

LEGAL AND FINANCE COMMITTEE MINUTES
Rapid City, South Dakota

May 31, 2017

A Legal and Finance Committee meeting was held at the City/School Administration Center in Rapid City, South Dakota, on Wednesday, May 31, 2017, at 12:30 p.m.

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

GENERAL PUBLIC COMMENT

None.

CONSENT ITEMS

Attorney Scott Sumner spoke regarding item number 12 on behalf of DTH, LLC the developer for tax increment district 54. Attorney Sumner presented a summary based upon DTH's position on the issues. This project was originally approved in 2005 for \$5,106,456.67 of that amount, \$2,650,000 was for capital improvements and \$2,456,000 was for the interest expenses. There was one amendment to this project plan, a water well system was originally proposed but in 2008 the well was removed and a water reservoir was added. The original project plan and the first amended project plan were based upon cost estimates not actual costs. The applicant is here today to do a second amendment to the project plan to finally bring the project plan into alignment with the actual costs that were incurred for the capital improvements, professional services, and finance costs. DTH, acknowledges prior cost certifications, however there was never a final cost certification. The last cost certification was in 2012. One of the reasons this could not have been the final cost certification was in 2014 the City sent an invoice for professional services, nearly two years after the second cost certification. The developer is now ready to finalize the numbers and revise the project plan to align the actual costs for construction of the capital improvements, professional services and interest. There was also some discussion on the costs savings in this TID pertaining to savings on interest expenses compared to the original expenses. The developer asks to reallocate some of those interest savings to cover those actual costs for capital improvements and professional services that were more than originally projected. He pointed out that the City has in the past approved these types of reallocations. They are asking the City to treat DTH, LLC the same as they would treat themselves as developers.

Motion was made by Laurenti, second by Wright and carried to approve Items 1-14 as they appear on the Consent Items with the exception of Item No. 5, 8, 9, 11, 12 and 13.

- 1) Approve Minutes for May 10, 2017

FIRE DEPARTMENT

- 2) LF053117-04 – Approve Change Order for Purchase of Fire Apparatus

FINANCE DEPARTMENT

- 3) Acknowledge the Following Volunteers for Worker's Compensation Purposes: Austin Helgert, Edward Thomas

LEGAL AND FINANCE COMMITTEE

May 31, 2017

- 4) LF053117-01 – Approve Resolution No. 2017-037A a Resolution Fixing Time and Place for Hearing on Assessment Roll for a Business Improvement District 2017
- 5) LF053117-03 – Scott asked Finance Officer Pauline Sumption Scott if this report includes the property tax payment from the County? Sumption stated the property tax payments come from the County in May. In April, we only received one sales tax payment from the State so that negatively effects the cash balance. Scott then asked if they will see not only the property tax payment from the County but also three sales tax payments from the State? Sumption explained that as of yesterday, the third payment was not received and when it does arrive it will be applied to June. Scott moved to Acknowledge April 2017 General Fund Cash Balance Report. Second by Laurenti. Motion carried.
- 6) LF053117-05 – Approve Resolution No. 2017-041 a Resolution Declaring Miscellaneous Personal Property Surplus
- 7) LF053117-06 – Approve Resolution No. 2017-040 a Resolution to Update Change Funds

COMMUNITY RESOURCES

- 8) LF051017-06 – Scott moved to continue Y2016 Final Consolidated Annual Performance and Evaluation Report (CAPER) and Financial Report to the June 14, 2017 Legal and Finance Committee Meeting. *(continued from the May 10, 2017 Legal and Finance Committee Meeting)* Second by Modrick. Motion carried.
- 9) LF053117-02 – Scott asked Community Resources Director Jeff Barbier if this is only a letter of support for the grant and there is no commitment of City funds. Barbier confirmed that is correct, there is no commitment of City funds. Modrick moved to Authorize Mayor to Sign the Emergency Solutions Grants Program – Local Government Certification for Pennington County Health & Human Services Approval Form. Second by Laurenti. Motion carried.
- 10) LF053117-11 – Approve Renewal of Midco Service Agreements
- 11) LF053117-12 – Scott stated she will be voting no on this because the Council did approve a \$75,000 to a developer on a project that in her opinion is still in the preliminary stages and there is no commitment that it will go through. Also, the developer has stated he plans to use the \$75,000 on more studies and she feels that the money should go toward actual assets for affordable housing rather than studies. Wright asked Community Development Specialist Barb Garcia to clarify the report attached to this item. Garcia stated these allocations have already been approved by City Council, this is on the agenda for final approval, acknowledging there was no public comment during the 30 day public comment period. Modrick asked Garcia regarding the \$75,000 to Freeland Ranch. The developer stressed at the City Council meeting that the money was needed for the traffic study which is required by the City. In the document attached to this item it is defined for engineering, surveying, administrative costs, professional fees and studies for \$75,000 there is no indication that it will go toward the traffic study. Is that amount part of the traffic study or will be a cart with whatever other items. Garcia stated in the application it listed all of those items and the traffic study would fall under the studies portion of their request. Modrick asked if it can be more clearly stated that the \$75,000 is designated for the traffic study only and not anything else. Modrick moved to Approve Final Community Development Block Grant (CDBG) FY2016 Reallocation of Contingency Funds and FY2017 Allocations with the Freeland \$75,000 specifically allocated for a traffic study. A vote was taken with Modrick voting “yes” and Laurenti, Wright and Scott voting “no”. Motion failed. Laurenti moved to amend the awards of the CDBG funds to reduce the amount of \$75,000 for Freeland Ranch and put it back into contingency. Wright stated he will vote no on that motion because the Council has already approved this. Modrick agrees and explained this motion goes against what the Council decided. This money is a use it or lose it grant and if it is not used,

