

**COMMON COUNCIL MEETING OF THE CITY OF BOX ELDER**  
**DRAFT MEETING MINUTES**  
**Tuesday, May 6, 2014, 7:00 p.m.**

A scheduled meeting of the Common Council of the City of Box Elder was called to order at 7:00 pm on Tuesday, May 6, 2014. Present were: Mayor William Griffiths; Council Members: Allen; Cowley; Coatney; Curry; Foster; Haddenham; and Hollinshead were present. Also present were: Police Chief Dubbs; Finance Officer Mystee Lashwood; Legal Council Rex Hagg; Public Works Director Al Todd; and Planning & Zoning Director Ron Koan.

**Moment of Silence and Pledge of Allegiance**

- 1. Call meeting to order at 7:00pm.**
- 2. Pledge of Allegiance**
- 3. Roll Call:** Present: Allen; Cowley; Coatney; Foster; Haddenham; Hollinshead.
- 4. Approve Agenda –** with the removal of Items 7B and 7C with Executive Session for Legal as per SDCL 1-25-2 Sub (3).

Motion by Coatney, seconded by Allen to approve the agenda as presented with the removal of Items 7B and 7C with Executive Session for Legal as per SDCL 1-25-2 Sub (3). Vote Aye: Unanimous.

**5. Presentation:** Ben Snow, President of Rapid City Economic Development Partnership, presenting information on the Rushmore Region Branding and Marketing Initiative. The formal launch of the Initiative will be next Thursday at SDSM&T during lunch.

**6. CONSENT AGENDA:** Agenda items A and B on the Consent Agenda are meant to be approved as a group with a single motion. Questions maybe asked of any Consent Agenda items, but may not be debated. Any Consent Agenda item may be removed from the Consent Agenda for separate action at the request of any Council Member or anyone present. All questions are to be directed to the Department Head.

**A.** To approve the reading of the April 15, 2014 Common Council Minutes.

**B.** To approve Payroll 9 (April 6 to April 19): Total Payroll \$46,954.63; General Government: \$1,693.85; Finance Office: \$1,852.00; General Financial: \$4,046.72; Police Dept: \$20,287.77; PW Street: \$4,710.04; Animal Control: \$340.00; Sign Inspection: \$629.85; PW Parks: \$3,080.76; Planning & Zoning: \$3,074.31; PZ Board: \$540.00; PW Water Production: \$2,498.60; PW Water Distribution: \$2,788.53; PW Sewer Collection: \$1,412.20.

Motion by Hollinshead, seconded by Cowley to approve the consent agenda. Vote Aye: Unanimous.

**7. UNFINISHED BUSINESS:**

**A. PLANNING/ZONING DEPARTMENT:** Motion by Allen, seconded by Coatney to discuss and approve revised Minor Plat #140023 by Atlantis LLC and MC Davis Inc for Lots 1-3 of ISIS Subdivision (Formerly Lot 1 of Tract E of W-Y Addition, Lots A and B of Lot 1 and Lot 2 of Wal East Subdivision) located in the SW1/4 of Section 27, Township 2 North, Range 8 East, Black Hills Meridian, Box Elder, Pennington County, SD.

Roll Call- Vote Aye: Allen, Cowley, Coatney, Foster, Hollinshead. Abstain: Haddenham.

**B. PLANNING/ZONING DEPARTMENT:** ~~To discuss, approve, and authorize Mayor to sign Grant Application to GOED (Governor's Office of Economic Development) Local Infrastructure Improvement Program Application for extension of water and sewer on Ellsworth Road. *Item removed.*~~

**C. PLANNING/ZONING DEPARTMENT:** ~~To discuss and approve direction to Public Works Director to obtain an initial engineering estimate to extend water and sewer to City owned lot in Skyway Subdivision. Item removed.~~

**D. CITY ATTORNEY:** To discuss, approve, and authorize signatures on Agreement Establishing the Rushmore Regional Railroad Authority. To discuss and approve Resolution 14-05, a Resolution Authorizing an agreement to create the Rushmore Regional Railroad Authority and to become a member thereof. Section 3 of the Resolution was removed; need to appoint representative and alternate.

Discussion on who should be appointed, Council Members that would like to be considered for appointment are: Allen, Cowley, and Haddenham.

