

## DELL RAPIDS CITY COUNCIL MINUTES

Monday, March 3, 2014 at 7:30 p.m.

Mayor Scott Fiegen called the Dell Rapids City Council meeting to order at 7:30 p.m. at the City Hall Council Chambers. The Roll was called finding the following members present: Chad Andrews, Lee Burggraff, Mark Crisp, Mike Geraets, Gary Haak, Vice President Craig Lauritzen, President David Sommerfeld (via Skype) and Mayor Scott Fiegen.

Absent: Paul Miles.

Staff Present: Administrator Justin Weiland, Finance Officer LeAnn Kerzman, and City Attorney Dean Hammer. Pledge of Allegiance was recited.

**Approval of Agenda:** Burggraff moved to approve the agenda with the correction on the date of the approval of minutes from February 3 to February 18, 2014. Motion seconded by Lauritzen. Motion carried.

**Approval of Minutes:** Lauritzen moved to approve the minutes of the regular meeting held on February 18, 2014. Geraets seconded. Motion carried.

**Claims Approved:** Burggraff moved to approve the claims as presented. Seconded by Haak. Motion carried. A-Ox Welding Supply Co, cylinder rental \$22.32; Avenet, web hosting 550.00; BX Civil & Construction, snow removal 1063.75; City of Dell Rapids, utilities \$101.27; Dakota Technology Consulting, NAS backup/wireless access points 1454.71; DakotaCare, insurance 8008.46; Dells Farm & Tire, tires 846.00; Delta Dental, insurance 670.20; East, Vander Woude, Grant & Company, annual report 2860.00; EFTPS, payroll liability 5447.11; First Bank Card, travel expense/parts 991.71; Garbage N More, trash hauling \$75.00; Golden West Telecommunications, telecommunications, 752.91; Gruis, Karla, maintenance 612.00; Hauf Mid-American Sports, L screens 600.00; LG Everist, quartzite 247.77; Loyal Electric, repair Norby's cooler 99.45; MidAmerican Energy, natural gas 1897.10; Midwest Alarm, lift station monitor 29.38; Minnehaha Community Water, utilities 8182.42; Minnehaha County Sheriff, 1<sup>st</sup> quarter law enforcement 60,162.60; Republic National Distributing Co, liquor 13,515.60; Sam's Club Discover, 3 chairs/office supply 570.19; SD DENR, rubble site fee 250.00; SD State Treasurer, Dept. of Revenue, sales tax/ lottery draw 1601.08; SDRS, retirement 5051.26; Stan Houston Equipment, chain 475.00; Verizon Wireless, telecommunications 92.82; Witte Industries, thaw services 1950.00; Xcel Energy, electricity/street lighting 4648.95.

**Added or Increased Salaries:** February payroll - General Government: 12,019.42; Public Safety 2,643.16; Public Works 10,055.10; Library 5,066.59; Water 7,467.68; Wastewater 7,467.68. Library Department: Weiland reported the hiring of Sherry Brandner as part-time Library Assistant at a wage of \$8.00 per hour beginning on March 11, 2014.

**Deposit and Investment Policies: Annual Report:** The 2013 Annual Report has been completed and Schedule IV, Statement of Revenues, Expenditures and Changes in Fund Balances Government Funds, was presented to the council. Kerzman stated the full report will be presented to the council for review and approval.

**Resolutions & Ordinances - First Reading of Ordinance #791 – Rezone Lots 1 and 2 of Block 32 of Dell Rapids Original from B-1 (Central Business) to R-1 (Single Family Detached):** Dennis Holles was present to represent the landowners in their request. His future intent is to sell the home and the rezone would make it easier for the purchaser to qualify for a home loan. Motion by Burggraff, second by Crisp to accept the application for rezone. Motion carried.

