

PROCEEDINGS OF THE CITY COUNCIL
Rapid City, South Dakota

May 3, 2010

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Rapid City was held at the City/School Administration Center in Rapid City, South Dakota on Monday, May 3, 2010 at 7:00 P.M.

The following members were present: Mayor Alan Hanks and the following Alderpersons: Bill Waugh, Patti Martinson, Sam Kooiker, Lloyd LaCroix, Karen Gundersen Olson, Ron Weifenbach, Ron Kroeger and Deb Hadcock; and the following Alderpersons arrived during the course of the meeting: None; and the following were absent: Aaron Costello and Malcom Chapman.

Staff members present included Finance Officer Jim Preston, City Attorney Jason Green, Public Works Director Robert Ellis, Growth Management Director Marcia Elkins, Police Chief Steve Allender, Fire Chief Mike Maltaverne, Community Resource Director Kevin Thom, Assistant Director Growth Management Bob Dominicak, and Administrative Coordinator Amber Sitts.

ADOPTION OF AGENDA

The following items were added to the agenda:

- Report on the petitions submitted on April 30, 2010 regarding Ordinance 5591 titled "An Ordinance Establishing the Downtown Business Improvement District."
- Direction on setting an election regarding the referral of Ordinance 5591.
- Report on the Historical Marker for Skyline Drive, Alderman Kooiker

Motion was made by Hadcock, second by LaCroix and carried to adopt the agenda as amended.

APPROVE MINUTES

Motion was made by LaCroix, second by Olson and carried to approve the minutes for the April 19, 2010 regular Council meeting and the April 27, 2010 special Council meeting.

AWARDS AND RECOGNITIONS

Mayor Hanks presented an Executive Proclamation declaring May 2010 as Historic Preservation month. The County Commission and Loren and Roberta Symonds were presented with Norman E. Nelson Preservation awards for their outstanding preservation projects.

NON-PUBLIC HEARING ITEMS -- Items 1 – 114

Motion was made by Olson, second by LaCroix and carried to open the public comment for Items 1 – 94. Ron Sasso expressed his support for the changes and improvements to the Silver Street area and the Out of the Dust resolution. Michael Galanda spoke in support of Item 70 (No. LF041410-23).

Motion was made by Weifenbach, second by Olson and carried to close the public comment for Items 1 – 94.

CONSENT ITEMS – Items 1 – 83

The following items were removed from the Consent Items:

deadline to June 1, 2010. Olson suggested continuing the item. Responding to Kooiker, Mayor Hanks confirmed extensions were granted for the previous project as well, and Green added that we are much further along with this project. Olson stated her support for the motion. Motion carried.

Motion was made by Olson to deny (No. LF042810-01) refunding the application fees to the Melody Acre residents. Motion was not seconded.

Motion was made by Kroeger, second by Hadcock, to (No. LF042810-01) refund the application fees to the Melody Acre residents. Green advised the Council that this expenditure is not lawful. Olson indicated she took an oath to uphold laws and explained she will not be in favor of the motion. Kroeger said there was no need for a PRD so we should have the ability to refund the fees. Responding to Kooiker, Green stated he could not think of an instance where the City has refunded or not collected fees in the past. Kooiker referred to a discussion at a meeting in March of 2003 regarding impact fees and said he felt this is something we can and should do. Weifenbach discussed state versus city law and said we have a direct conflict. He said it is not fair that the residents should have to apply for a PRD that they do not understand so the fees should be refunded. Responding to Hadcock, Elkins explained the steps and process for a PRD. Green said that they are amending the comprehensive plan, and the ordinance requiring fees is in a different ordinance. Responding to Hadcock regarding public hearing requirements, Green explained the requirements in state law and City ordinance and said his understanding is that all procedures were followed. Hadcock said she felt the process was not followed by staff so the applications are invalid. She indicated the applications were revoked as they were not filled out correctly. Responding to Hadcock, Green said nothing has been revoked, and the fees were an application fee regardless of approval. There is no legal basis for a refund. Green addressed the reference to impact fees in 2003 and explained that Council was able to refund fees that were collected prior to the effective date of the initiated measure. LaCroix said this was a lesson learned and said he will support this even though it is illegal. He is willing to work off the Dias for resolution. Responding to Kroeger, Green said he does not know of a statute that authorizes transfer of funds collected under a valid ordinance to a private party. He also pointed out that if the refund is directed by Council it is likely it would result in a qualification to the City's annual audit, which would have adverse consequences to the City anytime there is an effort to borrow money or undertake financing of municipal obligations. Responding to Hadcock, Bill Fretag explained why he felt the fees should be returned. Hadcock said this would not have happened with full disclosure, and she said they should be able to find something for the mistake with legal interpretation. Responding to Hadcock, Green said it came through the normal process and pointed out that the fee must be submitted at the time of application. If the application was not filled out right, the time to address the issue has long passed, but the fee was still validly collected. Hadcock suggested calling it something else in order to help the applicants. Weifenbach said this does not make sense and said there is a flaw in the process. Green said he has looked at suggested alternatives, but it is impermissible for him to advise the Council on how to violate the law. Kooiker referred to the action on March 27, 2003 regarding the impact fees again and said this is a similar situation. Green clarified the action that was taken in 2003 indicating there was no legal authority to collect the fee prior to the effective date. Upon vote being taken, the following voted AYE: Hadcock, Waugh, Kooiker, LaCroix, Weifenbach and Kroeger; NO: Martinson and Olson. Motion carried.

Motion was made by Olson, second by Hadcock, to continue items 100 and 101 to the June 7, 2010 City Council meeting. Hadcock expressed her appreciation to Thom for his assistance. Motion carried.

100. No. LF042810-05 – Resolution No. 2010-038 to Establish the Position of Airport Electrician

101. No. LF042810-06 – Resolution No. 2010-052 to Amend the City of Rapid City Compensation Plan by Reclassifying the Position of Deputy Airport Director.

Public Works Committee Items