Motion by Allen, seconded by Hollinshead to defer the appointment of members to the Rushmore Regional Railroad Authority until the next meeting.

## **8. City Report: Council Member**

**Foster:** I enjoyed my time here and I did not run again because I sold my house; the staff at City Hall does an awesome job; I have learned a lot; and I appreciate being here. Mayor Griffiths thanked Foster for his service and welcomed him back next week to receive a plaque.

## **9. SWEARING IN and ELECTIONS:**

**A.** Swearing in of Council Members for new three (3) year terms – Ward 1 Scott Allen; Ward 2 Doug Curry; and Ward 3 Mark Coatney.

**B.** Nomination and Election of Council President

Motion by Coatney, seconded by Cowley to nominate Allen for Council President. Vote Aye: Unanimous.

Motion by Coatney, seconded by Cowley to close nominations for Council President. Vote Aye: Unanimous.

**C.** Nomination and Election of Council Vice President

Motion by Allen, seconded by Hollinshead to nominate Cowley for Council Vice President. Vote Aye: Unanimous.

Motion by Hollinshead, seconded by Allen to close nominations for Council Vice President Vote Aye: Unanimous.

**10. SECOND CONSENT AGENDA:** Agenda items D through M on the Second Consent Agenda are meant to be approved as a group with a single motion. Questions maybe asked of any Consent Agenda items, but may not be debated. Any Consent Agenda item may be removed from the Consent Agenda for separate action at the request of any Council Member or anyone present. All questions are to be directed to the Department Head.

**D.** To approve the Claims, Utility deposit refunds, and Hand Checks. Questions asked and answered.

**E.** To approve application for Temporary Fireworks Sales License #1555 by Douglas Bellinger of All American Sales to be located at 4505 South I-90 Service Road. (PZ Commission approved unanimous)

**F.** To approve application for Annual Fireworks Sales License #1198 by MC Davis Inc, doing business as Space International, at 4309 South I-90 Service Road. (PZ Commission approved unanimous)

**G.** To approve application for Annual Fireworks Sales License #1562 by Tom Skoog of Big Fireworks to be located at 4501 S I-90 Service Road. (PZ Commission approved unanimous)

**H.** To approve application for Minor Plat #140043 by Bryan Tharp for Lots 1-3 of Big B's Subdivision (formerly Tuesday, May 6, 2014

a portion of the NE1/4 of the NW1/4) located in Section 8, T2N, R9E, BHM, Meade County, SD (PZ Commission approved unanimous)

**I.** To approve application for Minor Plat #140050 by Tom Farrar for Lot 1 of Tract B (formerly a portion of Tract B Less Lots H1 and H2) of Block 2, Cimarron Subdivision, Section 20, T2N, R9E, BHM, Box Elder, Pennington County, SD. (PZ Commission approved unanimous)

**J.** To approve application for Business License #1558 by Angie Vinson for AV Photography located at 484 Freude Lane, Box Elder.

**K.** To approve application for Business License #1560 by Kamaliah Scally for Tortoise and the Hare Daycare located at 1213 Dakota Drive, Box Elder.

**L.** To approve application for Business License #1561 by Chad Moyers and Jake O'Grady for Two Guys and a Truck (Moving and Landscaping business) located at 701 Lazelle Street Unit A, Sturgis.

**M.** To approve application for Business License #1565 by Dolgencorp, LLC for Dollar General Store #15078 located at 430 North Ellsworth Road, Box Elder.

Resident Maine asked if all the firework license packets are all in and complete. Koan informed her that they are.

Motion by Coatney, seconded by Cowley to approve the second consent agenda. Vote Aye: Unanimous.

## **11. NEW BUSINESS:**

**A. FINANCE DEPARTMENT:** Motion by Coatney, seconded by Cowley to discuss and approve audit reporting for 2011 and 2012 from Casey Peterson and Associates. Vote Aye: Unanimous.

Discussion and recommendations given on audit reports for 2011 and 2012 from Deidre at Casey, Peterson, and Associates.

**B. PLANNING/ZONING DEPARTMENT:** Motion by Allen, seconded by Coatney to discuss and approve Performance Contract between City of Box Elder and Black Hills for the Development of Tax Increment District # 2 Project Plan. Vote Aye: Unanimous.