May 31, 2017

we will not have that money. Motion died for lack of second. Wright moved to send Final Community Development Block Grant (CDBG) FY2016 Reallocation of Contingency Funds and FY2017 Allocations to council without recommendation. Second by Laurenti. A vote was taken with Wright and Roberts voting "yes" and Laurenti, Modrick and Scott voting "no". Motion failed. Modrick moved to approve Final Community Development Block Grant (CDBG) FY2016 Reallocation of Contingency Funds and FY2017 Allocations. Second by Wright. A vote was taken with Modrick, Wright and Roberts voting "yes" and Laurenti and Scott voting "no". Motion carried.

COMMUNITY PLANNING & DEVELOPMENT SERVICES

12) 17TI001 – Wright moved to send 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 May 15, 2017 City Council Meeting*) to Council without recommendation. Second by Modrick. Wright asked if there will be a summation from the City available for review before Monday night. Patsy Horton stated there are an additional 38 documents that will be linked to the item for review. Wright wants the public to know the issues being discussed include the construction of the new water reservoir, the water main to connect the reservoir to the structure, a booster station, park improvements and related fees. All of this is being funded by the TID and they are all City owned infrastructure. He stated the City is gaining significant infrastructure through the financing of this TID. The City is not paying for the individual lots, we are the beneficiary in his opinion. Modrick feels this area is growing and feels this project makes sense and we need to move forward and close it. Scott made a substitute motion to approve the reallocation of the \$675,000 from the water reservoir to the actual capital cost of the water reservoir. Second by Laurenti. Scott can see moving capital costs. What she is not in favor of is when the total project costs include a high interest cost toward the total project. If the incremental taxes pay off the project ahead of time, the developer has not incurred the finance costs. Therefore the Council is being asked to take money that the developer has not been charged and reallocate it to cover some of the additional costs of the project that came in a little higher. Scott acknowledged a previous Council did reallocate \$675,000 from the financing interest that was allocated to the total project to the capital project of the water reservoir. Her motion is supporting the previous Council's decision to use some financing costs to actually pay for the capital project that went forward at that time. She cannot support the additional \$575,494.62 to be allocated from the finance interest that the developer has not incurred on finance interest charges to be allocated to a capital because that is the tax payers money that is just going to extend the project payment out. Wright supports the approval of this resolution. There were multiple infrastructure improvements changes that required significant reinvestment in design and evaluation. Laurenti supports the amended motion. He feels they need to understand when these public infrastructure pieces were either added or changed. If it was prior to 2012 when the developer finalized costs, you don't finalize projected costs, you finalize real costs on a TIF. This TID was finalized in 2012. Modrick asked if we retro back to 2012 and close out the certification, do we dissolve the \$84,000 that we billed in 2014? Sumption stated if it is determined not to reallocate costs, there is no additional room to accept the \$84,000 so no they would not be able to add those into the certification. In 2012 they certified every project in the project plan. It has never happened before where they have certified every project line within the project plan and then came back for reallocation. There is an email from 2012 where Mr. Estes acknowledges the fact Sumption told him that he needed to reallocate those costs before the certification occurred in 2012. Horton explained that this project was allowed to be certified in phases. Typically before the phase 2 certification occurred they should come forward to make this same amendment to adjust all of their final costs to match their actual project costs. Somewhere there was a step in there that was missed. The costs did not increase when the water reservoir was recommended. A vote was taken on the substitute motion with Laurenti and Scott voting "yes" and Modrick, Wright and Roberts voting "no". Motion failed.

