

LEGAL AND FINANCE COMMITTEE MINUTES
Rapid City, South Dakota

August 12, 2020

A Legal and Finance Committee meeting was held at the City/School Administration Center in Rapid City, South Dakota, on Wednesday, August 12, 2020, at 12:35 p.m.

A quorum was determined with the following members answering the roll call: Darla Drew, Lance Lehmann, Laura Armstrong (telephonically), Pat Jones and Jason Salamun. 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 Jones second by Lehmann to adopt the agenda. Roll call vote taken with Drew, Lehmann, Jones, Salamun and Armstrong voting “yes”. Motion carried unanimously.

GENERAL PUBLIC COMMENT

None.

CONSENT ITEMS

Motion was made by Lehmann, second by Salamun to approve Items 1-7 as they appear on the Consent Items. Roll call vote taken with Drew, Lehmann, Jones, Salamun and Armstrong voting “yes”. Motion carried unanimously.

CONSENT ITEMS -- Items 1 – 7

Public Comment opened – Items 1 – 7

Public Comment closed

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

- 1) Approve Minutes for July 29, 2020

MAYOR’S ITEMS

- 2) LF081220-02 – Amend Request Authorizing the City Hall Maintenance Division to Purchase a 2020 Dodge Ram Under State Bid in the Amount of \$25,406.09
- 3) LF081220-03 – Confirm the Appointment of James Emmert to the Rapid City Public Library Board of Trustees

FINANCE DEPARTMENT

- 4) Acknowledge the Following Volunteers for Worker’s Compensation Purposes: Girl Scout Troup #74030: Amara Usera (Parks Department), Miranda Kenney (Parks Department), Haley Kieper (Parks Department), Kyra Perkins (Parks Department), Shannon Perkins – Troop leader (Parks Department), Shiann Petro (Parks Department), Tifanie Petro – Troop Leader (Parks Department), Shirley Edwards (RSVP+), Janice Key (RSVP+), Douglas Miller (RSVP+), Michael Reade (RSVP+), Rosemary Seymour (RSVP+), Carla Dailey (RSVP+), Carson Quinn (Library)
- 5) LF081220-01 – Approve Resolution No. 2020-064 a Resolution Levying Assessment for Abatement of Nuisances

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COMMUNITY DEVELOPMENT

- 6) 17TI002 – Approve Resolution No. 2020-062 a Resolution Dissolving Tax Increment District No. 79 for Property Generally Described as Being Located in Village on Monroe
- 7) LF081220-04 – Approve Resolution No. 2020-065 a Resolution Declaring 627 Saint Cloud Street Surplus

END OF CONSENT CALENDAR

NON-CONSENT ITEMS – Items 8 – 9

Public Comment opened – Items 8 – 9

Public Comment closed

COMMUNITY DEVELOPMENT

- 8) 20OA005 – Salamun moved to approve the Second Reading and Recommendation of Ordinance No. 6388 an Ordinance to Amend Provisions of the Rapid City Municipal Code Relating to the Storage and Parking of Certain Vehicles and Trailers. Second by Lehmann. Roll call vote taken with Drew, Lehmann, Jones, Salamun and Armstrong voting “yes”. Motion carried unanimously.

ITEMS FROM THE PUBLIC

- 9) LF072920-08 – On behalf of 11 Main, LLC, Todd Gagne provided a short presentation regarding a proposal to purchase eight city lots west of their current property located at 406 St. Joseph Street. 11 Main, LLC plans to build a 14,000 square foot commercial real estate project. He explained that the project is to support “Property Meld” which is a fast-growing software company here in the region. He displayed photos of the proposed building which would add to the downtown corridor from a design perspective. Gagne shared the history, the local success, the economic impact, and the projected growth of Property Meld. He informed the committee that President and CEO Tom Johnson, from Elevate Rapid City, would like to present an analysis of the economic impact to the City Council this Monday night (8/17/2020). Gagne also went over the financial proposal they have netted out with staff in order to figure out how to price the eight lots. 11 Main, LLC began their proposal using \$15.28 per square foot which is the amount they paid for the purchase of 406 St. Joseph Street in 2020. City staff recommended \$17.00 per square foot as a starting point. After 11 Main, LLC consulted with Chris Long from Keller Williams who validated that \$17.00 was within the ballpark cost for lots downtown, they put together a proposal around the 28,000 square feet that are there, then added some discounting based on some of the conditions they are being asked if they do purchase the lots. One condition is to keep the surface parking for three years as there are contracts associated with that, so they cannot do anything with it for that three year period. Therefore, they have asked for a 5% discount. Another 5% discount they added is for lot maintenance. He explained that there was a proposal in between these about the City leasing back the land from them at a flat fee but in this model the City is basically saying 11 Main, LLC would take over the lease agreements as well as maintenance (snow removal and insurance) on the properties. He said that the price for the eight City lots ends up at \$428,400.00 with these deductions. Gagne added that there are a couple of other open issues which are still being worked through with City staff that include an easement on the Stock Growers Building and an access issue to the Stock Growers Building basement that crosses over onto these City lots. He concluded by saying that this is the proposal they would prefer to move forward. Salamun asked City Attorney Joel Landeen how the figure of \$17.00 per square foot was arrived at as an option to present to the owners. Landeen said the value number was derived from looking at some of the commercial sales on the staffs Rapid Map, the sale of the Imperial lot (about \$22.00 a square foot), the 11 Main, LLC sale (the low at \$15.00 a square foot), and the appraisal for the 5th and St. Joe property, (with the most updated version being in 2014, at a little over a million dollars). He does not have the exact

