

CITY OF BOX ELDER COMMON COUNCIL MEETING MINUTES
Tuesday September 5, 2017
7:00 pm – City Council Chambers, 420 Villa Drive, Box Elder

Public comments are welcomed, but no action will be taken by the Council on comments received for items not on this agenda. Anyone wishing to have the Council vote on a new item will need to fill out an agenda request item form for the item to be considered on the next council agenda.

1. Call meeting to order

2. Moment of Silence/Pledge of Allegiance

3. Roll Call

Mayor Larry Larson, Council Members Scott Allen, Steve Cowley, Bruce Hegel, Rick McPherson, and Tricia Weathers were present. Also in attendance were legal Counsel Rex Hagg, the Chief of Police Jason Dubbs, Public Works Director Bob Kaufman, Assistant Finance Officer Rebecca Davis, and City Administrator/Finance Officer Nicole Schneider.

4. Approve Agenda

Motion by Cowley, seconded by Allen to approve agenda. Vote aye: unanimous.

CONSENT AGENDA: Agenda items 5 through 7 on the Consent Agenda are meant to be approved as a group with a single motion. Questions may be 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.

5. To approve the reading of the August 15, 2017 Common Council Meeting Minutes and August 21, 2017 Special Common Council Meeting Minutes.

6. To approve Payroll 18 (August 6 to August 19) Total Payroll \$58,616.51; General Government: \$2,515.38; Finance Office: \$8,182.55; Police Department: \$22,391.77; PW Street Maintenance: \$5,706.10; PW Parks \$6,188.97; Planning & Zoning: \$5,081.91; P & Z Board: \$750.00; PW Water Production \$2,585.96; PW Water Distribution: \$4,061.89 and PW Sewer Collection: \$1,151.98.

7. To approve the claims, loan payments, and hand checks.

To discuss and decide action on Consent Agenda Items 5-7.

Motion by Hegel, seconded by Cowley to approve Consent Agenda. Vote aye: unanimous.

CITY BUSINESS:

8. FINANCE: Discuss and decide action on second reading of Ordinance 579, 2018 Budget.

Discussion from Council Member Weathers to use entire BID funds first, and using BBB funds second for the 2nd floor City Hall Capital Project and Council Member Hegel requested some of BBB can begin/start up-grades to Bandit Ball Fields. Council Chambers are planned to move upstairs.

Motion by Allen to approve Ordinance 579, 2018 Budget with any revenues set aside for the 2nd Floor Remodel (\$762,500) that are not expended will go to capital projects at the Bandit Ball Fields up to \$250,000. This includes the \$50,000 already appropriated Capital Project, Bandit Ball, seconded by McPherson. Vote aye: unanimous.

9. FINANCE: Discuss and decide action on first reading of Ordinance 580, 2017 Supplemental Budget Appropriation.

Ordinance 580 is for appropriation of expenditures that Council has already approved for FY17. Add \$172,000 for Creekside Water Main Extension, to bring total to \$706,200.

Four parcels of land including a building, staff recognition party (\$3,000), Code-Red contract (\$6,200), Single-Audit (\$25,000).

Motion by Weathers to approve, seconded by Cowley. Vote aye: unanimous.

10. FINANCE: Approve USDA Form 1942-A (Bond Counsel Agreement) with Todd Meierhenry for East Mall Drive, TIF #3 project.

Required Agreement for USDA loan packet and East Mall Drive Bond Counsel with a fee amount of 1%.

Motion by Weathers to approve, seconded by Hegel. Vote aye: unanimous.

11. FINANCE: Approve and authorize Mayor to sign engagement letter for legal counsel with Todd Meierhenry for the Special Assessment Bond, BID #2 project.

