

LEGAL AND FINANCE COMMITTEE MINUTES  
Rapid City, South Dakota

October 28, 2020

A Legal and Finance Committee meeting was held at the City/School Administration Center in Rapid City, South Dakota, on Wednesday, October 28, 2020, at 12:30 p.m.

A quorum was determined with the following members answering the roll call: Darla Drew, Greg Strommen, Laura Armstrong, Jason Salamun and Pat Jones. Absent: Lance Lehmann

(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 Armstrong to adopt the agenda. Motion carried unanimously.

**GENERAL PUBLIC COMMENT**

None.

**CONSENT ITEMS**

Motion was made by Jones, second by Armstrong to approve Items 1-11 as they appear on the Consent Items with the exception of item no. 5. Motion carried unanimously.

**CONSENT ITEMS** -- Items 1 – 11

**Public Comment opened** – Items 1 – 11

**Public Comment closed**

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

- 1) Approve Minutes for October 14, 2020

**MAYOR’S ITEMS**

- 2) LF102820-06 – Authorize Mayor’s Office to Act as the Lead Applicant for an Early Learner Community Toolkit Grant Through the United Way of the Black Hills in Partnership with Early Learner Rapid City

**FINANCE DEPARTMENT**

- 3) LF102820-01 – Acknowledge August 2020 General Fund Cash Balance Report
- 4) LF102820-05 – Approve Resolution No. 2020-083 a Resolution Declaring Miscellaneous Personal Property Surplus to be Traded

**HUMAN RESOURCES**

- 5) LF102820-07 – Salamun asked Human Resources Director Nick Stroot to give an overview of the healthcare plan changes. Stroot explained that historically the City has offered one healthcare plan which is written into contracts with our union representatives, so there are certain structural things the City is bound by; however some changes need to be made to help the fund balance. The City is a self-funded plan which means the City collects the premiums and then pays out claims through Wellmark BCBS. He further explained that by doing that, the City is responsible for maintaining that fund balance. Stroot has been working with the Mayor, the Healthcare Committee and the Department Directors, to come up with a four year plan to incrementally make some changes to help stabilize the healthcare fund because due to some high dollar claims and bad luck over the past couple of years, the fund balance is decreasing. To help stabilize the fund, there will now be

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two plan options: one, which is going to be more expensive but have a little bit better benefits to it and then one that is a little less expensive that meets the contractual obligations with the unions but the benefits are not quite as rich. Stroot said if this were to be implemented this year, then they will start looking at different things that can be done to incentivize better healthcare choices through the City's employees such as incentives to have spouses go on a different plan (if that is an option). They will continue to try to be creative on maintaining the fund balance. One of Salamun's concerns from a business standpoint, is retaining employees, which is one of the best ways to save money because high turnover and cost of replenishing employees can be difficult. Salamun asked if by making these changes, it will diminish the amount of take home pay for employees because of the amount they have to put into the insurance plan. Stroot said in response that the lower base plan is going to raise by 5% which was voted on in the spring by the Healthcare Committee, so if you have a spouse or family there will be a 5% increase to your premium monthly. He went on to say if you choose the more robust or enhanced plan, that is more expensive than in 2020's plan but is an option for every employee to either maintain their premium or see a 5% increase. Stroot explained that the City is shedding the "grandfather status". The grandfather status came about when the ACA passed there was an option to leave your plan as is and you wouldn't have to accept all of the changes in the ACA, which is what the City chose to do for ten years and it really was not designed to do that. By shedding the grandfather status and going to a more full ACA robust benefit package, there is a good chance the majority of employees may actually pay less over a year than they would currently because now there are some things that are being covered at 100% such as preventative services (i.e. colonoscopies, mammograms, etc.) There will also be an all in copay which means you will pay a \$30 copay and there is no co-insurance that follows that. Salamun asked if there are any compensation studies being done or the salaries are keeping up with wage adjustments to compensate for the changes. Stroot said in late 2019 a wage study was done for the non-union and the AFSCME employees. He said they currently have wage data for the Police Department employees. There is a current contract with the Fire Department employees that goes through 2022, so their increase is already locked in. Stroot said that non-union wages will be going up in the first part of January, and are working with AFSCME to hopefully lock in a contract that will see some increases for them. Drew asked if they took into consideration COVID related health care problems that the City will probably see an increase in the amount of claims. Stroot said that was definitely taken into consideration when looking at things like raising out-of-pocket maximums. He added that they are seeing what is called a COVID delay meaning people were delaying different surgeries March-June and then started going in July to have them done so now the City is getting hit pretty hard right now which are not even COVID related, but the hope is that levels out to get a better picture of what the true costs are going to be in early 2021. Armstrong moved to Authorize Mayor and Finance Director to sign 2021 Renewal with Wellmark BCBS for City Healthcare Plan. Second by Jones. Motion carried unanimously.