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number of the 5th and St. Joe property but it was along those lines in that area. He also pointed out that there is not really a lot of bare land for sale in the downtown area to use as comparable. Looking at an in between of \$22.00 and \$15.00, he felt \$17.00 per square foot was a good starting point. Landeen also spoke with Alderman John Roberts, a realtor, who would probably say the property is worth a lot more than \$17.00 a square foot. Landeen said he thinks the options are that you could tell 11 Main, LLC that the City is not interested in any easement or the City would consider an easement where the owners agree to revoke it. The problem with that is, it is going to change the materials that they would have to use to build at least the outside of the building which is going to make the project more expensive and Landeen doesn't know what that does to the overall viability of the project. The reality is that this is about more than just windows because it is also about the material on that side of the building if they have to build it so it is fire rated. Another option on the table if the City does not want to sell the property, 11 Main, LLC, would be willing to pay for an easement with discussions on price being in the mid twenty-thousands (10 feet-about \$14.00 or \$15.00 a square foot) also with the City recognizing that a significant amount of the value of that 10 feet would be decreased because no one would really be able to build there. Landeen said it does not mean that it could not be used, it could be used for parking or other outdoor features. The other option he said would be at that point to maybe negotiate with 11 Main, LLC that if someone wanted to develop that portion of it, what the value of that would be and purchase that back; but to retrofit the building and make it work, would probably be pretty expensive. When having discussions, another more creative option in the middle, was to look at just selling the property. One of the reasons the City had not agreed to discussing this initially was the concern over needing that as surface parking for at least a couple of years until 5th and St. Joe develops and the City has alternative parking there. The proposal today came out of discussions of if the City went down the sales route then 11 Main, LLC would be responsible for developing that property so they could develop it in a way that was harmonious with what they were doing with Property Meld and that is kind of where we came up with this proposal and as a potential option for the Council to consider. Jones asked Mr. Gagne what their second best option is if their first option is the no build easement. Gagne said their second option would be to purchase the land adjacent to the property if they could come to an agreement on price. Jones then asked Landeen what the City's perspective is as the best option and second option. Landeen said he could put together a recommendation but ultimately it is up to the council to decide philosophically the best option. He said that on one hand these are local guys, if they were to get this property if we could preserve it, he thinks they will develop it, but suspects however, if the Council goes down the sales route, the Council will hear that there might be some other people that would have been interested and, of course, it is going to be very easy for those people, at that point to say they would pay you more for it. He does not think the City would want to go down the route they did with the 5th and St. Joe project where the City solicited proposals through an RFP (Request for Proposal), which takes a lot of time. Landeen said there are some advantages obviously, with 11 Main, LLC developing it, because whatever they do is going to be harmonious on that lot with what they are doing with Property Meld, but again he asks the committee the question: are you necessarily getting the best deal for the land? If it is put it up for sale where everyone can bid on it openly, the City may get more money for it; so the committee needs to decide as a policy question, what the value of this project is, does this make sense, recognizing that the City may be able to get a better deal, but feel that in the overall big picture, this is the best route to go. He added that if the committee is not sure, then an easement route could be pursued. He also expressed that the main reason staff was not supportive of an easement previously was because there was a misunderstanding of whether or not 11 Main, LLC was willing to pay for it and how much they would be willing to pay for it. If they are willing to pay for the easement, he does not think staff would have an objection. Landeen said the question again is: do we sit and debate the value of a no build easement which becomes a lot more difficult to determine? Or if the committee accepts this \$17.00 or \$18.00 a square foot as reasonable, then he thinks the \$24,000 or \$25,000 range is reasonable; but also commented that this is not his area of expertise and a realtor or someone else might tell the committee something different. Finance Officer Pauline Sumption said from her perspective her preference or first choice would be the

