location of the subject property.

Mrs. Rice reiterated the subject property currently maintains a Transitional zoning classification and the property is located south of Dallas Street and north of Gary Street; across from Armstrong Bank; and, close to Southside High School.

The motion remaining on the floor and the members present all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 43-21.

Item No. 4 was an ordinance zoning identified property and amending the zoning map (*from Planned Zoning District (PZD) to Planned Zoning District (PZD) by classification at 3123 Jenny Lind Road*) (*Planning*).

Mrs. Rice briefed the Board on the item advising such is per the request of Jesse Fenwick, owner. The subject property is located on the northeast corner of Dallas Street and Jenny Lind Road, and contains an area of 0.56 acres. The purpose of the request is to expand the allowed land uses to support the fund-raising and educational mission of the existing feline rehabilitation and rescue center. The Planning Commission held a public hearing on April 13, 2021 with no individual present to speak in opposition. The Planning Commission voted nine (9) in favor and zero (0) opposed to recommend the matter to the Board of Directors for consideration.

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Dawson, seconded by Good, moved adoption of the ordinance. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance by caption for its readings. Prior to the vote, Director Martin requested clarification that the fund-raising and education mission is referring to construction of the stage on the subject property. He further questioned if the City was aware of the stage, and if any concern with regard to noise has been conveyed to the City by tenants of the nearby apartment complex.

Mrs. Rice confirmed the fund-raising and educational mission does refer to the stage. She further confirmed that the City was not aware the stage was in place until after its construction. With regard to concern or complaints, none have been received whereby it was noted that many of the nearby residents are and will be participants of fund-raising and educational events to be held on the stage. She further added that although there will be mics utilized, all events will cease at 11:00 p.m. and screening of the subject area is also required.

The motion remaining on the floor and the members present all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 44-21.

Item No. 5 was an ordinance amending the 2019 Unified Development Ordinance of the City of Fort Smith (*Planning*).

Mrs. Rice briefed the Board on the item advising the proposed amendments to the Unified Development Ordinance (UDO) adds a provision to the UDO that allows business park or multi-tenant signage when the following criteria are met:

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- a) the tenants are located within the same development, subdivision, lot, tract, or parcel
- b) business park/retail centers shall be limited to one sign and shall comply with the general sign standards as well as the sign standards for the specific zoning district or overlay district
- c) business park/retail centers with more than six (6) lots or tenants may increase the sign area by an additional twenty (20) percent provided the sign area does not exceed 300 s.f. and the height does not exceed 30 feet

The proposed will eliminate the need for variance requests from the definition of a business sign, which requires all signage to be located on-site. Business park/multi-tenant signs reduce sign proliferation and allows such without the necessity of a variance making the issue a more attractive signage option. The Planning Commission held a public hearing on April 13, 2021 with no individual present to speak. The Planning Commission voted nine (9) in favor and zero (0) opposed to recommend the proposed amendments to the Board of Directors for consideration.

Settle, seconded by Rego, moved adoption of the ordinance. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance by caption for its readings. Prior to the vote, Director Settle questioned what prompted the proposed amendments.

Mrs. Rice advised that such was prompted due to several variance requests for said matters submitted to the Planning Commission. Upon approval, the proposed will remove the requirement for a variance from the Planning Commission and authorizes such provided all of the above criteria are met.

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The motion remaining on the floor and the members present all voting affirmatively, the Mayor declared the motion carried. Settle, seconded by Martin, moved adoption of Section 3 the emergency clause. The members present all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were declared adopted and the ordinance was given Ordinance No. 45-21.

Item No. 6 was a resolution to accept the bid and authorize a contract for the Cell A-6 construction, wheel wash pad construction, and culvert/road repair at the Fort Smith Sanitary Landfill, Project No. 016-001-35197320 (*\$9,576,634.25 / Solid Waste Services / Budgeted - Solid Waste Sinking Fund*).

Administrator Geffken simply advised the proposed item authorizes a contract for construction of Cell A-6 and wheel wash pad, and culvert road repair at the Fort Smith Sanitary Landfill. In order to place the item on the floor, he recommended a motion and second to adopt the item; however, he further requested the Board then table consideration of the item.

Settle, seconded by Catsavis, moved to table consideration of the resolution to the November 2, 2021 regular meeting and that discussion of the matter be scheduled for a future study session. The members present all voting affirmatively, the Mayor declared the motion carried.