**COMMUNITY DEVELOPMENT**

- 6) LF102820-02 – Approve Amendment to the Preliminary FY20 CDBG Annual Action Plan
- 7) LF102820-04 – Approve Final FY20 CDBG-CV Funding Recommendations
- 8) LF102820-03 – Authorize the Mayor and City Finance Director to Sign the CDBG-CV, SF-424, SF-424D and Certifications for FY20
- 9) 20TP031 – Approve the 2021 Unified Planning Work Program – Final Report
- 10) 20TP034 – Authorize the Mayor and Finance Director to Sign the Agreement Between the City of Rapid City and the South Dakota Department of Transportation for Accomplishing the Rapid City Area Transportation Planning Process in the Amount of \$664,805.00

**CITY ATTORNEY'S OFFICE**

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- 11) LF102820-08 – Authorize the Mayor and Finance Director to Sign the Contract for Construction of Public Improvements by Private Developer for Homestead Street Tax Increment District

END OF CONSENT CALENDAR

**NON-CONSENT ITEMS** – Items 12 – 15

**Public Comment opened** – Items 12 – 15

Valerie Big Eagle spoke in support of item #14 regarding the land swap in the three parcels of land found in the Rapid City Indian School lands project. She voiced that for the past 70 years their grandmothers and elders have been asking for native land for development that will be a great benefit to the native community.

Billie Jo Brown spoke on item #14 and is requesting more information on it before she votes on anything. She would like to see some representation from officials from the Bureau of Indian Affairs (BIA) because she feels this is a BIA matter. She knows that rent is very high here in Rapid City and she is currently trying to find housing for her granddaughters who are being evicted by Friday. She believes this land is needed to help not only Native Americans but others as well. Armstrong offered to speak with Brown after the meeting to provide some resources that can help address her immediate needs.

Bev Warne, a Lakota Elder, spoke in support of item #14 regarding the land swap. She provided a little background of living in Oshkosh Camp along Rapid Creek (now Founders Park) in the 1940's where she felt safe in the camp until she went downtown Rapid City where she saw a sign in a store window that said "no Indians allowed". Her father told her it was because others did not know them. She feels strongly that the majority of the non-native community still do not know them. Warne said that what they are doing regarding the land swap is helping themselves. She wants the land swap completed so they can work on issues that we all face today. She believes this is the beginning of their ability as Lakota, other native people, and their allies, to do something positive, to grow the City into a friendly, good place. She added that approving this resolution will be a solid beginning in the healing of the native community.

Robin Zephier also spoke in support of item #14 regarding the land swap. He is a volunteer to the Rapid City Indian School Land Project but is here as a Lakota, a Rapid City resident and small business owner. He is honored and privileged to stand up for the people they have tried to help in honoring all of the children that had passed while at the school, but also to give honor to those that fought so hard to try to seek some type of remedy for inequality for existence and survival. Zephier said the statute that is at the base of this overall issue is the 1948 statute that is very clear in nature and the group is standing here today by following in the footprints of those that went before them and trying to carry forth the grand commitment to them and to their spirits. He asks the committee and the council to make the decision to accept this resolution and bring us forward into the 21st century. He also encourages this issue to be resolved with diplomacy.

Karen Mortimer spoke in support of item #14. She asked the committee to carefully consider the approval of the resolution to resolve the three outstanding deeds. The Mniluzahan Okolakiciyapi Ambassadors group (MOA) has been working to address the problem of the lack of or broken relationships between the native and non-native community, which she has been a part of since 2014. Native and non-native leaders in the community have been brought together over time to work on this issue. Mortimer has been working with Heather Thompson, Kibbie Conti and Dr. Zimmer on unfolding this very important history in the community. She voiced that these three deeds are legally important and must be dealt with but they are also symbolic of this broken relationship and it is time to address this directly. She again hopes the committee will very carefully consider the creative solution that has been sought through this resolution versus a litigious result and bring this forward to the City council on Monday, November 2, 2020.