Discussion on using the TID#2 funds to help pay for the City Hall Building.

**C. PUBLIC WORKS DEPARTMENT:** Motion by Hollinshead, seconded by Coatney to approve First Reading of Ordinance #547, an Amendment to 2014 Budget. Vote Aye: Unanimous.

**D. FINANCE DEPARTMENT:** Motion by Allen, seconded by Cowley to approve Computer Service Contract for remote computer and network support assistance with Matthew Anderson. Effective April 1, 2014 to March 31, 2015. Vote Aye: Unanimous.

**E. FINANCE DEPARTMENT:** Motion by Hollinshead, seconded by Allen to approve Resolution 14-06, a Resolution endorsing the Rushmore Region marketing code of conduct. Vote Aye: Unanimous.

**F. PLANNING/ZONING DEPARTMENT:** Motion by Hollinshead, seconded by Coatney to deny Application for Conditional Use Permit #140029 by Brandon Wiege to allow a home based auto repair business at 22746 Pickarts Lane. (PZ denied request unanimous). Vote Aye: Unanimous.

Mayor Griffiths called for a 5 minute recess.

Meeting back in session at 8:35pm.

**G. PLANNING/ZONING DEPARTMENT:** Motion by Coatney, seconded by Cowley to discuss and approve the request for Atlantis LLC and MC Davis Inc as an “Experimental Subdivision” as per Ordinance 468 Article VI.

Roll Call- Vote Aye: Allen, Cowley, Coatney, Curry, Hollinshead. Abstain: Haddenham.

Discussion and presentation from Attorney, Roger Tellinghuisen representing Atlantis LLC on the Experimental Subdivision. Attorney Hagg requested that the following letter be part of the official record.

## **MEMORANDUM**

This document is privileged information and is considered attorney work product.

**To: Ron Koan, City of Box Elder**

**From: Rex Hagg**

**Date: April 24, 2014**

**RE: ISIS Plat and Subdivision Requirements**

I have reviewed your materials concerning use of the Experimental Subdivision ordinance provision for certain items regarding the ISIS Plat and Subdivision. It is my opinion that the Experimental Subdivision may not be used to waive or change requirements regarding signage, conditional use permits for zoning, and the relocation of the Haddenham residence. This would affect proposals No. 1B, C, D, E, F, 2A, B and C.

Anywhere a conditional use or variance is needed for the above would be required to use the appropriate process. Experimental Subdivision as noted in Ordinance 468 addresses “unusual materials” or “design concept(s).” Further, the developer is required to justify the reasons why the requirements of the ordinance cannot be applied. I don't recall seeing anything addressing those points.

In order to attempt to meet the requested time lines, it will be necessary to get the Conditional Use Applications filed for the commercial zoning as it applies to both the hotel and the Haddenham residence.

Signage changes are a concern. I don't see where the sign ordinance will allow the size changes. Ordinance 493 allows some change where a franchise agreement is required, and then only to the minimum. There is no other language that appears to allow changes or variances. Further, the Haddenham signs, if currently grandfathered in, would be out of compliance if moved. I don't know how this could be cured to comply if they are moved.

Regarding any waivers where the ordinance prohibits certain items, neither the council nor the Planning and Zoning Commission can waive prohibitive conduct or items. That would require an ordinance change for something of that magnitude. Therefore, the signage prohibitions mentioned in your memo cannot be fixed without changing the ordinance.

Regarding the height modifications from 35 feet, I would suggest placing that in any request for variance that may be made concurrently with the conditional use permit.

If you have any questions regarding the above, please do not hesitate to contact me. I would be happy to review and discuss any of the above.

RAH/mks

**H. CITY ATTORNEY:** Motion by Coatney, seconded by Cowley to approve Resolution 14-07, a Resolution of two (2) year moratorium on mobile home/manufactured home parks. Vote Aye: Unanimous.

**I. CITY ATTORNEY:** Motion by Hollinshead, seconded by Cowley to approve and authorize Mayor to sign Letter of Understanding with TruValue. Vote Aye: Unanimous.

**J. COUNCIL MEMBERS ALLEN/COWLEY:** Motion by Coatney, seconded by Hollinshead to approve Resolution 14-08, a Resolution to transfer of City land to Box Elder Economic Development (legal – Tract C, Skyway Subdivision). Vote Aye: Unanimous.

