

**CITY OF BOX ELDER COMMON COUNCIL MEETING MINUTES**  
**Tuesday September 19, 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, Jeff Hollinshead, Bruce Hegel, Rick McPherson, and Tricia Weathers were present. Also in attendance were legal Counsel Kim Pehrson, the Chief of Police Jason Dubbs, Public Works Director Bob Kaufman, Planning & Zoning Director Ron Koan, Assistant Finance Officer Rebecca Davis, and City Administrator/Finance Officer Nicole Schneider.

**4. Approve Agenda**

Motion to approve the agenda with an executive session at the end of the contractual by Allen, seconded by Hegel. Vote aye: unanimous.

**CONSENT AGENDA:** Agenda items 5 through 9 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 September 5, 2017 Common Council Meeting Minutes.

**6.** To approve Payroll 19 (August 20 to September 2) Total Payroll \$57,909.50; General Government: \$2,515.38; Finance Office: \$8,604.23; Police Department: \$27,459.90; PW Street Maintenance: \$5,670.23; PW Parks \$4,129.31; Planning & Zoning: \$5,081.91; P & Z Board: \$600.00; PW Water Production \$2,645.50; PW Water Distribution: \$4,120.22 and PW Sewer Collection: \$1,205.58.

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

**8.** To approve City Administrator to initiate hiring process for fiscal year 2018 positions as approved in Ordinance 579: Sr. Administrative Assistant/City Clerk (FT), Accountant (PT), Community Service Officer/Animal Control (FT), Assistant Public Works Director (FT), and GIS Specialist (FT). Initiate 2<sup>nd</sup> Police Sergeant pending the recommendation of the Public Safety Committee.

**9.** Approve Business License for Big Sky Upholstery & Supply LLC, application #1749.

To discuss and decide action on Consent Agenda Items 5-9.

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

**CITY BUSINESS:**

**10. SDML WC Fund – Brad Wilson:** Presented an award to the City Council on behalf of 25 years of membership of SD Municipal League Workers Compensation Fund.

**11. CITIZEN – Ronald Ashley:** Request to adjust water bill due to water main break, recommended adjustment of \$598.30 for the month of July.

Motion to approve the adjustment by Allen, seconded by McPherson. Vote aye: unanimous.

**12. Box Elder Promotions, LLC – Paul Bradsky:** Annual report regarding BID #1 expenditures.

Discussed the fiscal year 2016 and outlined 2017 expenditures. The total collected from 3 hotels in Box Elder was \$136,062.00 in occupancy tax of which \$61,689.50 was remitted back to Box Elder Promotions. Advertising has been the main expense of in the form of Billboards Leases and Digital Media.

**13. Atlantis LLC – Roger Tellighuisen:** Discuss and decide on Resolution of Intent 17-08 for the creation of BID #2.

The draft of this petition has been provided to the City Administrator and Todd Meierhenry; paragraph 6 has generated the most discussion per R. Tellighuisen and this paragraph is an attempt to have the city tell the hotels who will be assessed with a special assessment who will be raising funds for an event center that they must collect the special assessment by

charging it back on a percentage basis to their customer's room rate. Mr. Meierhenry would be able to expound upon at the appropriate time; when, hopefully, there will be a bond issued and the effort to sell those bonds to institutions and investment bankers. These investors will want some to know there is some mechanism in place to assure the hotels that are raising the revenue to pay those bonds will in fact collect it. This is an attempt to put something in place that specified that the hotels must collect it on room basis from their customers at a percentage of their room rate. This is different from the Occupancy Tax (which the city is familiar with from BID#1) which is limited by statute at \$2.00 per night per room. The reason we are choosing to use the special assessment process is because statutes allow the city to spread those assessments over the property in the manner they believe is the most just and equitable based on the benefit to be received by the properties within the district. In this case the hotel owners have requested that the city assess them so they can provide the funding to the city to build the event center. Having the ability to collect this percentage in this way satisfies one component in their ability to sell the bonds and it satisfies their effort to make sure they collect the money to remit to the city on 30day basis to pay the bonds. If this is approved a hearing date would be set 30 days down the road in an effort to pass an ordinance to create Business Improvement District (BID) #2. If this Resolution of Intent is passed tonight they will begin collecting the special assessment for expenses such as feasibility study, soil testing, etc.