**Second Reading of Ordinance #788** Amending the 2011 revised Zoning Ordinance of the City of Dell Rapids, SD, by amending chapter 3, NRC: Natural Resource Conservation District to provide for a private garage as a conditional use. Motion by Geraets to approve. Second by Andrews. Additional discussion ensued. Roll call: Andrews-Aye, Burggraff-Nay, Crisp-Nay; Geraets-Aye; Haak-Nay; Lauritzen-Nay, Sommerfeld-Nay. Motion failed five (5) to two (2).

Within the discussion of Ordinance #788, the council also discussed future agenda items of **Zoning Ordinance Amendments – Accessory Structures and Conditional Use Amendment protest**. Burggraff and Crisp each preferred to see some of the language from each which was removed when the entire Zoning Ordinance was amended. Hammer stated that some conditions have become state law and therefore don't need to be restated within local ordinance but agreed that reference could be made. Weiland received direction to bring another proposal for the council to consider.

**Resolution 2014-03 – South East Sewer Extension Project Authorizing Sales Tax Revenue Bond and Entering into Loan Agreement:** Burggraff moved to approve Resolution #2014-03. Crisp seconded. Motion carried six (6) to one (1) with Sommerfeld voting nay.

RESOLUTION NO. 2014-03

RESOLUTION AUTHORIZING THE ISSUANCE BY THE CITY OF DELL RAPIDS, SOUTH DAKOTA, OF ITS SALES TAX REVENUE BOND IN AN AMOUNT NOT EXCEEDING \$1,200,000 TO PAY THE COSTS OF CONSTRUCTING AND EQUIPPING OF IMPROVEMENTS TO THE CITY'S SANITARY SEWER SYSTEM; APPROVING THE TERMS AND FORMS OF LOAN AGREEMENT AND BOND; AUTHORIZING THE SALE OF THE BOND; PLEDGING THE CITY'S SALES AND USE TAX REVENUES TO THE PAYMENT OF THE BOND; AND PROVIDING FOR THE MANNER OF EXECUTION AND ISSUANCE OF THE BOND.

WHEREAS, the City of Dell Rapids, South Dakota, South Dakota (the "City") is authorized pursuant to SDCL §9-40-1, et seq., and §9-48-1, et seq., to construct, operate and improve wastewater systems, including sanitary sewers, storm sewers, and sewage and solid waste disposal plants and systems, and pursuant to SDCL Chapters 9-40 and 6-8B (together, the "Acts") to issue bonds to defray the cost of such extensions, additions and improvements; and

WHEREAS, the City Council has determined that the City's sanitary sewer system (the "Sanitary Sewer System") facilities are inadequate and that it is necessary and in the best interests of the City to make certain improvements to the system as more fully described in *Exhibit A* (the "Project"), and to finance a portion of the costs thereof through the issuance of the City's Sales Tax Revenue Bond, Series 2014 in an amount not to exceed \$1,200,000 (the "Bond") to the South Dakota Clean Water State Revolving Fund Loan Program administered by the South Dakota Conservancy District (the "Conservancy District") pursuant to SDCL 46A-1-49; and; and

WHEREAS, the City is authorized by Chapter 10-52 of the South Dakota Codified Laws to levy a non-ad valorem tax (as defined in said Chapter 10-52) on the sale, use, storage, and consumption of certain items taxed under Chapters 10-45 and 10-46 of the South Dakota Codified Laws, subject to certain exceptions, at a rate not to exceed two percent (2%); and

WHEREAS, the City has adopted and enacted Ordinance No. 349, as amended by Ordinance No. 434, Ordinance No. 447, and Ordinance No. 453, codified as §§ 19.5-25 through 19.5-30, inclusive, of the Revised Ordinances of the City, and as further amended by Ordinance No. 653 and Ordinance No. 683 (together, the "Sales Tax Ordinance") imposing a sales and use tax (the "Sales and Use Tax"), as authorized by SDCL Chapter 10-52, at the rate of two percent (2%); and

WHEREAS, pursuant to Section 10-52-2.10 and Chapters 9-40 and 6-8B of the South Dakota Codified Laws (the "Acts), the City is authorized to issue sales tax revenue bonds in anticipation of the collection of sales and use taxes and to pledge the revenues from such taxes to the payment of such bonds; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Dell Rapids, South Dakota, South Dakota, as follows:

