

LEGAL AND FINANCE COMMITTEE MINUTES
Rapid City, South Dakota

May 10, 2017

A Legal and Finance Committee meeting was held at the City/School Administration Center in Rapid City, South Dakota, on Wednesday, May 10, 2017, at 12:30 p.m.

A quorum was determined with the following members answering the roll call: John Roberts, Jerry Wright, Lisa Modirck, Steve Laurenti, and Amanda Scott. 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 Modrick, second by Wright and carried to adopt the agenda.

GENERAL PUBLIC COMMENT

None.

CONSENT ITEMS

Motion was made by Modrick, second by Laurenti and carried to approve Items 1-10 as they appear on the Consent Items with the exception of Item No. 7, 8 and 10.

- 1) Approve Minutes for April 26, 2017

FINANCE DEPARTMENT

- 2) Acknowledge the Following Volunteers for Worker's Compensation Purposes: Hazel Bonner, Louise Dulany, Leona Potts, Deanna Vogel, Travis Bolt, Marie Romano, Larry Romano, Genevieve Benjamin, Robert Knox, Jack Welker, Kyra Butler
- 3) LF051017-01 – Approve Resolution No. 2017-035 a Resolution Declaring Miscellaneous Personal Property Surplus
- 4) LF051017-02 – Approve Resolution No. 2017-027B a Resolution Levying Assessment for Cleanup of Miscellaneous Property
- 5) LF051017-05 – Approve Resolution No. 2017-036 a Resolution Declaring Miscellaneous Personal Property Surplus
- 6) LF051017-07 – Acknowledge March 2017 Sales Tax Report

COMMUNITY RESOURCES

- 7) LF051017-06 – Wright moved to continue FY2016 Preliminary Consolidated Annual Performance and Evaluation Report (CAPER) to the May 31, 2017 Legal and Finance Committee meeting. Second by Laurenti. Motion carried.

COMMUNITY PLANNING & DEVELOPMENT SERVICES

- 8) 17TI001 – Laurenti asked Katherine Johnson, member from the developer, DTH, LLC to explain the first reallocation in 2008. Johnson stated the reallocation was caused by the decision to change the plan of a water well to include a water reservoir instead. The original 2005 project plan did not have a specific line item for professional services so in 2008, they shifted 10% of the funds for each

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of the construction projects into a separate line item for professional services. Laurenti asked if the 10% was high or low on the actual costs for professional services. Johnson stated the actual professional services costs exceeded the amount that was allocated in 2008. In 2008 the allocation was \$15,000 and the actual was \$30,608. Laurenti asked Johnson state the reason for this reallocation request. Johnson explained the current reallocation is to change the project plan to match the actual costs for professional services and construction. Laurenti would like to know why the professional services amount was upward of 30% rather than the 10% allocated. Johnson described that if you exclude the work that was completed in phase 1 (the extension of the water main south on Bunker) and include the Northridge water infrastructure, (including the booster station, the water main and the grading up to the reservoir) the professional services were around 29% of the actual construction costs. There were several items that were added to the professional services costs, the primary one was the realignment of the water line and the associated grade of the road was changed multiple times. Laurenti asked why we are here today if the TIF costs were finalized in 2012. Johnson disagreed that the costs were finalized in 2012. It was never their intention that their 2012 certification as a final certification. They always knew they would need to prepare a revised project plan to ensure the project plan met the actuals. The last invoice they received was in 2014, so they knew there was some outstanding costs. Laurenti asked Finance Officer Pauline Sumption to clarify the difference of the certification of the TIF costs back in 2012 and what the applicant is saying now. Sumption believes the confusion is he is referring to costs and she is showing all of the project plan line items had been certified on some level. She was not aware of any extra costs in 2012 and nothing was said to her that an amendment would be coming forward at any point in time. Sumption's comments refer to the project line items within the project plan where they all have been certified to some extent. Laurenti asked when the Finance Department was notified that the 2012 certification was not the last of the costs. Sumption stated she received a binder in December of 2016. Laurenti asked if this normal in a TIF to certify all of your costs and then four years later come back and say they are not finished. Sumption does not believe she has ever run into this before. Modrick asked further questions on the certification and when we were notified of the additional costs. Sumption explained that it was 2016 when she was notified of the additional costs. She emailed Johnson and stated she was confused since it said "final certification" on the binder and she thought everything was certified in 2012. Johnson apologized and said she will go through the process of requesting an amendment before Sumption would look at any of the additional certified costs. The 2014 invoice was from the City to DTH because one of the projects went over the original budget amount. Modrick asked if these additional costs should be reallocated in this project so we can move forward and close it. Sumption said when the project changed it was built into the agreement that DTH would pay up front based on the estimates at the time and then after it was complete there was an overage in one of the projects so the City billed them for \$84,000. The reallocation is the same projects it is being reallocated from different line items. Patsy Horton showed a few calculations explaining the reallocations from 2005 to the present. The interest breakdown for phase 1, we spent \$140,000 on the first certification in interest, phase 2 we spent not quite \$800,000 and we anticipate the second phase of certification will be paid off in December of 2018. The proposal based on the actual expenditures in this TIF they anticipate another \$1.1 million in interest which is well below the \$2.3 million that would be allowed based on the original project plan. Wright clarified that the costs in the professional services were caused by the repeated redesign for infrastructure that is owned by the City. There is no increase in the costs, it is just being redistributed because of the additional costs. Landeen wanted to generally explain how TIFs work. The way we have always done TIFs is before you can get payment you have to certify the costs and then we start making payments. There are occasions where we will allow certification by a series of phases. When you are a developer and you have several thousands of dollars on the line and you are not able to get things together quicker and get your reimbursement which means we are going back five years to certify invoices. This is one of the reasons why we now give specific timelines on when they need to certify. Scott analyzed the interest and the economic growth that is included in the project plan. When the growth comes in faster, she feels there should be a negative on that finance because we should not be paying on