The consent agenda (Item No. 7) was presented for consideration, the items being as follows:

- A. Resolution setting a public hearing date on petition to vacate a portion of North 21st Street right-of-way in Geo S. Birnie Addition, an addition to the city of Fort Smith, Arkansas (*Planning*)

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- B. Resolution authorizing a change order for the 2019 Traffic Signal Improvements, Project No. 19-09-A (add 34 days) *(Engineering) ♦ Future Fort Smith Item*
- C. Resolution accepting completion of and authorizing final payment for the 2019 Traffic Signal Improvements, Project No. 19-09-A (\$36,934.38 / *Engineering Department / Budgeted - Sales Tax Program*) ♦ *Future Fort Smith Item*
- D. Resolution accepting completion of and authorizing final payment for the 2020 Street Overlays/Reconstruction, Phase A, Project No. 20-03-A (\$354,619.78 / *Engineering Department / Budgeted - Sales Tax Program*) ♦ *Future Fort Smith Item*
- E. Resolution authorizing the execution of an Assignment of Claim against Micromobility Transition, Inc. f/k/a Zagster, Inc. *(Administration)*

Catsavis, seconded by Settle, moved adoption of all consent agenda items. There being no director commenting and the members present all voting affirmatively, the Mayor declared the motion carried and the resolutions were adopted and given Resolution No. R-60-21 through R-64-21 respectively.

Mayor McGill opened the Officials Forum with the following comments offered:

- Mayor McGill

- Re:
- 1. Regarding the recently held Steel Horse Rally, he extended much appreciation to the Fort Smith Police Department (FSPD) and Fort Smith Fire Department (FSFD), along with all emergency services present, for their service during the event citing many positive comments were received regarding same, as well as the for the overall event.
 - 2. Announced he recently recognized “two (2) fine young men” and Northside High School graduates, i.e. Tre Norwood and Kiondre Thomas, for being selected as prospects in the National Football League (NFL) 2021 Draft.

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3. Reminded all of the upcoming Old Fort Days Rodeo, which is set for Monday, May 31 through Saturday, June 5, 2021. Although he encouraged all to attend the event, he cautioned that COVID-19 is still present; therefore, he urged attendees to continue to adhere to social distancing and safety protocols.

■ Director Catsavis

- Re:
1. Noted that the mayor of Barling recently suffered a severe medical event; therefore, he extended well wishes for a speedy recovery.
 2. Expressed concern with getting applicants for the FSPD and FSFD, and inquired if the City can consider a startup bonus to entice more applicants. He further inquired of the starting pay for the FSFD.

Administrator Geffken advised such can be considered; however, he advised the difficulty is finding qualified applicants. He further reminded all that the FSPD and FSFD are currently accepting applications.

Fire Chief Phil Christensen advised starting pay for an entry firefighter is \$12.50 per hour with mandatory overtime, which results in an annual salary of approximately \$38,000 whereby Director Catsavis simply responded, *“that’s embarrassing.”*

■ Director Rego

- Re:
1. Extended much appreciation to Judge Amy Grimes for inviting him, and the Mayor, to speak at a Hope Court event whereby an individual was recognized for completion of the program. He noted that said program is changing lives and he was honored to attend.

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2. Noted Director Martin's recent YouTube weekly video segments entitled "Give Me Five" whereby he extended much appreciation for same citing such are very informative and encouraged all to view.
 3. Announced he and his family recently attended the Immaculate Conception School carnival citing such was a *"resounding success."*
 4. Reminded all that the new Blue Ember Smokehouse is now open and looks to be an *"incredible new dining option"* in the city.
 5. Acknowledged the passing of a local man that perished due to a motorcycle accident over the weekend, and requested all to remember his family and friends in their prayers.
- Director Dawson
 - Re: Reminded all that Parrot Island Waterpark will officially open on Saturday, May 15, citing she's already purchased her season pass and is looking forward to seeing the new additions to the facility and things *"getting back to normal."*
 - Director Martin
 - Re: Regarding the recently held Steel Horse Rally, he inquired if preliminary numbers are available with regard to attendance at the event. He also extended much appreciation to the FSPD and FSFD for their presence citing he would like to see more like events in the city.

Tim Jacobsen, Executive Director of the Convention and Visitors Bureau advised it's been determined that 126,606 individuals were in the Downtown Entertainment District throughout the event.

Mayor McGill further extended much appreciation to Communications Manager Shari Cooper for covering the event and posting various items to social media.

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- Director Good

Re: Regarding the recent storms and tornados, he extended much appreciation to teachers at Morrision and Spradling Schools, who pulled together and helped many of the adjoining neighbors to remove storm debris. He further extended much gratitude to the multiple public safety personnel, as well as people of the community that pitched-in to *“help people they didn’t even know.”*

- Administrator Geffken

Re: 1. Reminded all of the upcoming Ward 2 Neighborhood Meeting, which is scheduled for 6:00 p.m., Thursday, May 20, 2021 at the Blue Lion, 101 North 2nd Street.

2. Urged all to visit the Trader Joe’s website, which maintains an option to request they open a store in Fort Smith. He encouraged all convey their desire in hopes that Fort Smith will be selected.

