

LEGAL AND FINANCE COMMITTEE MINUTES  
Rapid City, South Dakota

January 29, 2020

A Legal and Finance Committee meeting was held at the City/School Administration Center in Rapid City, South Dakota, on Wednesday, January 29, 2020, at 12:30 p.m.

A quorum was determined with the following members answering the roll call: Becky Drury, Darla Drew, Ritchie Nordstrom, Lance Lehmann, and Laura Armstrong. Absent: Chad Lewis

(NOTE: For sake of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents are on file with the Master Agenda.)

**ADOPTION OF AGENDA**

Motion was made by Armstrong, second by Lehmann and carried to adopt the agenda.

**GENERAL PUBLIC COMMENT**

**CONSENT ITEMS**

Motion was made by Drew, second by Armstrong and carried to approve Items 1-12 as they appear on the Consent Items with the exception of item no. 8.

- 1) Approve Minutes for January 15, 2020

**MAYOR'S OFFICE**

- 2) LF012920-05 – Confirm the Appointments of Dan Tribby, Todd Hollan, Jerry Schmidt, Nick Patton, and Rick DenHerder to the Downtown Business Improvement District Board

**POLICE DEPARTMENT**

- 3) LF012920-04 – Approve Law Enforcement Agreement between the City of Rapid City and the South Dakota School of Mines & Technology

**FIRE DEPARTMENT**

- 4) LF012920-06 – Authorize Mayor and Finance Officer to Sign Resolution No. 2020-005, A Resolution of Intent to Enter into an Agreement for Exchange of Real Property with Black Hills Federal Credit Union

**FINANCE DEPARTMENT**

- 5) Acknowledge the Following Volunteers for Worker's Compensation Purposes: Jazzmyn Potter (RSVP+)
- 6) LF012920-01 – Approve Resolution No. 2020-004 to Update Petty Cash Funds and Change Funds
- 7) LF012920-07 – Authorize Mayor and Chief of Police to Sign the 2020 Federal Equitable Sharing Agreement
- 8) LF012920-10 – Drew asked Director of Parks and Recreation Jeff Biegler why these items are being surplus. Biegler explained that one item is a 19 year old John Deere tractor the cemetery has been using that will be used as a trade in for a newer piece of equipment. He said he does not have information on the other item at this time. Nordstrom moved to approve Resolution No. 2020-006 A Resolution Declaring Miscellaneous Personal Property Surplus to be Surplused. Second by Armstrong. Motion carried.
- 9) LF012920-11 – Acknowledge December 2019 General Fund Cash Balance Report

**CITY ATTORNEY'S OFFICE**

- 10) LF012920-03 – Approve Rapid City Youth City Council Bylaws
- 11) LF012920-08 – Authorize Mayor and Finance Officer to Sign Release of Agreement Waiving Right to Protest for Lot 4 of LJS Subdivision
- 12) LF012920-09 – Authorize the Mayor and Finance Officer to Sign Agreement Between the City of Rapid City and the Abbott House, Inc., for the Use of City Vision Funds to Help Construct Two Therapeutic Foster Homes

END OF CONSENT CALENDAR

**NON-CONSENT ITEMS** – Items 13 – 15

**Public Comment opened** – Items 13 – 15

**Marvin Kammerer** spoke on item number 14 in support of the preservation and protection of the environment for generations to come. He stated these companies drill holes thousands of feet deep sometimes punching through different aquifers which they may or may not get around to plugging, and have neglected to do so in the past; and they use things now to aid in drilling and in getting the gold prospects out, which we don't know everything they use, so allowing companies (not local) free access to go ahead and drill is nothing but a pretense in the first step in mining. If we have learned any lessons at all, it should be from what has occurred in the past, which is, any time these miners are done, South Dakota is left with the mess and we have to depend on the local and federal government to try to correct their screw-ups. He added that firefighting foam has poisoned the wells of some of his friends who cannot grow even a garden and that water is in the soil that is moving towards Boxelder Creek.