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revocable no build easement, kind of like what the City has with the Stockman's Building because it doesn't tie anyone's hands in the future for the use of that ten foot space. From there, she thinks either one would be fine whether we sell it as long as we get a market rate for it, or if we sell the non-revocable easement, but does think there has to be some kind of compensation if a future buyer cannot use that space. She worries that we are not getting the best market rate for it when we don't know what that really is at this time or what the potential is when we see some other growth in the area. She hesitates to cut the City short in trying to optimize any revenue that we can make off of that to expand our parking system elsewhere. Lehmann agrees with Sumption on the revocable easement. Armstrong said the value of the project and how it will benefit the concurrent projects already in existence is tremendous and encourages Mr. Gagne and Mr. Ehlman to come up with a plan A, B, and a plan C for the City Council meeting on Monday night to follow Lehmann's motion. Salamun asked Landeen if the Council could approve the revocable no build easement but still negotiate (not from the dyes) the ten foot strip or beyond for the land so that negotiation is happening and they can get their project moving forward. Landeen said it probably would not accomplish that because the materials and some of the things the owners are going to do are going to have to change and he does not know if they are going to want to proceed with that because that is going to affect the cost of the building. He believes the revocable easement is taking a pretty big risk because they may have to take down the entire wall and build a new wall if the City sells the property a couple of years later. Landeen said the committee could make a decision whether they are going to support selling an easement or sell the whole property. He said he thinks the owners are okay with the easement, so if they know that they would be granted the easement, whether or not the City ever makes the sale piece of it work, then that would allow them to proceed with their project. If the committee does not want to commit to the easement, then the owners probably will have to adjust their project to move forward. Salamun said he wants the committee to at least arrive at a direction for the Council for Monday night rather than sending it without recommendation. He then asked Gagne if the option they presented today asking for a discounted rate of \$15.30 (per square foot) for the lot is their first option and option B is the ten foot easement and option C presents the no build easement or have it revocable after three years. Gagne clarified that if there is a revocable easement on this, they would be looking to do the project somewhere else and do have some other property downtown. Drew asked how many offices the building will house and Gagne said it will be an open floor plan which will have space for approximately 103 people in the building. Drew asked Gagne if they have any green consideration in the works and Gagne said they do have some green concepts they are working on within the architectural design. Drew asked Sumption what happens to the parking space if they were to buy the lots. Sumption said it will depend on if the City works on an agreement where the owners do the leasing for three years. She said the preliminary conversations were, that if they buy the lots, they would keep that as leased parking for three years and the City would give them the contact information for those individuals that have leases in that lot so they would get first opportunity to lease them back again to those individuals for the three-year time period. Sumption said either way if the City keeps the lot or it goes to them, rates should probably be increased already to the \$41.00 level instead of the \$31.00 level. Drew stated that when the City feels that a project is really important and is going to move the City forward in some way, the City does make some kind of concessions on pricing, and she doesn't know what the cost of the land was for the new Ascent Center but that it is pretty valuable land and does not feel that this is much different in many ways. Sumption said the land for the Ascent Center was donated but the City paid \$1.4 million for it in 2012. She clarified the differences in the property for the Ascent facility verses this property pointing out that the Ascent Center went to the Economic Development Foundation which is a non-profit entity and the City has the ability to give non-profit entities surplus land, cars, computers, etc. but the City does not have that same ability with private business. She added that another difference is that the City was not using that land other than for some cold storage and this property is income generating property for the City. Gagne said 11 Main, LLC, is not a non-profit. Drew asked Gagne to consider some other ways to help the community other than just creating jobs as Rapid City has a very strong non-profit community and they need technical help. Lehmann moved to send the Request from 11 Main,

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LLC for No Build Easement Over City-Owned Property Adjacent to 415 St. Joseph Street (Continued from July 29, 2020, Legal and Finance meeting) to Council without recommendation. Second by Armstrong. No vote was taken as Jones made a substitute motion to sell the land at \$17.00 a square foot and allow the project to move forward. Second by Salamun. Roll call vote taken with Drew, Jones, Salamun and Armstrong voting "yes". Lehmann voting "no". Motion carried.

ADJOURN

There being no further business to come before the Council at this time, motion was made by Salamun second by Lehmann and carried to adjourn the meeting at 1:12 p.m.