

LEGAL AND FINANCE COMMITTEE MINUTES
Rapid City, South Dakota

February 12, 2020

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

A quorum was determined with the following members answering the roll call: Becky Drury, Darla Drew, Lance Lehmann, Chad Lewis and Ritchie Nordstrom. Absent: None

(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 Drew, second by Nordstrom and carried to adopt the agenda.

GENERAL PUBLIC COMMENT

None.

CONSENT ITEMS

Motion was made by Lewis, second by Lehmann and carried to approve Items 1-10 as they appear on the Consent Items with the exception of Item Nos. 2, and 10.

CONSENT ITEMS -- Items 1 – 10

Public Comment opened – Items 1 – 10

Public Comment closed

Remove Items from the “Consent Items” and Vote on Remaining Consent Items

- 1) Approve Minutes for January 29, 2020

POLICE DEPARTMENT

- 2) LF021220-07 – Nordstrom asked Assistant Police Chief Don Hedrick to give a brief overview of this item. Hedrick explained that traditionally law enforcement has leaned very heavily on the jail to deal with minor offenses such as low level alcohol related offenses. Law enforcement has come to find out that the jail is not only inefficient to add treating the underlying root cause behind the alcohol offense, but is also very expensive and costly. He said that for a low level alcohol violation, not only does it take up the time of the officer, it takes up the time of the booking clerk, the attorneys, the judges, the folks that then have to put through a warrant, and in the end, never getting to the underlying causes or treatment. Hedrick informed the committee that this funding would go to continuing support of the Quality of Life Unit. The Quality of Life Unit has stepped outside of the box in reaching out to vulnerable people that need help in getting these underlying root causes treated and they have had some great success stories lately regarding some individuals they were dealing with on a daily basis that they no longer are. This is great for the individuals, for the police department and for the tax payers. Drew asked what the dollar amount of the grant is and how many officers it covers. Hedrick said he anticipates the amount to be similar to last year (2019) which was \$134,614.00 and it will cover two existing positions that support the officers and will also help fund some victims services, research, some pairing up with some of the victims services to figure out how to connect better, and to figure out how to bring things to the next level. Nordstrom moved to Authorize Mayor and Finance Officer to Sign and Accept if Awarded the State Victims of Crime Act (VOCA) Grant. Second by Drew. Motion carried.

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- 3) LF021220-08 – Authorize Mayor and Finance Officer to Sign and Accept if Awarded the 2020 Community Oriented Policing (COPS) Cops Hiring Program (CHP) Grant

FIRE DEPARTMENT

- 4) LF021220-09 – Authorize Mayor and Finance Officer to Sign Agreement Between the City of Rapid City and Black Hills Federal Credit Union for Exchange of Real Property

FINANCE DEPARTMENT

- 5) Acknowledge the Following Volunteers for Worker's Compensation Purposes: John Goff (Library)
- 6) LF021220-01 – Approve Resolution No. 2020-007 a Resolution Declaring Miscellaneous Personal Property Surplus
- 7) LF021220-02 – Authorize Mayor and Finance Officer to Sign Amended Renewal Ready Subscriber Agreement with Black Hills Power, Inc., dba Black Hills Energy
- 8) LF021220-04 – Approve Resolution No. 2020-012 a Resolution Declaring Miscellaneous Personal Property Surplus
- 9) LF021220-05 – Approve Resolution No. 2020-013 a Resolution Levying Assessment for Abatement of Nuisances
- 10) LF021220-06 – Drew asked Tracy Davis from the Finance Office why Mr. Herrera received this abatement. Davis explained that in his instance, he was on military deployment and was not available at the time to request the exception. Nordstrom moved to Approve Request for Property Tax Abatement as Follows: Erik Herrera, 2019, \$394.80 [Combined Total for all Rapid City: \$394.80]. Second by Lehmann. Motion carried.