City Administrator indicated Todd Meierhenry is the foremost authority in the state of South Dakota as it relates to attorneys and Business Improvement Districts. Previously, Council had discussed having him as legal counsel in addition

to the City Attorney, Rex Hagg on this BID #2 project. This engagement letter will allow him to begin providing services to the City and speak on behalf of the City. City Attorney first expressed concern that the current bond fee would be 1% (\$200,000) of current asking \$20,000,000 bond; so, he isn't sure, and needs Council to be aware of that; Second, there needs to be a clear delineation of duties because on an amount that big, unlike the one they just approved (East Mall Drive) when it comes to the bond portion, there is no doubt about that. If the bond doesn't go through of course the TIF will go through and essentially it is a done deal and we just need to do the bond documents now. The question is if we want to commit to that (all or nothing at 1%) or if we should look at an hourly rate for initial advice. The documents he is talking about, he would not be drafting some of the initial documents; like the resolution that we will put on next time if that's what we are going to do. Those initial documents he doesn't necessarily usually do, he normally just does the bond documents, the bond resolution, and those kinds of things. He'd like there to be some clarity on what all we want him to do and the initial thing be some consultation on some of these initial resolutions because it is a different creature than normal and if we want that advice. I have read the statues numerous times to understand these initial resolutions. They need to understand what they are engaging him to do for that fee and when it kicks in and what all it entails. He doesn't believe this letter includes the initial resolutions it does the bond resolution only. He hasn't had the chance to speak with him with the Holiday but he could ask him some of those questions. It is up to the Council how they want to precede but want to make things clear on when it kicks in, when it is engaged, do we want to ask for initial opinions if there are disagreements over the initial resolutions so there is a clear point in time that he is representing the City's interest and not just getting the \$20M bond closed to earn the \$200,000 fee (or 1% of any bond, even if it's only \$5,000,000) and if it is ok to pay which is basically couple years or more of our whole legal budget. Those are questions that he would like the Council to be aware of and consider. Clarify when it kicks in, if there are initial stuff now that needs to be done if we want contract by the hour, seeing if the bond moves forward and he clearly needs to be engaged and they can decide if they want to pay the 1% fee of the transaction. The initial part has to be some motivation for a \$200,000 payment in the end as to what these initial questions might be. He would be more comfortable if we begin with hourly rate and if we elect to move forward with the bond then he would be contract for the bond amount.

If Council gives R. Hagg permission to contact Todd and add to the current letter to have the hourly rate for the initial consultations/resolutions; which I think we all know will probably be conflicting between Roger Telleheusien and the one Rex Hagg will prepare. This is the first question as to if will he allow us to hire him on at an hourly rate for initial review and acceptance of Resolution of Intent. Nicole would like to know if it is covered in paragraph 4. In Rex's opinion, it would be in the best interest of the City the contemplated work is examining applicable law (is generally putting the bond together), the review of creation of the district that it has been created accurately (Todd would not be doing the initial draft work), his engagement usually comes in when they are ready to do the bond. It's up to Council on how and when they would like to precede to include specific items on hourly advice or for a fee when we are ready. Such as how these initial resolutions work and to give the City/R. Hagg some guidance and can pay T. Meierhenry for the assistance. He doesn't know why city council would obligate themselves to a bond counsel contract with a bond fee until they know they are going to go forward with the bond. So but that doesn't exclude him from hiring him by the hour to get advice; which is up the Council how they want to proceed.

The agreement is just like the last one(s) before; the bond goes forward Todd reviews the transcript record, previous resolutions, and there is demarcation point because right now on those initial things because right now it is an idea. There are two conflicting opinions regarding the tax (Roger & Rex); in what is and what is not a tax. Rex wants clarity and wants Todd representing the City and would like to engage him with the initial advice on an hourly rate. Mayor asked "What is wrong with passing it now because if it doesn't go forward there is nothing there anyway; Rex doesn't expect him to do work outside of this deal, without being paid. He wants to make sure we get an opinion for the city for work that is outside the traditional bond counsel role. He's done three/four bonds together and now the Council wants early advice versus when Todd would normally engage in the bond process. Rex wants to separate the duties now verses what we normally associate with the bond. If Council wants Todd Meierhenry to do everything; because there is a feeling that there is some sort of conflict or something, he has no problem with it on a \$20M exposure on a bond (he'll ask Todd if he has malpractice insurance in those amounts). Want to make sure we get the advice we want/need that is impartial. Weathers asks, if we spell out what we want him to do and he agrees; it would be his decision, and it would be cost savings to the city. R. Hagg disagrees with that assessment. If he had a \$200,000 fee coming he would want to make sure he had a certain amount of control on and it went a certain way that he would bolstering that under proper legal work of if it was outside of that it would be from hiring someone as a direct consultant which is unbiased. R. Hagg doesn't know why the Council would want to rush/spend \$200,000 when it isn't even here yet. Then having to back track when the time does come then "you" have a mess on your hand. With conflict of opinions between Roger & Rex it would be a good conclusion to have Todd advise the City as an impartial party. If we engage Todd initially, it gets the impartial opinion now off the "dime." Rex says hire him for initial consulting work; and when bond counsel is needed hire him then to do what he does to close the bond just like the last USDA one.