Troy Fairbanks, sixth generation grandson of Chief Sitting Bull, spoke in support of item #14. He began by saying that Indian and white relations throughout Rapid City has been subjective to a lot of different

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avenues and those objectives over his lifetime have been approached by the City Council on many different avenues such as education and economic development, which he commends. He knows the council to do the right thing regarding the land agreements with these three deeds. Fairbanks wants to work together as a community to better the community and asks the committee to look at the community as a whole because he believes an agreement can be reached.

**Public Comment closed**

**FINANCE DEPARTMENT**

- 12) LF101420-03 – Salamun moved to approve the Second Reading and Recommendation of Ordinance No. 6446 Regarding Supplemental Appropriation 7 for 2020. Second by Jones. Motion carried unanimously.
  
- 13) LF101420-08 – Salamun moved to approve the Second Reading and Recommendation of Ordinance No. 6448 an Ordinance to Amend Provisions Concerning Purchasing Procedures and Delegation of Purchasing Authority by Amending Sections in Chapter 3.04 of the Rapid City Municipal Code. Second by Armstrong. Motion carried unanimously.

**MAYOR'S ITEMS**

- 14) LF102820-09 – Heather Thompson gave a presentation regarding the Rapid City Indian School Lands Project. She began by informing the committee that the elders came to them to help find the graves of the children that were buried in unmarked graves at the boarding school. In doing so, they uncovered all of the other land issues that were related to the boarding school lands. She emphasized that this was not a new issue to the elders in the community as they have been raising this essentially every decade since 1948. The elders have been requesting investigations, writing to congress, writing to City Council, to tribes, and unfortunately it went largely unheard. She explained that when they discovered these difficult issues, they met with the Department of Interior who has the legal right to these parcels for reversion and they have been engaged in the conversation from the beginning. Thompson referenced a letter the committee has in their possession that came from those initial conversations after the Department of Interior reviewed all of the documents and found that these three parcels were subject to reversion back to the Department of Interior. The three entities that are on those parcels do not wish that their parcels revert back to the DOI. Her group has worked fastidiously for the last three years to find a solution. Per the resolution, there is a provision in the statute that only deals with the 1200 acres that used to be the Rapid City Indian Boarding School that goes from Mountain View to Canyon Lake. There is a second provision in that statute that does allow those three parcels to be swapped or exchanged for other land within or near Rapid City as long as that land is used for needy Indians. Their group has had over a hundred presentations and meetings including a series of very specific meetings in 2019 to obtain as much community input as they could. The community voted for a land exchange that would empower the creation of a Native American Community Center which is something that would help the entire community that everyone would be able to utilize. The secondary component of the resolution is to help capitalize a Community Development Corporation for the sole purpose of generating revenue which would subsidize the Community Center. The three top vote getters in the community for what areas of business that the CDC could invest in were housing, a hotel/meeting space, and a cultural art based tourism type business which is what is in the proposal today. Thompson pointed out that in the end, this is a negotiation between the City and the Department of Interior and is the Department of Interior that owns the right to reversion. In the 2017 letter the Department of Interior encouraged the City and the school district to be creative and work with the Native American Community which is what they have done. She concluded by saying they believe this is a very creative proposal that is a win-win for the entire City and helps resolve a 70-year old legal battle in a very positive way that does not involve litigation. Jones said he is not sure what her group represents and what authority they have in bringing this forward. He asked Thompson the following questions 1) Has the Department of Interior given her