Todd Meierhenry was present at the meeting and J. Hollinshead asked for the record T. Meierhenry's opinion regarding paragraph six. There was an Attorney General's (AG) opinion given whether we could put two BIDs overlapping each other. The AG's opinion was absolutely yes. Another question was if we could collect/make it part of a room rental. The AG says it is a contract between a private business and a private party and AG doesn't opine on private contracts between two parties that are private. That is what the issue is; is this a governmental tax or is it a way the private party collects money to pay their special assessment. Special assessment is a lien on real estate. This BID creates liens on those hotels that benefit from the project; paragraph 6 is almost like a rate covenant, but the city is asking that these hotels designate a percentage of their rental every month and use that revenue to pay their special assessment and it kind of feels like a bank covenant which says you should make this money so you have enough to pay your taxes and that is all it does. It probably is a provision which any financial institutions which lends on the BID Bonds would find it favorable because they will know if a hotel is in-trouble if they aren't remitting part of that assessment every month to the city and it creates a better credit for the city on their bonds. It is not a tax, it is more so a triple net lease which is similar to you paying \$8.00 for rent but you also pay taxes, insurance, and everything else. It is absolutely legal. The Department of Revenue would say that this is revenue that is not subject to tax because it is a special assessment. Atlantis LLC is still working on getting a letter from the State. T. Meierhenry received the same opinion and he has reviewed the Resolution of Intent has of the minimal requires and paragraph 6 is just an extra one that says we want to know if your hotels are not doing so well because you should collect monthly and pay it is and the city will know right away and we won't have to deal with the county and the upcoming Ordinance will indicate collection matters if it isn't paid. If they don't pay the City would foreclose their special assessments on their property you don't make them charge leases.

J. Hollinshead also asked, that there is a concern that statutory authority of SDCL 9-55-3 that specifically authorizes roads of public utilities developments subdivision that is not going to be a public place; referencing the Seger Drive portion of this BID. The concern is that, it would seem more appropriate under road district or another statutory mechanism. If it does qualify, it appears it is not the intent of the developer to provide those improvements as security based on the front footage assessment under SDCL 9-55-7 or 9-55-13 without some type of assessment to that property. Should this be of concern to the City? T. Meierhenry indicated you can assess for public improvement and you can assess for the benefit and benefit is a little different than the running foot. SDCL 9-43 is generally the Municipality special assessment; they have front foot and benefit. This chapter is different because it is a BID. So, what the City actually does is determine if there a special benefit and all public improvements as a whole can be assessed however they determine against the properties that benefit which could include parking garages, lots, roads, bus stops, etc. Looking at it as a whole, the dollar amount is divided between the properties that benefit and how do "I" assess them. Do they receive a special benefit based on the nature of the facility? It is nice because they actually petition and they recognize as property owners and they said we specially benefit and you levy it for everyone per property & not on a running foot. For those that are there currently and not benefiting (empty lot) they have access they don't benefit; but until they develop into some property or hotel they do not get assessed a special benefit.

J. Hollinshead asked the City should have no concern with Seger Drive or anything along those lines as far as being included in the BID and as that property is developed over there will be no lien against it because the super lien will be against the actual Hotels as described in; T. Meierhenry those who benefit from the Convention center and the improvements.

B. Hegel reiterated steps: Resolution of Intent, Public Notice, Public Hearing. Hegel asked if there are any agreements between us and the City and the Convention Center besides this. R. Tellighuisen addressed they are in a process of drafting two agreements. One is a development agreement for the purchase property where the Convention Center would be located and the owner of that property. The other is between Atlantis LLC and the City that they could purchase the property subject to the auction for the same price that Atlantis has the opportunity to purchase it for. An additional agreement is between the City and Atlantis to pay for the upfront/preliminary expenses that the city use a portion of the special assessment funds to pay for those expenses as they occur. The management agreement will be drafted down the

road with the City where Atlantis would manage the Event Center and that there may be a surplus of operating revenue that would come back to the City of Box Elder. Historically, that is not the case usually these are loss-leader but down the road potentially could have the additional revenue.

B. Hegel asked who would take care of the insurance and all the other expense if the Bond is held by the City. The payment is still due by the City what happens if a F4 tornado whips out all the hotels and the event center. Atlantis would be responsible; as they too have their own insurance up to the assessment amount and would be addressed in the developer's agreement.

Motion to approve Resolution of Intent 17-08 by Hollinshead, seconded by Allen. Vote aye: unanimous.

**14. LEGAL:** Discuss and decide approval to Ordinance #581, amendments to Ordinance #521 – Liquor Licenses. Motion to approve by Hollinshead, seconded by Cowley. Vote aye: unanimous.

**15. PLANNING & ZONING:** Discuss and decide action regarding Minor Plat regarding Lots 1 & 2 of Bertelson Subdivision, for Joel and Rebecca Anderson. Motion to approve by Hollinshead, seconded by Allen. Vote Aye: unanimous.

**16. PLANNING & ZONING:** Discuss and decide action regarding Resolution accepting Minor Plat for Lot 1 & Lot 2 of Tract CC, Bertelson Subdivision. (Resolution 17-28) Motion to approve by Hegel, seconded by McPherson. Vote aye: unanimous.

**17. PLANNING & ZONING:** Discuss and decide action regarding Flood Plain Development Application on behalf of Amanda Taylor to place fill in the floodplain at 22724 Tawney Court, Creekside Subdivision. Motion to approve by McPherson, seconded by Cowley. Vote aye: unanimous.

**18. PLANNING & ZONING:** Discuss and take action regarding reappointment of Mike Hanson and Al Labine to the Planning Commission, each with a five (5) year term as per Ordinance 33.01.05, to expire May 1, 2022. Motion to defer until advertising has been completed by McPherson, seconded by Allen. Vote aye: unanimous.