Mayor, asked right now how do we write this so that he is hired. R. Hagg indicated, to approve T. Meierhenry to provide some initial legal counsel for the 2 upcoming resolutions and whether they will comply with what he will be doing later because he reviews them for compliance, we would like it done up-front. Right now, the scope of work now is to assist with the independent opinion regarding the contents of resolution of intent and the next resolution that will need to be passed

after a hearing if it is accepted. Then, if it is accepted, if it is going forward, if you approve that; then you engage him as bond counsel to handle the proceedings there from on the bond and everything else. Council Member Weathers verifies that we are not responsible for \$200,000 by signing this letter if the bond does not go through. R. Hagg indicated, his engagement letter is clear, that at such time the bond closes; if that's what the city wants the bond to close because they voted on it. Then he is engaged and then the Council has to decide if they want to pay the \$200,000 for the service or whether it is negotiable. But you can hire him and we have hired him on almost all bonds. If we sign this letter, we are not obligated to pay if it doesn't go through. R. Hagg indicates the scope of work does not include the initial drafting resolution of intent and the next resolution if we decide to go through with the project and he thinks we should get that advice. R. Hagg doesn't believe we should do both the initial consulting and hire for bond at one time. If the city wants him to handle everything, he's ok with that because there is a \$20M obligation to the city that has to be secured to be paid because the bond holders are going to demand payment of that.

If that needs to be properly secured, and properly done, and you need a bond counsel to do that or there is some well why don't you review this and review that and there is some splitting; R. Hagg is good either way. For now, the city doesn't need to obligate themselves to this initial penny. Once we have the resolution of intent, we go forward and have the hearings required by law and we are going through with a \$20M bond and the resolution then he handles all that contemplated by his engagement letter now. On the bond part of it, he doesn't think it contemplates him drafting the resolution of intent or other things; it's not what it says.

Hegel asked and read paragraph 4 "As bond counsel, we will: examine applicable law; review the creation of the business improvement district and documents related thereto, the levying of the special assessment, prepare the resolution, load agreement, transcript or ordinance authorizing and securing the Bond and other authorizing documents": That paragraph references the resolution for the bond, that the City is committing itself to the bond and what all goes into the specific resolution. If we pass this; he wants to make sure this goes through because he has as a \$200,000 fee coming. R. Hagg says he wouldn't go that far and he hopes he would have the ethics to do it right. But Hegel asks if we want to split that a little bit and wants to ask for advice solely for the City of Box Elder. There is a difference of opinion for the resolution of intent and how it is worded. For instance, the last draft R. Hagg got from them that the city shall require them to assess by the room. Shall, a new word which wasn't there last time, now creates the city creating an occupancy tax because we are saying they have to collect it by that room; as opposed to, they can go out and collect it themselves by the room if they want to and bill their customers like they want to. That is part of the AG's opinion how they want to collect the money from their customers they can do it, but if the city says you have to do it by the room and here is how we are raising the money by the room then we are saying we have to do an occupancy tax. These are not small matters, (go out and collect it how you want to collect it) but we can't mandate that they collect it by the room. All we are mandating is that the four hotels each take a portion of the bond payment; that is what is contemplated, I think. How they raise that money, they can do however they want with their customers. At what point do we have a tax, and that tax comes in when we dictate that. You have to raise this per room, it's called occupancy tax it's right in the statutes. You can assess, you can do an occupancy tax, or you can stack them and do both; but if we require that. This is one place where we need some clarity and R. Hagg doesn't think it is appropriate and if we ask Todd these lists of questions to help review the resolution of intent he thinks we can do that and it's great. Then after that we have the public hearings; then you decide if you are going forward. You don't decide that next meeting; the resolution of intent just allows the hearing to be had, so that information is flushed out, generates the feasibility study, then move forward. But if we need advice to break tie or the concern; let's do it, but why would you want to engage in the entire bond deal before we know if we are doing a bond.