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group legal authority to act on their behalf to bring this forward? Thompson clarified that their group is made up of approximately 100 volunteers who are Native American community members that are common men and women from every background who believe this is important and are bringing it forward. Jones clarified that they do not represent any other organization, tribe, private or public group or government entity of any kind. Thompson said that is correct with the caveat that coalitions are incredibly important so they try to build coalitions with everybody in Rapid City who are interested in the topic; but do not work for or represent anybody other than themselves. She added that they represent an effort to try and gain consensus as best as possible within the Native American community to advise that process. 2) Are the people in her organization involved in other organizations or elements that are trying to do other things to not bring people together in Rapid City? Thompson said there are different groups that have different strategies on how to go about this conversation but this group has chosen a diplomatic strategy right now, but she believes we would all be remiss to not understand that the Native community has not had a whole lot of faith in working in the diplomatic strategy or within the process. Thompson pointed out that other Native organizations in Rapid City for the large part, deferred to their organization to try to work through plan A in a positive diplomatic way as best as possible with the understanding that these three parcels have been occupied for 70 years and the Native community has raised it at least 24 times that she knows of the top of her head so we can understand their frustration in not having a lot of faith in the process. She can only speak for their organization who are 100% volunteer and are not a 501c and not controlled by any entity but their team goal is to find a diplomatic solution. 3) There are people who have worked on this for some time who have said that this will solve all of the Native American conflict and issues in Rapid City. Is that your belief? Thompson said that is not her belief; this is just one very specific statute, three very specific parcels that is an important positive incremental forward step. Armstrong would like this item to be sent to City council without recommendation because it is important to have further discussion with the full City Council as well as the Mayor who has been intimately involved with these discussions over the last three or four years, to give the council more time to do some research, to be able to formulate some more questions, and get further insight from the other council members. Salamun conveyed his appreciation for all of the work that Thompson and her group has been put in over the years. He does agree that if these transfers were done illegally, then work has to be done to make it right but do to the significance and the nature of the matter, it is best to make sure facts guide the decision making. Salamun had several questions that he feels need to be answered to allow progress to happen in these discussions because the right answers get to the right resolution. The first question he asked is if the City is negotiating with the appropriate legal entity. Thompson said the City is negotiating with the Department of Interior. Salamun said the City would need a letter authorizing their group to negotiate on behalf of the Department of Interior. Thompson made clear that their group is not negotiating on behalf of the Department of Interior but that a letter was sent by the DOI in 2017 to the City notifying the City that these three parcels were subject to reversion. The letter also offered the City the opportunity to come up with a creative solution. Their group has taken it upon themselves to put together a creative solution while trying to collect as much consensus as possible and the reason why it is relevant is because the DOI has a trust responsibility to them as individual Native Americans through federal law so it matters to them what the opinion is of the Native community and also the opinion of the tribes. She reiterated that from a legal standpoint this is strictly a negotiation between the City and the DOI but the DOI has informed the City and the school district that they want to hear the opinion of the community and their group has collected the opinion of the community. Question two Salamun asked is if the City has independently confirmed that improper title transfers occurred on the three parcels and if so can the council see the title search documents. The next question Salamun had is if the 20 million dollar valuation of the three parcels is for the land alone or does it include the structures. Thompson said the reason the 20 million dollar value was chosen was the City's appraisals themselves which valued both the land and the buildings; and for the Native community, that is what they would receive upon reversion. Salamun's last question: if a settlement is reached, does it resolve the matter and who actually receives the funds. Thompson said if a settlement is reached it resolves the matter for