END OF CONSENT CALENDAR

NON-CONSENT ITEMS – Items 11 – 13

Public Comment opened – Items 11 – 13

Bill Freytag spoke on item number 12 regarding his issues with this ordinance. He does not have a problem with a pre-construction meeting, but has two issues with the way the ordinance is written. His first concern is that a single engineer that reviews the plans can hit the brakes, which leaves Freytag stopped until that individual says “your plans are finally complete,” even though he has hired a licensed engineer who has a checklist (provided by the City) that he has gone through before the plans are ever submitted; and when his engineer submits the plans to the City, there is one engineer who can say “I don’t like these plans,” leaving Freytag with no appeal process available to him. He said he has always been able to appeal any of the staff’s decisions to the elected officials. He shared with the committee, the checklist that is provided to his engineer. His second issue with the ordinance is that all of the plans that he has submitted have met everything in the checklist, if they have not met the checklist, then Planning and Zoning sends his engineer home and tells him to bring it back when everything on the checklist is done and at that point the clock is already stopped. He stated “if any of you have ever had to work with engineers, here is what they do: their most favorite line is “Well, that will work, but that is not the way that I would do it,” so his engineer stamps it, but that is not the way it will work; that is not the way a city engineer says it ought to be, so the City Engineer overrides his engineers stamp. He believes the City Engineer cannot override his stamp, he cannot re design his plans, he cannot do any of that by state law; but what he can do, is stop it and blackmail and hold his engineer hostage, until he gets his way, which is not fair to Freytag. He feels this pre-submittal meeting is fine for the two engineers to go over the plans, pointing out anything obvious that needs to be corrected, then they can go

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back and do it and bring it back to the City to look at again. The other thing that is wrong he believes, is all of the check list things do not apply now and that it is just two engineers where one doesn't like the way the other one did it and Freytag does not have a criteria list that his engineer had to meet. He strongly believes this ordinance is not ready for a first or second reading, but has to be redone and he is willing to spend time to help come up with a solution. Another thing he wants the committee to be aware of is that he is of the opinion that the City takes too much time to review the plans, and does not stick to the 13 day calendar that they are required to. He shared an instance in which he lost over a month on a recent five lot plat on Lennon Lane Fire. There are many times plans are redlined many times over and he would like to see all of the red lines at once.

Kyle Hibbs from KTM Design Solutions spoke on item number 12 regarding the two things he has an issue with: 1) there is no appeals process to the City Council and 2) there is no clear criteria identified that the plans are going to be evaluated on. He said a vague complete design is not specific enough for him and he would like to know exactly what items are going to be looked at and what needs to be provided because he might provide too much, whereas another consultant might spend half the time and provide just enough. It is just not clearly laid out to him.

James Maggard spoke on item number 13 providing an explanation for his request to waive the property assessment since he was not in ownership at the time the code violation occurred. He was living in a different state and became the homeowner three days after the code violation was assessed; therefore, unable to do anything with the property.

Public Comment closed

FINANCE DEPARTMENT

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

COMMUNITY DEVELOPMENT

- 12) 200A001 – Nordstrom addressed the appeal process, pointing out that in the current language there are four different places where an appeal process is mentioned and asked Mr. Hibbs if any of those addressed his concerns. Mr. Hibbs said the way he reads the language is that the timeline has not started on his development engineered plans until the review engineer has given approval that it can start, and this meeting happens pre application; therefore, there is no appeals process to go through since the timeline has not begun. How Mr. Hibbs believes it is going to work is that he as a consultant, is going to sit down with one of the review engineers at the City to go through the plans to make sure they are complete; if the review engineer does not believe they are, they can tell Planning and Zoning not to accept the application, which means a timeline has not begun, so he would have no appeals process to convince that review engineer that his plans are complete. Nordstrom asked Planning Manager Vicki Fisher for clarification regarding the appeal process. Fisher began by saying the process today is that it is rare, if ever, that the City receives stamped plans by the design engineer as part of a development engineering plan application. The Review Committee that Mr. Freytag and Fisher were a part of, anticipated getting somewhere close to 90% completed plans, noting that there would be some items that would have to be worked out with city engineers based on City utility and drainage information that they may not have. In actuality, what is being received is 35% to 65% completed plans. When the plans come in, the City has 15 days to review those plans assuming that they were going to be ready for a signature by the design engineer, and they are not. So, after about 10 days the City suspends them and sends out a suspension that says the City can suspend the plans for up to 90 days so that the developer's design engineer can work with the City Engineer. If more time is needed beyond that, than an appeal needs to be made to City Council before that date to ask for an extension. (This has been working within that 90 day time frame.) She went on to say that there is a lot of back and forth