Mayor Larson asked what do we say to engage him at an hourly rate to make sure he is on board. R. Hagg indicates we need him to review the resolution of intent and the hearing until we decide to do the bond and give us an opinion. This would be the tie breaker about these issues. If you decide, and "I hope you aren't deciding tonight", because there is no \$20M bond voted on; and we need to engage him for what we need now which is to help review the resolution of intent and the second resolution from the hearing that would go forward with the assessments and so forth. Then, if at that time hire him as bond counsel for what the Council thinks is fair. Let's get the initial advice now so we can be clear that he is helping the City with the Resolution of Intent through the initial hearing. Get him on board, get his advice, and do that. At that time, you can decide if the rest of this is ok on a bond you don't even know if you are going to do yet. So, R. Hagg would say engage him with letter of engagement to assist in initial consultation on letter of intent and the compliance hearing that way he has his fingers in it from the beginning.

Council Member Weathers, reviews the third to last paragraph in present engagement letter, "estimate that our fee as bond counsel would not exceed one percent of the bond issue to be paid out of the proceeds of the bond issue." Also, "If, at any time, we believe that circumstances require an adjustment of our original fee estimate, we will consult you." In addition, to those this letter was written with the understanding that he would review those initial documents. Part of the deal is the review the record. Weather is not comfortable voting on a letter we haven't seen, but R. Hagg says we should contract with him by the hour initially; after that, whatever you want to do, we do. R. Hagg is concerned that there is movement going forward that is not in the best interest of the city on some of these initial documents and we should get some feel on without committing the city to a \$200,000 potential fee. The last paragraph says up to 1%, which this is what the fee will be (like the last one). R. Hagg is perfectly fine passing this and turning everything over to T. Meierhenry if

Council is uncomfortable with his current advice; he is ok with that. "The devil is going to be in the details of securing the city to make sure they get the payment for twice the amount of the sewer treatment plant, R. Hagg is concerned, so he wants it to be right and passing things prematurely that aren't... "he gave this letter because it was asked for, he wasn't saying you have to do it now. He normally comes in and reviews your records which is part of his bond transcript. Usually he isn't bothered with drafting initial resolutions or answering questions and maybe he'll give me (R. Hagg) free advice for the initial couple of documents. Because he has done stuff for us before in the past, and maybe knows we are good for the engagement letter if the bond goes forward; so, let's ask him to do that. If the Council is uncomfortable and believes "this is sending a wrong signal" that R. Hagg should not do anything more.

Weathers indicated she was confused; if we aren't committed to a fee until the bond goes through and he is doing the work we need him to do, she wasn't understanding the true conflict. R. Hagg said, what he believes the Council wants is a memo to be drafted to give opinion/feedback specifically on the Resolution of Intent the Resolution going forward instead of calling him on the phone and getting verbal feedback. This letter of engagement doesn't contemplate those items and Todd should be compensated for his legal advice. Council Member Weathers asked if the same level of client/attorney relationship is there with either option. R. Hagg said he can't explain, but she wants to make sure we aren't going to have less protection when contracting him for an opinion versus as a full counsel. R. Hagg doesn't know if there has been a decision made to move forward with a bond. R. Hagg said Todd doesn't get involved until there is a bond to prepare; there is no bond yet. R. Hagg wants a memo to be on record for a good legal opinion.

Mayor Larson asked if we do it separate, would it preclude him from being the bond counsel; R. Hagg said it shouldn't and he should be the City's client both ways. Council Member Weathers wants to verify that by engaging him hourly we still have client/attorney relationship with that hourly versus just paying for a 3rd party opinion. R. Hagg still wants to retain Todd to represent the City of Box Elder and it should be a specific engagement which is a higher-level engagement and we need to know if we mandate a per room collection if it is an occupancy tax or not with the word "Shall" as suggested by Roger Telleheusien.

Motion by Weathers to contact Meierhenry Sargent LLP Attorney's at Law to engage Todd Meierhenry as our legal counsel on an hourly basis to advise on the preliminary issues regarding a potential bond, seconded by Allen.