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that finance. In this project specifically, it appears that there should be a deduct and the Council is being asked to approve taking tax payers money from the School, the City and the County, that could be paid back to them sooner and actually allocating it to other costs that occurred within the project. Scott understands why we would reallocate costs to match the actual costs but she is having a hard time deciding on the interest on why we would give up tax funds that would go back into the County, City and School to cover finance charges that were not anticipated have to be paid. Wright asked for an explanation on the 2014 invoice for \$84,000. Johnson stated it was for the booster station itself. This was a City bid project and the City would negotiate construction management with an engineering firm and the TIF would pay for those services. The project was bid in 2010 and constructed over the next few months. The bidding and construction management fees were billed in 2014. Modrick asked why the City's invoice was sent two years after the 2012 certification. Landeen asked Sumption if the amount that the City invoiced, reimbursable out of the TIF originally. Sumption stated if the City had it under contract prior to the five year time limit, it was eligible to be reimbursed. When finance received the information from Public Works to send the invoice, they sent it. They are still looking into whether or not it was a reimbursable cost under the original TIF. They believe it was under contract in 2010 so it would have been within that five year limit. Scott moved to continue Resolution No. 2017-019 a Resolution Approving Revision #2 Project Plan Reallocating Project Costs for Tax Increment District No. 54 for Property Generally Described as Being Located North of Mall Drive and West of Haines Avenue (*continued from the April 26, 2017 Legal and Finance Committee Meeting*) to the May 31, 2017 Legal and Finance Committee meeting. Second by Wright. Motion carried.

- 9) 17TP007 – Authorize Mayor and Finance Officer to Sign Amendment #1 to the 2017 Unified Planning Work Program Agreement #311291
- 10) LF051017-04 – Wright wanted to acknowledge the memo received from Public Works Director Dale Tech and the good job the department is doing at keeping this project within budget. Laurenti moved to acknowledge Update on Mount Rushmore Road Reconstruction Vision Funds. Second by Scott. Motion carried.

END OF CONSENT CALENDAR

NON-CONSENT ITEMS – **Items 11 – 14**

Public Comment opened – **Items 11 – 14**
Public Comment closed

FINANCE DEPARTMENT

- 11) LF051017-03 – Wright moved to approve Introduction and First Reading of Ordinance No. 6181 Regarding Supplemental Appropriation #2 for 2017. Second by Modrick. Motion carried.

COMMUNITY PLANNING & DEVELOPMENT SERVICES

- 12) 17OA001 – Scott asked Assistant City Attorney Carla Cushman to give additional information on this ordinance. Cushman stated this amendment will clarify and simplify some of the processes when the City rezones property especially in annexations and creating new zoning districts. This was mainly triggered by the downtown plan and the Big Sky annexation. The City will still provide notices to all the property owners effected in the area. Modrick moved to approve Introduction and First Reading of Ordinance No. 6112 an Ordinance to Amend Provisions Concerning Zoning Applications by the City by Amending Section 17.54.040 of the Rapid City Municipal Code. Second by Wright. Motion carried.

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CITY ATTORNEY'S OFFICE

- 13) LF042617-04 – Laurenti moved to approve Second Reading and Recommendation of Ordinance No. 6178 an Ordinance to Update Campaign Finance Disclosure Requirements by Amending Chapter 2.32 of the Rapid City Municipal Code. Second by Wright. Motion carried.

- 14) LF042617-05 – Laurenti moved to approve Second Reading and Recommendation of Ordinance No. 6179 an Ordinance to Update References to the Convention and Visitors Bureau Related to Business Improvement District No. 1 by Amending Chapter 3.24 of the Rapid City Municipal Code. Second by Modrick. Motion carried.

ADJOURN

There being no further business to come before the Council at this time, motion was made by Laurenti second by Wright and carried to adjourn the meeting at 1:21 p.m.