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because the City Engineer may make the statement “there is currently not sewer capacity available for this subdivision, how are you addressing it?” So there are not just the redline comments, it might be that there needs to be something designed and a report may need to be brought in which of course means, there is going to be some back and forth on it. Fisher thinks that there is credibility in the comments that have been heard today and that if at the end of the pre submittal meeting, the engineer of record for the developer believes that the plans are ready for final signature, and is wanting to submit them and the engineering staff is saying that they are not ready, we could certainly write in an appeal revision in that step similar to what you see once the plans are accepted and there are additional comments; that appeal would come to the City Council for final decision. Development Group Coordinator Todd Peckosh defined stamped plans as construction plans that are sealed and signed by the developer’s professional licensed engineer before the City approves them. He explained that plans that are initially submitted, are not stamped, they are considered preliminary; so, once all of the comments have been addressed from staff and it can be approved, then the City receives signed plans, which are the plans that go out for construction. Peckosh addressed the public comments regarding multiple sets of comments. He said that consultants do receive comments back from the City more than once, which is one thing they are trying to address with this ordinance. He said if the City receives preliminary plans and not final plans, the City makes comments and then the plans change; then the City has to make more comments and that causes problems. The goal is to work with the consultant while they are designing the project, before they submit the final plans so that once they are done, the City has already seen them, so the process on the City’s end should be much quicker, helping to speed up the process for everyone. The City has met with several consultants regarding this and have received their full support. Lewis asked Mr. Hibbs if the changes discussed here today were to be made, if that would allay some of his concerns about the proposed ordinance. Mr. Hibbs said the addition of an appeals process that would come before one of the Committees and the City Council would be acceptable. Hibbs also asks that some criteria be specified in which the plans would be evaluated on to make sure everyone is on an even playing field. Drew asked Fischer if plans are ready to go when they come in. Fisher explained that an engineer of record is not going to stamp those plans until they know that they are meeting all of the design standards set forth by the infrastructure design criteria manual, the drainage manual, and utility master plan. She added that what Peckosh is proposing is to get some pre submittal conversation going so they get the information up front, so they can complete those plans, so when they do submit them with that development engineering plan, they feel they CAN stamp them because it is jeopardizing their license if they stamp something that is not going to function correctly. Peckosh said there seems to be some confusion among different consultants as far as what level of effort is needed before they make the application. The engineer is not at the counter, so when they make the application it goes into Planning and the engineers do not see them until after the application has been accepted. In some cases he said, they receive plans that are pretty far along for a good review and in some cases they receive plans that are very preliminary or missing a design report or elements of a design report and so they cannot give it a full review. He added that they have had projects that have come in where they are in the middle of the review of the project and then receive new plans, so they have to stop the review and then look at the new plans; then the 15 days are almost up because they have been given three sets of plans to look at and it is evolving. He went on to say that in some cases in the past they have taken plans in after they have been accepted and if they are too incomplete, they will stop the project right there and suspend it. The development review engineers currently suspend projects but it is after the application comes in, not before the application is submitted. They want everyone to be on the same page when they make the application so that everyone can get through the project quickly. Peckosh commented on the checklist requirements and indicated that projects are very different project by project so they can try to put a checklist together but it would be difficult to actually have one that would cover everything that is needed for each specific project. There are currently requirements to what the design reports need to have and what is needed on the plans. Lehmann asked Fisher how much time would be needed to make the adjustments to this ordinance. Fisher feels they would probably need to push it out a month for staff to meet and work

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on it. She added that Mr. Freytag indicated that he would also like to be at some of those staff conversations. Fisher agrees with Todd Peckosh in that at the end of the day if there is clear transparency on the intent and the ability to appeal, this could extremely expedite the process. There are many developers that get frustrated because their consultants are bringing in something that they think is a 100% but when the City receives it, it is at 35%; therefore, there is a lot of back and forth. If they are aware of that going into it, they can be a part of these conversations so that everyone is working together to get the final plans submitted for approval to have these projects approved in a timelier manner. Nordstrom moved to approve the Introduction and First Reading of Ordinance 6384 an Ordinance to Add a Pre-Submittal Meeting to the Requirements for Development Engineering Plans by Amending Section 16.08.070 of the Rapid City Municipal Code. Second by Drew for discussion. Lehmann made a substitute motion to move this item to the Legal and Finance meeting on April 1, 2020. Second by Lewis. Motion carried.

- 13) LF021220-03 – Code Enforcement Officer Clayton McClain explained that on rare occasions a complaint comes in for a property, the house is for sale and at the time the citation is issued, the homeowner has not taken possession of the property. In this particular case, the contractor had to remove snow on December 15th and Mr. Maggard moved in on December 18th. Five or six days later, the invoice is received by the City from the Contractor. The paperwork is then done and the bill is sent out to the current homeowner, which in this case would have been Mr. Maggard at the time. He said Ken Young has waived the administrative fee and then normally it is up to the Council to waive the Contractor fee. McClain recommends in this case to waive the entire fee. Lewis moved to Approve Property Owner Request to Waive Entire Assessment for 4128 Prairie View Drive. Second by Lehmann. Motion carried.

ADJOURN

There being no further business to come before the Council at this time, motion was made by Lewis second by Lehmann and carried to adjourn the meeting at 1:08 p.m.