R. Hagg further state that he can give the questions to Nicole to give to him or he can send them to Todd Meierhenry directly; however, R. Hagg wants a memo back with our specific questions answered and his advice and he can prepare them for Nicole to give him or he can give them to Todd. As long as we all understand that we want answers back in writing in the memo. If he can be present or on the phone at the next meeting to give advice he can be; but, R. Hagg is just concerned that it should be right.

Hegel asked if this is for just creating the letter or including the Mayor to sign the letter to engage him. Weathers indicated that the intent of the motion is Authorizing the Law Firm and Todd Meierhenry to represent us on an hourly basis on preliminary items regarding a potential bond in the future. If he agrees to that the Mayor may sign the letter with the memo attached.

Vote aye: unanimous

12. FINANCE: Approve quote from Hilton Garden for the Staff/Volunteer Recognition and Holiday Party to be held December 9. (Best of three quotes)

N. Schneider explained quotes are for locations that are outside the city for staff to avoid feeling like staff was going to work and was centrally located for all staff.

Motion by Allen to approve Hilton Garden quote with additional \$150 cost overrun, seconded by Cowley. Vote aye: unanimous.

13. FINANCE: Authorize Mayor to sign and approve the Public Assurance Alliance Insurance Declaration Renewal Packet for the 2017-2018 term.

Motion by Allen, seconded by Cowley. Vote aye: unanimous.

14. FINANCE: Discuss and decide action on declaring various surplus items referenced in Resolution No. 2017-27. Approving surplus lists verifies that they are not used and are not required to be insured.

Motion by Hegel, Seconded by McPherson. Vote: Roll Call Required.

Allen- Abstained, Cowley- Aye, Hegel- Aye, Hollinshead- Absent, McPherson- Aye, Weathers- Aye

15. FINANCE: Discuss and decide action on new Package (off-sale) Liquor License and Application submitted by Doyle Estes, Saint Patrick LLC for Box Elder Liquor.

Based on current data in Ordinance 521 in 2012 from the 2010 census, total number (7) that could authorize from the state the ordinance is limiting the amount to 5 so there is no license available. The cost for on-sale is \$50,000 with additional fees and Sunday sales.

Motion by Allen, seconded by Weathers. Vote aye: unanimous.

16. COUNCIL MEMBER ALLEN: Discuss and decide appointment of City Council Members and constituents to the Public Safety Committee.

Scott Allen, Jeff Hollinshead, Rick McPherson, and citizen, Andrew Weathers, would like to be on Safety Committee. Recommended monthly meetings. Tricia Weathers is abstaining due to relationship to citizen interested in joining committee.

Motion by Allen to form committee and appoint members, seconded by Cowley. Vote: Roll Call Required
Allen- Aye, Cowley- Aye, Hegel- Aye, Hollinshead- Absent, McPherson- Aye, Weathers- Abstained

17. PLANNING & ZONING: Discuss and approve Preliminary Plat for Lot 77 of Block 1, Lots 9-11 of Block 17, and Lot 1 of Block 18 of Thunderbird Subdivision, Box Elder, Pennington County, South Dakota.

Motion by Hegel, seconded by Allen. Vote aye: unanimous.

18. PLANNING & ZONING: Discuss and approve Preliminary Plat for Freedom Estates Plat of Lots 1 through 3, Block 5, Freedom Estates Subdivision, Box Elder, Pennington County, South Dakota.

Motion by Weathers, seconded by McPherson. Vote aye: unanimous.

19. PLANNING & ZONING: Discuss and approve the concept of rezoning future lots 1 through 3 of Block 5, of Freedom Estates Subdivision from Agricultural to General Residential 3 (Mixed Use Residential).

Would be adding three buildings with Apartments are approximately 200 square feet each with idea to rent to college students or airmen to get off base.

Motion by McPherson, seconded by Allen. Vote aye: unanimous.

20. PUBLIC WORKS: Discuss and decide action on Resolution 17-26 to Amend the Public Works Department Fee Schedule for the use of city owned Hydrant Meters.

\$2525 would be due upon issuance, \$2500 is refundable less charge for water usage. Increasing deposit is intended to replace the meter if something happens as the current \$1500 deposit would not cover a new hydrant meter.

Motion by Hegel, seconded by McPherson. Vote aye: unanimous.

21. PUBLIC WORKS: Discuss and approve Bill of Sale and Hold Harmless Agreement with VRC Metal Systems, LLC for playground equipment.