**Rick Bell** spoke on item number 14 requesting the committee to support this resolution. He explained that based on historical experience, we know that gold mining wrecks the environment and creates such things as acid mine drainage. He shared a photo of a river in Colorado where there was a gold mining operation in which the EPA caused an accident. He noted that even though they took responsibility for the incident, they refused to pay for damages on the grounds of sovereign immunity. Bell referenced the photo to show what Rapid Creek could look like after a spill with the toxic chemicals such as cyanide that are used to extract the gold, which would create huge hazards to Pactola Reservoir and all of the downstream water supply to Rapid City. He added that mining should not be allowed for this reason alone but also because it would negatively affect the recreation in this area, which is part of our local tourism economy. He finished with saying it is our responsibility to protect the City's water supply for all of the residents and businesses of this community as well as Ellsworth Airforce Base.

**Jerry Munson**, who is in the tourist industry, spoke on item number 14 regarding his concerns with the risks of contaminating the water supply and does not want to see us go through what Flint Michigan is going through. He stated that 90% of Rapid City's water supply is from the Madison aquifer which is extremely pure and is relatively inexpensive to bring to everyone's homes and businesses. He wonders what it would do to Ellsworth Airforce base as they get most if not all of their water from Rapid City and to the new Civic Center going up that we want to fill with people. He asks: what is the cost to Elevate Rapid City and their goals; to our citizen's health; to the new schools that will hopefully go through, to our local and regional economy in general? He believes it would be devastating when compared to the miniscule economic benefit that some foreign company would get when they take the money, take the gold and leave us with a big mess. He urges the committee to pass this resolution unanimously.

**Mark Tilson** spoke on item number 14 regarding his concerns with the 1872 mining act, that the Forest Service cannot say no to, which puts a huge responsibility on the local government because the mining industry has lobbied for over a hundred years to protect that act. He said we would be allowing an out of state exploration company to come in and explore under a law that is over 100

year old and then facilitate them selling it to a mining company, selling our future and our water to a mining company. He feels it is time to stand up at this point. He is a founder of the Tanka Bar and his company is very active in the outdoor industry. Tilson is of the opinion that gold mining is no longer compatible even though there are marketing people in the tourism industry that say gold mining can be used as tourism development. He believes Rapid City is fast becoming a lifestyle City where people are coming to hike, bike and backpack and if Rapid City wants a progressive healthy future, then we have to recognize that we are in a very delicate watershed and need to all work together to protect it. He added that the federal government has made it clear that we cannot rely on them to protect our water.

**Dennis Yellow Thunder** a member of the Black Hills National Forestry Advisory Board, spoke on item number 14 reminding the committee of the sacredness of the Black Hills and the many aquifers, and to allow this type of exploratory gold drilling would damage the stratigraphy underneath Pactola Lake and affect the integrity of the area. He said these companies have a categorical exclusion, which does not normally create significant individual or cumulative effects on the human environment with "human" being the key word; however, it does not waive or fulfill NRCS compliance with the National Historic Preservation Act section 106, 800 regulations, or the Endangered Species Act. He asks you to keep in mind the sacredness of the Black Hills, the water-which is our first medicine, bald eagles, hawks, Rocky Mountain sheep and all kinds of animals. He said the Endangered Species Act will probably kick in and also mentioned tribal consultation, none of which has been done yet, so we cannot even talk about allowing anything to happen out there in regard to the safety and all of the things he has mentioned. He wants to go down on record as supporting this resolution.

**Jolie McCoy**, a member of the Sierra Club, spoke on item number 14 and the three issues that she has found: 1) the water which has been mentioned; 2) no extensive study has been done on the effects of the plants and animals; 2) the amount of traffic that this would bring as a nuisance as well as an environmental impact. She strongly supports this resolution.