3. Regarding the recent storms and tornados, he also extended much appreciation to multiple City Departments, i.e. FSPD, FSFD, Streets and Traffic Control, and Solid Waste Services, who provided much needed assistance and service to the community.

4. Also conveyed much appreciation to Communications Manager Shari Cooper, who done an excellent job in showcasing the Steel Horse Rally for the city.

5. Extended much appreciation to Director of Solid Waste Services Kyle Foreman for his hard work and service to the city of Fort Smith for the last three (3) years. May 14 will be his last day with the City as Mr. Foreman has accepted a position with the City of Billings, Montana.

6. Read a prepared statement providing an update on the Consent Decree, which is attached as Exhibit A.

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Such prompted multiple inquires regarding potential rate increases, grant availability for projects, confidentiality agreement, and requirements whereby Administrator Geffken responded to each inquiry accordingly.

Director Settle reminded all that he voted against accepting the requirements of the Consent Decree; however and although he acknowledged the City should and will continue to strive to complete the necessary improvements, he requested Administrator Geffken talk with the City's legal team to determine if now is the time to discuss taking the matter "to court."

Director Rego noted that recent legislative actions by the Arkansas General Assembly addressed certain issues regarding the matter; therefore, he requested Administrator Geffken gather such and provide to the Board.

There being no further business to come before the Board, Settle moved that the meeting adjourn. The motion was seconded by Catsavis, and the members present all voting aye, the Mayor declared the motion carried and the meeting stood adjourned at 7:22 p.m.

APPROVED:



VICE-MAYOR

ATTEST:



CITY CLERK

Consent Decree Summary

The City has made every effort to try to productively engage with EPA and ADEQ to reset our consent decree requirements to something that makes sense for our system and that is affordable. We have sought to talk with the State (Attorney General's Office; ADEQ), US EPA, USDOJ and have been assisted by our congressional delegation.

After several years of frustrating interactions, we had a high-level meeting with DOJ (Acting Head of Environmental Litigation) and USEPA (Assistant Administrator of the Office of Enforcement). We thought that meeting was a turning point in our negotiations with EPA's Assistant Administrator for Enforcement, Susan Bodine, actively working to understand our circumstances and best path forward.

Following that meeting, the USDOJ attorney who handled our case retired. DOJ also then asked us to sign a second confidentiality agreement, which we did last December.

Since our September 2020 meeting, there has been no progress in our negotiations. We think the last administration ran out of time on our modification and the new administration has not been able to engage yet either. I am told by our counsel that numerous other cities are in the same position.

During this lull, the federal district court issued its decision on our request for an interpretation of which sewer defects we have to fix now as well as our request to change the consent decree to reflect our current needs and priorities as well as our available revenues.

The Court agreed that we should get five more years to implement the decree requirements. The order also signaled to EPA/ADEQ that the City should get some additional time due to the impacts of the 2019 Flood and CV-19 pandemic.

However, the Court ruled that the City must fix all Category 4 and 5 defects within the 4-5 year deadline in the consent decree from the date of discovery of the defect. The order also denied our request to recast the consent decree due to our financial inability to continue to afford the requirements. The Court held that even if the City's financial projections were accurate, we have not met our burden to have the Court revise the consent decree.

We think the court erred regarding which 4 and 5 defects we must fix. The consent decree has a decision tree at appendix D and the Court's ruling erases from that decision tree one of the two branches as well as removes a key remedial measure from the one remaining branch. We think this is clearly erroneous and are filing an appeal with the 8th Circuit Court of Appeals. We have nothing to lose.

We will also appeal the Court's unwillingness to reform the consent decree.

As always, we continue to hope that the State and USEPA will work with us constructively to identify the right path forward for the City's program, especially in light of our other needs including drinking water.

While our appeal is pending, we are left to comply with our consent decree and that means we need to increase rates along with pursuing all other funding sources. We are reaching out to the State and EPA about any grant or grant-equivalent funding that might be directed to the City. We are also hopeful that the federal infrastructure bill will include funds for the City's program. However, rate increases will have to be a part of the funding solution. Barring success on appeal or federal/state grant funding support, we face significant annual rate increases to meet our consent decree obligations.

On the subject of drinking water, we have two large projects to be completed. The replacement of the 100 year old, 27 inch water transmission line with a 48" inch transmission line needs to be completed. Not only is replacing the 27 inch line timely, given its age, but we need to accommodate the City's and the region's growth.

The second project is the refurbishment and expansion of the Lake Fort Smith water treatment facilities. It's been 15 years since Lake Fort Smith was expanded and the water treatment facility needs refurbishing. The facilities need to be expanded in order to meet our City's and region's projected demand for water.

The City of Fort Smith will receive grant funds from the American Rescue Plan which we plan on using to address our priority drinking water needs.