ARTICLE I: THE BOND

Section 1.01 Findings. It is hereby found, determined and declared that:

- (a) The City is a political subdivision of the State of South Dakota and a body corporate and politic.
- (b) The City finds and determines that the improvements included in the Project are necessary and beneficial to the health and well-being of the residents of the City, and the lands adjacent thereto.
- (c) As authorized by this Resolution and the Acts, the City has determined that it is necessary and desirable to issue the Bond, and to use the proceeds thereof to (i) to pay a portion of the costs of the Project and (ii) to pay the costs of issuance of the Bond.
- (d) The Bond will be issued, sold and delivered by the City to the Conservancy District pursuant to the terms of the Revenue Obligation Loan Agreement between the Conservancy District and the City (the "Loan Agreement").

Section 1.02 Authorization and Execution of Bond; Terms. As authorized by the Acts, the City hereby authorizes the issuance of one fully-registered Bond in a principal amount not to exceed \$1,200,000. The Bond will be designated "Sales Tax Revenue Bond, Series 2014," will be numbered R-1 and will be dated as of the date of its issuance. The Bond will be payable in eighty (80) quarterly installments over twenty (20) years commencing as set forth in the Loan Agreement.

The Bond will bear interest at the rate of 2.50% per annum pursuant to the Loan Agreement. In addition, as required by the Loan Agreement, the City will pay the holder of the Bond an administrative expense surcharge on the outstanding principal amount of the Bond at a rate of .50% per annum.

The Bond will be signed by the manual signatures of the Mayor and Finance Officer, and sealed with the corporate seal of the City, or a facsimile thereof. The approval hereby given to the Bond includes an approval of such additional details therein as may be necessary and appropriate and approved by the City Attorney prior to the execution thereof. The execution of the Bond by the Mayor and Finance Officer will be conclusive evidence of the approval of the Bond in accordance with the terms hereof.

Section 1.03 Authorization of Financing Documents. The documents required to accomplish the issuance of the Bond include the following:

- (a) the Loan Agreement;
- (b) the Bond; and
- (c) such other documents, agreements or instruments as may be necessary to make covenants and recite facts required to demonstrate the validity and enforceability of the Bond under the laws of the State of South Dakota and to assure the exclusion of the interest thereon from the gross income of the owners of the Bond under the Code and to effectuate the terms and intent of this Resolution.

The execution and delivery of such documents is hereby authorized, approved and confirmed, and the Mayor and Finance Officer are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content presented to the City Council on this date (the terms of which are incorporated herein by this reference), with such changes as the City Attorney deems appropriate and approves, for and on behalf of the City. The Mayor and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the City as set forth in or required by the Loan Agreement.

Section 1.04 Form of Bond. The Bond will be in substantially the form set forth on Appendix B to the Loan Agreement.

Section 1.05 Sale of Bond. The sale of the Bond to the Conservancy District at par plus interest accrued to the date of delivery of the Bond, is ratified and confirmed; and the officers of the City are authorized and directed to do any and all acts necessary to conclude delivery of the Bond to the purchaser, upon receipt of the purchase price, as soon after the effective date of this Resolution as is convenient.

Section 1.06 Application of Bond Proceeds. Proceeds of the Bond will be deposited and applied in the manner provided in the Loan Agreement.

Section 1.07 Inspection of Documents. All documents referred to herein will be available for public inspection in the office of the City Finance Officer during regular business hours.

## ARTICLE II: SECURITY FOR THE BOND

Section 2.01 Pledge of Sales and Use Tax Revenues. Pursuant to SDCL 10-52-2.10, the City hereby irrevocably pledges to the Conservancy District all revenues received from the Sales and Use Tax (the "Pledged Revenues") in order to secure the City's obligation to pay all amounts payable under the Loan Agreement and the Bond. The City will set aside and segregate in a separate account on a monthly basis such Pledged Revenues for payment of the principal and interest on the Bond.