**Dr. Liliias Jarding** spoke on item number 14 beginning with informing the committee that the Forest Service says there are currently four companies that are active in gold exploration in the hills; two of which have not been made public. The other two are both in the Rapid Creek watershed. Her concerns are with some of the things that have already been mentioned but touched on some of the things that haven't been mentioned starting with the gold mining that has left the northern Black Hills with two Superfund sites which are among the most polluted sites in the country. Some of these sites have been abandoned and the bonding was not adequate, which is a problem the state has not solved. She said mining is temporary but our tourism economy is permanent. She shared a map which shows claims from these companies starting just north of Sheridan Lake all the way up just past the Lawrence County line, most of which are along Hwy 385, the spine of the Black Hills. She wanted to make clear that the geology of the situation is that Rapid Creek coming down through the dark canyon area, drops water out of the bottom of the creek that feeds the Madison aquifer and that feeds the Minnelusa aquifer, so the creek and those two aquifers supply 100% of Rapid City's water. If there was an accident all of Rapid City's water could be contaminated within a very short period of time.

**Helen Tjader** spoke on item number 14 and would like to see the City step up to oppose unnecessary risks to our water supply. The potential costs outweigh any potential benefits to the public good by failing to protect the quality of our primary source of water. There is too much risk to the water resources of Pactola and Rapid Creek. Pactola is 800 acres (5300 acres square feet) and cannot be replaced. Tax payers have a critical interest in its water security. She pointed out studies have shown that 74% of operating gold mines polluted surface water and/or groundwater including drinking water. She also informed the committee that F3 had no personnel at the Black Hills National Forest open house earlier this month, they were not on hand to face the critiques of their plan, they have not released their plan of operations for public review, they are not engaged with the community nor will they likely have to face the music in the event of any contamination and our City Council would be left with that. She said the public and the City Council should be

presented with professionally prepared hydrological plans, transport models, preventions and emergency measures for spills in the drill exploratory phases, professional assessments for roads, road conditions-especially for the new roads in the area, plans for protection of cultural resources and details of commitments for restoration and capping of drill site protections. However, considering all of the substantial risks of gold mining and the risk to the watershed, she urges the committee and the City Council to object to any drilling exploratory or otherwise for the safety of the children, the community, our recreation and tourism resources, our agricultural interests and for the financial risk to our City. Water is worth more than gold.

**Waylon BlackCrow Sr.** from the Pine Ridge Indian Reservation, spoke on item number 14 and his concerns regarding their current water supply. The water is brown where he lives and says the water was clear at one time. He said fish are jumping out of the water and he is seeing dead birds. He wants to see mother earth protected.

**Carol Merwin** spoke on item number 14 by reading a letter she sent to the Forest Service in opposition of gold exploration in which she addressed the risks to the water supply, the messes that are left behind for the community to clean up, the noise pollution, and all the living things who suffer from unintended consequences.

**Samantha Pond**, a member of the Oglala Sioux Tribe, spoke on item number 14. She began by saying it is all of our jobs to protect the earth for she (the earth) is dying and we have to do what we can to act together quickly if we want to save her. She asked the Committee to do all in their power to protect the water and our sacred land. She asked the committee to consider that the water is our first medicine, to consider what happens if they do find gold and how that will affect the land and the water and the people. She said there will be thousands and thousands of miners and they will tear apart the earth and target her Native American sisters. She asked the Committee to consider all of the Native American women that will be murdered.

**Gena Parkhurst** spoke on item number 14 as a person who was born with birth defects caused by contaminated drinking water at Camp Lejeune in North Carolina and said she appreciates the abundant and affordable clean water available to City residents. She is concerned that proposed gold drilling near Pactola will lead to gold mining and drillers talk about finding the next home state gold mine up there. She understands that Rapid City's water supply is key to residential and business growth so city officials must decide whether this proposal is in the public interest. She feels it is not and urges the City Council to sign this resolution.

**Ann Sandberg** spoke on item number 14 appealing to the committee and the public by sharing some startling numbers to keep in mind. Brougham Mining abandoned a 360 gilt-edged mine in 1998 and left behind a 258 acre open pit, 150 million gallons of heavy metal laden water in three open reservoirs, 3.3 million tons of mined ore and 12 million cubic yards of acidic waste rock-contaminated by arsenic, lead and cadmium. Two years later it was declared a Superfund site, so as of 2017, \$120 million dollars had been spent and 6.4 million of that was South Dakota money. \$40 million was Brougham Mining and their associates. They plan on spending another 80 million dollars to consolidate the three ponds and secure them, but the main source of pollution, the runoff from this 12 million cubic yards of acidic waste rock, remains. The EPA treats about 95 million gallons of the water that they can capture annually, but after they treat it, it gets dumped into Strawberry Creek and then drained into the Bear Butte Creek. This does not remediate the entire problem and small amounts of cadmium still flow through the watershed and out onto the plains which has been going on for over twenty years. Reclamation occurs in perpetuity; we are not going to solve this quickly and we need to be aware of the ramifications of such a thing.