Bill of sale for \$1.00 to transfer playground equipment/property to the City from Vandenberg School

Motion by Weathers to approve with the change they suggested as long as it is regarding at its own expense or liability only, seconded by Allen. Vote aye: unanimous

22. DEPARTMENT HEAD REPORTS:

Mayor: Working with BHSU on trying to second exit off the service road and will be meeting with them again coming up. Attended MPO meeting; they approved the agreement for the RC Area Transportation and Planning Process and the amendment to move the Radar Hill Road /1416 Hwy railroad crossing up with the installation of the crossing in 2017. Attended Chamber Mixer, BH Form and Press Club where Mayor Allender gave presentation on pros and cons of their new Civic Center and met with a new developer that has been building a lot of houses in Box Elder and that Developers and Construction companies would like to give feedback on new ordinances in the future. Attended Box Elder and Rapid City County meeting. Working with someone on the possibility of having Senior living in Box Elder.

Police: Week in review being emailed out on Fridays. Updated tracking sheet passed out for traffic enforcement. Reserves were released to be on their own and they did not disappoint. Chris Swan and Heather Monson are on their own now. Highway safety Mobilization/Labor Day weekend and start of school and the change in pick-up and drop-off routes at the school. First time we cut down the time for traffic flows on Briggs and Tower by 7-8 minutes and was even better when the Kindergarteners started. Chief will be gone from 13th to 15th for Zuercher 1 conference (tuition free) and will be on vacation on Monday the 18th.

Public Works: Radar Hill road slide project is underway and doing a lot of preliminary type work on it and patching work on Radar Hill road is on-going. Striping Contract should be done. Working with KTM Engineering for the close-out of the Ghre well site and our own crews have started to fill any holes we need to store site (close-out) Finance. Had a couple water breaks in Westwinds area.

Finance: Coming to the end of 2016 Single-Audit and they will be presenting to council soon. Findings were the same as 2015. Financial Statements looking good and where they should be. Clean-up has started from 2016 Audit in the 2017 Audit for BBB/BID fund reporting and they are more separated and seen as a singular report. Working on reconciliation audit on some utility billing some clean-up is mid-stream which should be done mid-month and one staff member is out on bereavement leave. Handout given on difference of BBB/BID funds.

Planning & Zoning: N/A

City Attorney: Great work on the Liquor project; it appears we are one over and we should review current ordinance increase from 5 to 6 and should look at a census. He could make amended corrections if/when Council wants or to go through ordinance committee to revamp the current ordinance we can do so with current census information.

23. COUNCIL REPORTS:

Allen: N/A

Cowley: N/A

Hegel: N/A

Hollinshead: Absent

McPherson: N/A

Weathers: Indicated she may be absent at next council meeting.

24. OTHER REPORTS:

Economic Development: Had Quick Meeting, extended one loan and what late fees shall be.

25. CITIZEN INPUT: Citizen concerned about the new structures proposed of the 36 single units (don't know what that is supposed to look like) per Ord. 153.1005F she got off the website that the use of factory built homes, semi-trailers, shipping containers, or vehicles for on-site storage for other than limited to temporary use related to construction projects as a preconstructed building that is being dropped on a property that is meant for multi-family use it seems kind of grey. Per R. Koan those types of homes are permitted in that area because they are not specifically for storage only. They are worried about parking and they were concerned about their property value because it is an odd place to put these single units as it is a small lot. Her husband is a former Marine and they recently moved to SD and is concerned about Airmen renting an additional "pad" on E3 wages; concerned what will happen moving forward. Parking shouldn't be an issue.

J. Maine addressed weeds at Exit 61 at the Fireworks stands and the weeds along the railroad. Has neighbors using semi-trailers for storage and some using their front step as clothes line and those trailers will need be addressed.

G2 Enterprises does not plan on dropping these units and walking away; he is not trying to deface the city with in low-income areas.

26. EXECUTIVE SESSION: Session started at _____ pm; Out of Executive Session at _____ pm.
No Executive session required.

27. ADJOURNMENT: 8:51pm.
Motion by Allen, seconded by Cowley. Vote aye: unanimous.

Seal:

Attest:

Larry Larson
Mayor

Nicole Schneider
City Administrator/Finance Officer