Section 2.02 Deposit of Pledged Revenues. All moneys in the account provided for above will be deposited with such financial institution as designated from time to time by the City.

## ARTICLE III: OTHER COVENANTS

Section 3.01 Compliance With Laws. The City hereby covenants and agrees with the holder or holders, from time to time of the Bond, that it will punctually perform all duties with reference to the Bond required by the constitution and laws of the State of South Dakota and by this Resolution.

Section 3.02 Other Covenants. The City agrees and covenants that it will purchase the improvements included in the Project. The City will not sell, lease, mortgage or in any other manner dispose of the Project, or any substantial part thereof, until the Bond has been paid in full. The City covenants and agrees with the owners of the Bond that it will prepare, keep and file records, statements and accounts as provided for in this Resolution and the Loan Agreement.

Section 3.03 Additional Bonds. Additional bonds payable from the Pledged Revenues may be issued on a parity with the Bond, but only as permitted in the Loan Agreement and no provision of this Resolution will have the effect of restricting the issuance of, or impairing the first lien of, such additional parity bonds. The City will have the right to issue additional bonds secured by a lien subordinate to the lien for the Bond but only as permitted by the Loan Agreement.

Section 3.04 Qualified Tax-Exempt Obligations. The City hereby designates the Bond as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code and determines that the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds, treating qualified 501(c)(3) bonds as not being private activity bonds) which will be issued by the City (and all entities subordinate to, or treated as one issuer with the City) during calendar year 2014 will not exceed \$10,000,000. Not more than \$10,000,000 of obligations issued or to be issued by the City during calendar year 2014 have been or will be so designated for purposes of Section 265(b)(3) of the Code. The City will use its best efforts to comply with any federal procedural requirements that may apply in order to effectuate the designation made by this paragraph.

## ARTICLE IV: MISCELLANEOUS

Section 4.01 Limited Obligations. The Bond, together with the interest thereon, will not constitute a charge against the City's general credit or taxing power, but will be a limited obligation of the City payable solely out of the Pledged Revenues, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Bond and will be used for no other purpose than to pay the principal of and interest on the such Bond, except as may be otherwise expressly authorized in the Loan Agreement.

Section 4.02 Severability. If any section, paragraph, clause or provision of this Resolution or the Loan Agreement is held to be invalid, the invalidity of such section, paragraph, clause or provision will not affect any of the other provisions of this Resolution or the Loan Agreement. The Mayor, Finance Officer, City Attorney and City officials are hereby authorized to execute and deliver for and on behalf of the City the Bond any and all other certificates, documents or other papers and to perform such other acts as they may deem necessary or appropriate in order to implement and carry out the matters herein authorized.

Section 4.03 Retention of Bond Counsel. The City hereby retains the firm of Davenport, Evans, Hurwitz & Smith, L.L.P., Sioux Falls, South Dakota, to act as bond counsel with respect to the Bond.

Section 4.04 Effective Date. This Resolution, after its final passage, will be recorded in a book kept for that purpose, will be authenticated by the signature of the Mayor and Finance Officer, will be published in the City's officially designated newspaper, and will be effective on the 20<sup>th</sup> day following such publication. After becoming effective, this Resolution will be irrevocable until the Bond issued hereunder has been paid in full, except that prior to issuance of the Bond, this Resolution may be amended at any time by adoption of an administrative resolution or ordinance.

Dated this 3<sup>rd</sup> day of March, 2014.

[CITY SEAL]

/s/ Scott Fiegen  
Mayor

ATTEST:  
/s/ LeAnn Kerzman  
Finance Officer

EXHIBIT A  
DESCRIPTION OF PROJECT

City of Dell Rapids wastewater improvements as outlined in Facilities Plan dated September 2013.

**Zoning Violation – Argonne Trust:** Due to the decision of the council from the last council meeting. The business operating out of an R-1 zoned property is in violation of ordinance. Direction requested from the council. Sommerfeld moved for administration to work with the business on forward progress on compliance with a reference to a six month time frame. Burggraff seconded. Motion carried with Andrews dissenting.