**Bruce Ellison** spoke on item number 14. He lives in Dark Canyon and has been involved in water protection issues for about the last ten years. Ellison has a well in the Minnelusa but also gets a little Rapid Creek water so protecting the Rapid Creek watershed is very personal to him and his family. Ellison is very concerned and urges the City to do something now, because with the kind of detailed exploration that is going on with geologically mapping the area, he feels these companies are not just looking for things, they are looking for where they are and how to best develop them. The fact that there are two companies almost adjacent to each other in the same area, shows they

are pretty certain they are going to find things. He said the City has a wonderful statement that says its responsibility is to provide clean water to the people. He said it is important these companies hear from the City because the City has a greater influence and then together we can send a clear message that water is more important than gold. He added that this is a central water body flowing out of the eastern part of the Black Hills and also goes into our agricultural community which is the foundation of our economy. He asks the City Council to pass this resolution.

**Carla Marshall**, an enrolled member of the Cheyenne River Sioux Tribe, spoke on item number 14 beginning with recognizing her ancestors who gave their lives to protect this land, their ancestral homeland. She went on to remind people the Black Hills is home to all creatures and plants who cannot just go to Walmart and buy bottled water so it is our job to protect them and protect the water. She added that water is alive, it has spirit, it needs to be recognized as a living entity, and it should be put on the endangered species list for perpetuity. Marshall also said Rapid Creek is about 87 miles long and goes all the way down to the Missouri River and there have been recent talks of piping water from the Missouri River back here for this area, so why would we even consider allowing a huge mining company to come in and pollute, such as what Wharf Mining has done in Strawberry Creek. She further stated the water from Rapid creek goes into Cheyenne and it goes right by the communities where her family lives. She fully supports this resolution for the protection of the water and land.

**Public Comment closed**

**FINANCE DEPARTMENT**

- 13) LF012920-02 – Drew moved to approve the Introduction and First Reading of Ordinance No. 6387 Regarding Supplemental Appropriation #1 for 2020. Second by Nordstrom. Motion carried.

**ITEMS FROM THE PUBLIC**

- 14) LF012920-12 – Drew thanked Dr. Jarding for bringing this resolution forward and is in full support of it. Armstrong thanked everyone that spoke or showed up today which means a lot to her to see everybody involved. To be fair, Armstrong asked if there is anyone here today that is against this resolution and there was no one, which indicates clearly that the people who live here, play here and visit here want clean water. She will proudly support this resolution. Nordstrom shared a quote and his support for this resolution. Drury commented that she has spoken with Public works and they assured her they have been watching the water with all of the mining that started up in the Rochford area. She said the City has also hired an engineering firm “RESPEC” that is watching this for the City as well, so the City is involved, watching and being aware of what is going on. Drury would prefer to see a shorter resolution brought before the City Council on Monday night. Drew moved to approve the Request from Liliias Jarding for City Council to Approve Draft Resolution Expressing Opposition to Gold Exploration in the Rapid Creek Watershed. Second by Nordstrom. Lehmann, Armstrong, Drew Nordstrom voting “Yes”. Drury voting “No”. Motion carried 4-1.

**ADDENDUM NO. 1**

**FINANCE DEPARTMENT**

- 15) LF012920-13 – Finance Officer Pauline Sumption explained that the December 16<sup>th</sup> minutes that were published did not include the full body of those two resolutions, so this would correct that. Nordstrom moved to approve Resolution No. 2020-008, a Resolution Acknowledging Corrections to the December 16, 2019 Council Minutes. Second by Drew. Motion carried.

**ADJOURN**

There being no further business to come before the Committee at this time, motion was made by Armstrong second by Drew and carried to adjourn the meeting at 1:31 p.m.