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these three parcels and these three parcels alone and the DOI has the final determination on that. The funds would be a combination of land that would go to the DOI so a swap land would be federal land. They would change their DOI land on West Rapid for whatever land is swapped. The monies would be a "to be formed" Native organization that would run the Community Center. Their group has purposely not created a 501c3 or formed any entity because it is irrelevant unless it is moved forward with the City. Once this passes, then the group would reopen it to the whole community to participate and shape what that would look like. Salamun wants to be sure the City is talking with the right entities that have the legal authority to resolve the issue and would like to hear from representatives from DOI or whoever they authorize. Thompson said that Regional Director Tim LaPointe has made himself available and they can make that happen before the vote on Monday. City Attorney Joe Landeen communicated that he has some of the same concerns initially about who we are negotiating with and there is not a legal entity but after some discussions with Thompson, although it is not perfect, he feels comfortable with it. He said ultimately the DOI is going to have to sign off on this. He said the letter from DOI in 2017 appears to be saying this is a big old mess and we think you might be right, why don't you try and figure it out and come back to us once you do; and to Thompson's credit, their group has stepped up. Landeen reminded everyone that this resolution is not technically an agreement, it is the framework to reach an agreement. He pointed out that no one is going to be able to guarantee if this resolution is approved on Monday night that the DOI is going to sign off on any recommendation. He said this is just the first step to continue moving forward. Landeen voiced that there is a dispute over the title to these three parcels and the reality is there could be a situation where some of the parcels could be found to be consistent with the federal grant and some of the parcels may not, which is probably the most likely outcome. He added that the Mayor does not view this as strictly a legal issue and while this has come to the committee as a settlement of a legal dispute, it is more than just a legal dispute and one of the questions when deciding how to proceed is if investing this money will benefit the native community and benefits the community as a whole. He also added that some of these things that this group is talking about, separate from this are probably things the council would potentially look at investing in anyway even absent this. If this is approved, then there would be a small group formed to work together to bring an agreement forward that is concrete and at that point, the DOI will need to be involved, or at least be aware. He reiterated that as positive a step forward as this might be, everyone needs to be realistic that that does not mean everything is going to work out because we would still need to sit down and identify parcels, financials and other things that are going to need to be done and we may not be able to reach an agreement on that; or maybe the small group is able to reach an agreement but maybe the DOI does not agree to it, or maybe tribal entities come out and say they are not in agreement with it, which changes the DOI's view on it. In his perspective, the most we can hope for is that this small group and the volunteers that Thompson is working with reach some proposals and bring it forward, the DOI signs off on it, and the majority of the community of Rapid City agrees to it. Landeen will give a more detailed analysis above just a strictly legal analysis because a simple legal analysis is not going to work on this decision as it is more complicated and involves bigger issues than just the legal aspects of it. Salamun believes what is missing is the DOI's presence in these discussions. Strommen agrees with Salamun that all of the questions raised will not be able to be answered by the Monday, November 2<sup>nd</sup> City Council Meeting. He believes there are additional questions raised from Thompson's responses. He pointed out a letter that says the use of the Regional Hospital land is consistent with the grant and also that the letter of 2017 is now more than three years old and does not say anything or even address Thompson's entity or group. Strommen would like to see this postponed at least until the first full council working session on November 10, 2020 so all of these questions can be answered before then. Thompson remarked that she understands it is complicated as Landeen pointed out, but they are trying to avoid litigation and have given an enormous amount of pro bono time for many years with the hope of avoiding litigation, adding that they will move forward to enforce the law but they are here to try and do it in a diplomatic manner first. Drew asked what the difference between the 1948 statute and whatever they enacted 1968? Thompson said 1948 is the statute at hand and is not familiar with anything in 1968. She said in the early 1950's many native

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communities were living along the creek which is where they have historically lived and two weeks after the statute passed in 1948, Native Americans requested land in that 1200 acres for housing. The citizens of West Rapid put together a petition to oppose that and City Council put together a plan with the school district to move people from Oshkosh camp to what became Sioux Addition two miles north. Drew is in support of this item and would like to see the Community Center regardless of what happens with this land exchange. Jones agrees with Landeen that it is important for the majority of the citizens in the community to be in support of this item and it is the obligation of elected officials to research what they are being asked to vote on, what to do and ask all of the questions. Armstrong appreciates Strommen's comments but would still like to see discussion at the City Council meeting Monday, November 2<sup>nd</sup> to keep the conversations moving forward, and if additional time is needed it at that point, then it could be postponed to the next working session. Armstrong moved to send the Approval of Resolution No. 2020-084 A Resolution to Resolve Three Outstanding Deeds Related to the Rapid City Indian Boarding School Lands to City Council without recommendation. Second by Salamun. Strommen made a substitute motion to continue this item to the first City Council working session on November 10, 2020. Second by Salamun. A vote taken with Strommen voting "yes" and Drew, Armstrong, Salamun, Jones voting "no". Motion failed 1-4. A vote taken on the original motion with Drew, Armstrong, Jones and Salamun voting "yes" and Strommen, voting "no". Motion carried 4-1.

**ADDENDUM NO. 1**

**CONSENT ITEM**

**CITY ATTORNEY'S OFFICE**

15) LF102820-10 – Landeen requested the committee send this item to council without recommendation do to some corrections that need to be made and for purposes of the record the Credit Union in the title is no longer accurate and is actually Midwest Business Solutions d/b/a Pactola which is a consortium of credit unions that funds bigger projects. Sentinel was the underlying financial institution but the agreement will be with Midwest Business Solutions d/b/a Pactola. There may be a couple of other little tweaks that will be done by Friday and there will be an updated draft attached to review before the City Council meeting Monday November 2<sup>nd</sup>. Salamun moved to send Authorize the Mayor and Finance Director to Sign the Assignment Agreement with Sentinel Federal Credit Union for the Contract for Construction of Public Improvements by Private Developer for the Homestead Street Tax Increment District to City Council without recommendation. Second by Armstrong. Motion carried unanimously.

**ADJOURN**

There being no further business to come before the Council at this time, motion was made by Jones second by Armstrong and carried to adjourn the meeting at 1:55 p.m.