**Visitors to be Heard:** None.

**Library Department - Renovation/Expansion Project:** Library Board Member Tom Earley spoke to project. They have discussed renting space at the former elementary school building and await a lease agreement from the school. Bid opening will be on Wednesday, March 5 at 2:15 p.m. for underground utility work. Building bid opening is scheduled for April 17. Next Library Board meeting will be Thursday, March 13 at 6:30 p.m. at the City Council Chambers.

**Library Personnel:** Weiland reported the Library Board recommended hiring Sherry Brandner as the new Library Assistant at a wage of \$8.00 per hour to begin on March 11, 2014. Lauritzen moved to approve the new hire. Andrews seconded. Motion carried.

**Surplus Property Committee - Warming House Property:** Weiland distributed copies of a subdivision plan to the council. Greg Ammon spoke for a group of citizens that expressed their interest in not selling the building or the property until they would have additional time to see about preservation of the structure. The group requested a moratorium on any action. Fiegen directed more research be provided about FEMA conditions regarding 50% improvements and historic structures.

**Bridge Located and Old City Dump Property:** Weiland stated that the borings taken where it was thought possible to sell additional land to the south of the landfill has been found to contain landfill debris. For this reason, it is unexpected that the surplus property committee would consider any additional action on this land. This led to discussion of the bridge that is located on top of the former landfill. Due to no action being taken in the land; no action was pursued with moving the bridge. Mayor Fiegen stated that until it can be placed as an access across the river, there isn't a reason to have the expense of moving it.

**Public Works – Streets: 15<sup>th</sup> Street Truck Route:** Haak requested the council consider dedicating 15<sup>th</sup> Street as a truck route in order to alleviate traffic through the city to the existing route along 4<sup>th</sup> and 3<sup>rd</sup> Street. The council discussed and noted that the road is used for trucks when the weight of the load dictates the need because it is a concrete roadway. Written statement against was provided by Summer Schultz, Dell Rapids Schools Superintendent. No action taken by the council to pursue.

**Parks – Community Gardens:** Weiland presented a proposed listing of guidelines and a fee of \$35 for a 10 ft. by 20 ft. garden plot. Discussion ensued regarding the location (east of diamond E (south side of river ball fields)) and ability for access. Motion by Burggraff to accept the guidelines as proposed. Second by Geraets. Motion carried.

**General Government – Big Sioux Media:** Mathew Larson asked to address the council to explain his business. He purchased and operates Big Sioux Media. Advertising is sold on the website but he does have other employment. Statistics from the website does show that many hits are coming to the webcast council meetings. He suggested that the council consider purchasing equipment in order to post the meetings ourselves and even to our own website if desired. The council thanked him.

**Treasurer’s Report:** A recap, of all income and expenses that occurred since the last meeting, was presented to the council.

**City Administrators Report** – Weiland reported on the following:

- With the freezing of water services, citizens have been asking about receiving credits for allowing their service to run. No direction from the council offered.
- Northview Drive/11<sup>th</sup> St water issue – Public Works continues to monitor water appearance. Looks good after flushing and debris found after that.
- SE Sewer extension project – DGR has reached final design stage. Current sewer service plan runs along east side of Garfield Avenue. Service to existing homeowners will be stubbed but connection cost to be borne by property owner. Beach Avenue service replacement has been discussed with LG Everist and D & I Railroad. They plan to replace a wider section on track which means additional section of sewer should be replaced and encased.
- Board of Equalization Meeting will be held on Tuesday, March 18<sup>th</sup> and possibly March 19<sup>th</sup> at 7:30 p.m. in Council Chambers. Deadline to file is Thursday, March 13<sup>th</sup> at 5 p.m.

Lauritzen moved to adjourn. Crisp seconded. Council adjourned at 9:39 p.m.

LeAnn Kerzman, Finance Officer