## **12. DEPARTMENT HEAD REPORTS TO COUNCIL:**

Mayor: Griffiths notified that the Dollar General will be tentatively opening Sunday at 4:00pm and hopes that people will continue to support our local businesses even though we are getting a new grocery store.

Police: Chief Dubbs gave the department statistics report for April 15- May 5. Next week is National Law Enforcement Memorial Week so please take the time to remember and recognize your local law enforcement personnel.

Public Works: Director Todd spoke about Ghere well: a culvert was installed near the well to help home owners in the area; we are looking into alternative options for getting the water to a quality level. He said the Boykin park equipment will be installed May 12 weather permitting and we will start removing the unsafe park equipment out of 4 parks starting with Creekside tomorrow.

Finance: Officer Lashwood explained the procedures for elections are a guideline and every city does things differently. Since the election board members have been the same people for the last three years and the wages were approved in the budget the council was not required to take any action. However, if there were any changes the council would have needed to address the election board. Also, the public works surplus list is complete and the city hall surplus list will be put on the next agenda for approval and disposition by council.

Planning/Zoning: No input.

City Attorney: As of tonight I have been with the City for 30 years. I think what we did tonight is a bad precedent but I am only offering my opinion as I have done in the past, I want everyone to know that I am not trying to hurt this project.

## **13. COUNCIL REPORTS:**

Allen: Thank you to the council members for the vote of confidence and reelecting me as president, I'll do my best. As far as the audit findings it was hard for me to look at the crowd tonight, these 11 & 12 audits make me sick, I hope we can turn this around so this stuff doesn't happen again.

Cowley: Thank you for the vote of confidence, and reelecting me as vice president. I would like to say I respect Attorney Hagg's opinion but I think the way we are going is the right way to go.

Coatney: Welcomed Curry to the council and told Attorney Hagg that he also values his opinion. But I believe getting this thing going without a bunch of the bumps in the road is the best way to better the city. He also thanked Lashwood for the hard work she has put in to help with these audit issues.

Curry: I am glad to be on board and I look forward to help out however I can.

Haddenham: Welcomed Curry and said congratulations to Rex for his 30 years.

Hollinshead: Welcomed Curry and thanked Allen and Cowley for the work they have done in the past year and I look forward to see what they can continue to do. They put in a lot of time that some of us are unable to; I trust both of their opinions; and they represent the council well. In regards to the audit, as a citizen and a council member, it makes me mad the way our tax dollars have been spent or abused. I hope this is an eye opener as a city, a council, and for our departments- we need to continue to engage and we need to make sure we are doing the best job possible to represent the tax payers out there. I don't want to see this happening when I am up here.

**14. OTHER DEPARTMENT REPORTS:**

Chamber of Commerce: President Hanson welcomed the new and returning council members; discussed the Box Elder Bash scheduled for July 5; and said the monthly Book Club and Lunch 'n Learns are starting to get a lot of small business owners interested.

Economic Development: President Rick welcomed the new and returning council members.

**15. CITIZEN INPUT:**

Resident Maine said the audits and city finances have been a problem for years and it seems when you are on the council all you are doing is fixing prior problems so it's hard to move forward. She wished luck to all the council members in hopes that they can fix these issues.

Resident Hanson referenced a conversation between he and the Mayor on April 24.

**16. EXECUTIVE SESSION:**

Motion by Allen, seconded by Coatney to enter into Executive Session for Legal as per SDCL 1-25-2 Sub (3) at 9:34pm. Vote Aye: Unanimous.

No decisions were made.

Motion by Coatney, seconded by Allen to come out of Executive Session for Legal as per SDCL 1-25-2 Sub (3) at 9:55pm. Vote Aye: Unanimous.

**17. ADJOURNMENT: THERE BEING NO FURTHER BUSINESS TO BE TAKEN IN FRONT OF THE COUNCIL AT 9:55PM MOTION BY Allen, SECONDED BY Coatney TO ADJOURN. Vote Aye: Unanimous.**

Seal:

Attest:

\_\_\_\_\_  
William F Griffiths Sr  
Mayor

\_\_\_\_\_  
Mystee Lashwood  
Finance Officer