May 31, 2017

Wright moved to approve 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 May 15, 2017 City Council Meeting*). Second by Modrick. A vote was taken with Wright, Modrick and Roberts voting “yes” and Laurenti and Scott voting “no”. Motion carried.

- 13) 17TI002 – Laurenti will not vote in favor of this until the developer presents margins different for affordable housing compared to non-affordable housing, margins not revenues. If there is not something that the City is gaining without the development. The developer has to give something up to do affordable housing. Scott feels this concept is intriguing but she can support it. Scott asked Executive Director of NeighborWorks Joy McCracken about the loan program that will allow the affordable housing aspect of this. The applicant applies for the loan they get approved, it brings down their payment so it meets the affordable housing requirement of purchasing a home with less than 30% of their income. And then when they sell the property, the proceeds from that sale go back to payoff that loan so it is a renewing funding source for the next person. Wright moved to Approve Resolution No. 2017-030 a Resolution Creating the Village on Monroe Tax Increment District and a Resolution Approving the Project Plan for Property Generally Described as 612 Dilger Avenue. Second by Modrick. A vote was taken with Wright, Modrick, Scott and Roberts voting “yes” and Laurenti voting “no”. Motion carried.

CITY ATTORNEY’S OFFICE

- 14) LF053117-07 – Approve Resolution No. 2017-042 a Resolution Revising the Order of Business for City Council Meetings

END OF CONSENT CALENDAR

NON-CONSENT ITEMS – **Items 15 - 19**

Public Comment opened – **Items 15 - 19**
Public Comment closed

ALDERMAN ITEMS AND COMMITTEE REPORTS

- 15) LF053117-08 – Laurenti supports this proposed ordinance. He feels it is time to change the ordinance and he hopes the new council members and current members support it. As a government entity it is our primary responsibility to take care of our infrastructure and safety. Scott thanked Roberts for bringing this forward. She feels that she cannot support the proposed ordinance in its current form. She feels it is too wide open and it should be reworked to be more specific. Wright feels the new council needs to address this and it should be decided after the Civic Center issues have been addressed. Modrick moved to table Proposed Ordinance Dedicating a Percentage of the Vision Fund to Infrastructure Improvements by Amending Section 3.16.090 of the Rapid City Municipal Code. Second by Scott. A vote was taken with Wright, Modrick and Scott voting “yes” and Laurenti and Roberts voting “no”. Motion carried.

Scott left the meeting at 1:28 p.m.

- 16) LF053117-10 – Solid Waste/MRF Superintendent Karl Merbach presented a short summary on Landfill Gas and the potential reuse. Methane is created from the decomposition of garbage. In 2008, performance testing showed that our landfill exceeded the limits for the non-methane organic compounds which required us to put in a landfill gas collection system. In 2010 the first phase was completed with the installation of a flare to burn those compounds to destroy the methane. In 2014, we completed our second phase on cell 12. We are now utilizing that landfill gas to heat the education center and a couple of our maintenance shops. We are currently in our third phase of gas collection on cells 13, 14, and 17. At completion, we will have over 90 gas wells that we will be

LEGAL AND FINANCE COMMITTEE

May 31, 2017

withdrawing gas. The gas composition is 45-50% methane, 45-50% carbon dioxide and <1% nitrogen, oxygen, NMOC and sulfides so it is not pipe line quality gas. It is a very low dirty gas that is still usable. Three reuse options are electrical generation, pipeline to local industry and conversion LFG to CNG – vehicle fuel. Wright asked Merbach to present this summary to City Council on Monday night. Laurenti moved to acknowledge Summary Presentation of Landfill Gas Production and Future Beneficial Reuse. Second by Wright. Motion carried.

FINANCE DEPARTMENT

17) LF051017-03 – Laurenti moved to approve Second Reading and Recommendation of Ordinance No. 6181 Regarding Supplemental Appropriation #2 for 2017. Second by Wright. Motion carried.

COMMUNITY PLANNING & DEVELOPMENT SERVICES

18) 17OA001 – Laurenti moved to approve Second Reading and Recommendation 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 Modrick Motion carried.

CITY ATTORNEY'S OFFICE

19) LF053117-09 – Laurenti moved to approve Introduction and First Reading of Ordinance No. 6180 an Ordinance to Update the Life Safety Loan Program Funding and Process by Amending Chapter 3.28 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 1:39 p.m.