**19. PUBLIC WORKS:** To discuss and decide on agreement for Architectural/Engineering Services for Phase I/Phase II of Box Elder City Hall. Motion to approve by Hollinshead, seconded by Cowley. Vote aye: unanimous.

**20. PUBLIC WORKS:** Approve Engineering Proposal to close out Ghere Well Site Improvements and Fencing at new Public Works Site. Motion to approve engineering proposal by Hollinshead, seconded by Allen. Vote aye: unanimous.

**21. PUBLIC WORKS:** Approve Utility Easement Request for West River Electric. Motion to approve by Allen, seconded by Cowley. Vote aye: unanimous.

**22. FINANCE:** Discuss and decide action on second reading of Ordinance 580, 2017 Supplemental Budget Appropriation. Motion to approve by Weathers, seconded by Cowley. Vote aye: unanimous.

### **23. DEPARTMENT HEAD REPORTS:**

Mayor: Received the grant for the water line that will go from approximately Villa to the old Vandenberg School for the amount of \$379,000. Did not receive the grant for economic development but we will have a meeting with a community development representative from the Governor's Office this coming Thursday. Have a meeting tomorrow morning with a company that develops senior living communities. Attended the Black Hills Form and Press Club, discussion of the addictions of certain pain medications.

Police: Couple of weeks ago I spoke about being invited to the training school called ALICE, Alert Lockdown Inform Counter and Evacuating specific to active shooter and civilian response. We sent Officer Gunnar Grass to that training and to further in that, we have a meeting tomorrow at the school, myself, Gunnar, along with some of the other agencies will participate and talk more about how we are going to implement that, what it's going to look like and mean for our district. The POW/MIA Run/Walk went smoothly, pretty good time and turn out. First year they had it here, brought it from Rapid. Talked to the organizer, said it well and would like to continue having it here and want to grow it even larger. This weekend we have the Out of the Darkness Suicide Awareness Walk we will be helping with.

Public Works: Closing for the Public Works worksites scheduled for next Tuesday the 26<sup>th</sup>. At the site, we've been working with utilities companies trying to get things coordinated for the gas and electrical services, things of that nature. Had a water leak in Ash Court last week, crew was working on one in Northern Lights yesterday, and leak at the BMX track

today. Last week, the street crew completed all the prep work for the auto patching work that was contracted through JJ Asphalt, basically the patch work for all our water repairs. The street maintenance project with JJ Asphalt and the striping project have been completed. On City Hall, this past Monday I met with a representative of Tile Company that provided tile for City Hall, went around and looked at all our problem areas, talked about different cleaning options, just extra that we can do. Several proposals out for a maintenance contract for work on our sewer lift station, instead of just cleaned once a year we are hoping for twice a year.

Finance: All were given some nice financial reports, revenues are coming in as projected. Revenue in expense through August, the only thing that is high is legal, which was discussed in the budget hearing. We were able to finally close the single audit today and our SAC report was submitted to the Federal Clearing House, all the federal reporting that's required plus the actual audit itself. We will have Casey Peterson here for the Council Meeting on the 17<sup>th</sup> to report the fiscal year 2016 Audit. We are looking forward to some of the training that is coming up, we are going to the South Dakota Municipality Conference, plan to meet with several companies and the South Dakota Assurance Alliance to go over all of our current insurance policies, make sure we are getting the best. During the audit training, I was able to meet with Jerry with the Public Assurance Alliance, a nonprofit through the South Dakota Municipal League, who informed me we could get the derby rider for even cheaper. Wanting to look into other options. The cross training has been going really well, we've been able to get quite a bit accomplished with the utility bill migration. Monday we were able to get the new template, a lot of complaints were because of the new email version of the invoice, we've cleaned it up hopefully we'll have that go into effect next Monday. Working with Teresa who is our assigned agent since Don's resignation, she is great, she will be working with Sandy who's with the South Dakota Municipal. They will be doing a presentation on all the health care options available to council on October 17<sup>th</sup>, 2017.

Planning & Zoning: NA

City Attorney: NA

#### **24. COUNCIL REPORTS:**

Allen: NA

Cowley: NA

Hegel: NA

Hollinshead: NA

McPherson: Safety Meeting on October 2<sup>nd</sup>, 2017, noon.

Weathers: NA

#### **25. OTHER REPORTS:**

Economic Development: NA

#### **26. CITIZEN INPUT: NA**

**27. EXECUTIVE SESSION:** Contractual and Executive Session started at 7:55 pm; Out of Session at 8:44 pm. Motion by Hollinshead, seconded by Cowley to go into Executive Session. Vote aye: unanimous.

**28. ADJOURNMENT:** 8:45 pm. Motion to adjourn by Weathers, seconded by Allen. Vote aye: unanimous.

**Seal:**

**Attest:**

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**Larry Larson**  
Mayor

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**Nicole Schneider**  
City Administrator/Finance Officer