

PROCEEDINGS OF THE CITY COUNCIL
Rapid City, South Dakota

February 16, 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 Tuesday, February 16, 2010 at 7:00 P.M.

The following members were present: Mayor Alan Hanks and the following Alderpersons: Bill Waugh, Patti Martinson, Sam Kooiker, Aaron Costello, Lloyd LaCroix, Malcom Chapman, 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: None.

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 Mark Rohlfing, 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:

- Hockey Team, Alderman Hadcock

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

APPROVE MINUTES

Motion was made by Hadcock, second by Chapman and carried to approve the minutes for February 1, 2010.

AWARDS AND RECOGNITIONS

Mayor Hanks presented the Veteran of the Month for February 2010 to Winfred 'Doc' Jackson, Jr. and recognized his efforts and dedication to the service of his country and community.

NON-PUBLIC HEARING ITEMS -- Items 3 – 77

Motion was made by Chapman, second by Olson and carried to open the public comment for items 3 – 58. No comments were offered.

Motion was made by Hadcock, second by Olson and carried to close the public comment for items 3 – 58.

CONSENT ITEMS – Items 3 – 51

The following items were removed from the Consent Items:

23. No. PW020910-16 – Approve the Solid Waste Master Plan.
32. No. 10TP002 - Authorize Mayor and Finance Officer to sign the 2010 Unified Planning Work Program Amendment 2010-01.

33. No. 10TP003 – Authorize Mayor and Finance Officer to Sign Amendment Number 1 to Agreement Number 811009 between the City of Rapid City and the South Dakota Department of Transportation for accomplishing the Rapid City Area Transportation Planning Process.
38. No. LF021010-08 – Direct appropriate change of Wards and Precincts Adding Annexed Areas.

Motion was made by Olson, second by Chapman and carried to approve the following items as they appear on the Consent Items.

Alcoholic Beverage License Applications Set for Hearing (March 1, 2010)

3. Girl Scouts – Dakota Horizons for a Special Event Wine License for an event scheduled March 25, 2010 at the Journey Museum.

Public Works Committee Consent Items

4. Acknowledge the report on I-190/North Street/Silver Street/West Boulevard Structure and Intersection Improvements from South Dakota Department of Transportation.
5. Acknowledge the report on Traffic Signal Improvements at Mt Rushmore Road and St Patrick Street from South Dakota Department of Transportation with the recommendation of Option 5 to wait until the upcoming reconstruction project in 2014.
6. Acknowledge the report on Drainage Issues at School Drive & Highway 44.
7. Acknowledge the report on Saint Patrick Street and South Valley Drive Intersection Traffic Signal.
8. Acknowledge the report on the 46th Annual Concrete Conference.
9. No. PW020910-02 – Approve Change Order No. 3 to SECO Construction, Inc. for the Milo Barber Transportation Center, Project No. GB08-1765, for an increase of \$8,312.20.
10. No. PW020910-03 – Approve Change Order No. 4F to Heavy Constructors, Inc. for the Red Rock Water Storage Reservoir, Project No. W03-1184, for a decrease of \$125,540.56.
11. No. PW020910-04 – Authorize Staff to Advertise for Bids for the Rapid Transit System Bus Shelter Renovation. Estimated cost: \$60,000.00.
12. No. PW020910-05 – Authorize Staff to Advertise for Bids for the Street Rehabilitation Project – Arrow Street, Farlow Avenue & Culvert Street, Project No. ST10-1854 / CIP No. 50549. Estimated cost: \$315,000.00.
13. No. PW020910-06 – Authorize Staff to Advertise for Bids for West Chicago Area Water Main Reconstruction, Project No. W08-1763 / CIP No. 50282. Estimated cost: \$475,000.00.
14. No. PW020910-07 – Authorize Staff to Advertise for Bids for Easy Street Sanitary Sewer Main Extension, Project No. SS09-1829 / CIP No. 50776. Estimated cost: \$185,000.00.
15. No. PW020910-08 – Authorize Mayor and Finance Officer to Sign a Professional Services Agreement with Stanley Consultants, Inc. for the Energy Efficiency and Renewable Energy Initiative in the amount of \$39,800.00.

- 16. No. PW020910-09 – Authorize Mayor and Finance Officer to Sign Amendment No. 2 to the Agreement with Geiger Architecture for the Milo Barber Transportation Center Improvements, Project No. GB08-1765 / CIP No. 50746-1765, in the amount of \$92,690.00.
- 17. No. PW020910-10 – Authorize Mayor and Finance Officer to Sign a Permanent Utility Easement with Black Hills Power, Inc. for the Hartland Court Relocation (Dover Drainage Improvements), Project No. DR05-1452 / CIP No. 50025.
- 18. No. PW020910-11 – Authorize Mayor and Finance Officer to Sign an Agreement with SDDOT for Use and Restoration of Detour and/or Wet Weather Detour, State Highway Project No. IM 0902 (108) 80 PCN 0123.
- 19. No. PW020910-12 – Authorize Mayor and Finance Officer to Sign Amendment No. 1 to the Agreement with Ferber Engineering Company for Construction Observation Services for the Eglin Street Extension, Project No. ST05-1470 / CIP No. 50560, in the amount of \$94,380.00.
- 20. No. PW020910-13 – Authorize Mayor and Finance Officer to Sign Amendment No. 2 to the Agreement with Burns & McDonnell Engineering Company, Inc. for Design and Bidding Phase Services for the WRF Digester Control Building Improvements, Project No. WRF09-1783 / CIP No. 50581, in the amount of \$8,330.00.
- 21. No. PW020910-14 – Approve Resolution #2010-017 for the Bridge Reinspection Program for use with SDDOT Retainer Contracts, Annual Bridge Inspections, Project No. ST10-1864 / CIP No. 50630.

RESOLUTION #2010-017
 BRIDGE REINSPECTION PROGRAM RESOLUTION
 FOR USE WITH SDDOT RETAINER CONTRACTS

WHEREAS, Title 23, Section 151, United States Code and Title 23, Part 650, Subpart C, Code of Federal Regulations, requires initial inspection of all bridges and reinspection at intervals not to exceed two years with the exception of reinforced concrete box culverts that meeting specific criteria. These culverts are reinspected at intervals not to exceed four years.

THEREFORE, the City of Rapid City is desirous of participating in the Bridge Inspection Program using Bridge Replacement funds.

The City requests SDDOT to hire Brosz Engineering (Consulting Engineers) for the inspection work. SDSOT will secure Federal approvals, make payments to the Consulting Engineer for inspection services rendered, and bill the City for 20% of the cost. The City will be responsible for the required 20% matching funds.

Dated this 16 th day of February, 2010.

ATTEST:
 s/ James F. Preston
 Finance Officer

CITY OF RAPID CITY
 s/ Alan Hanks, Mayor

(SEAL)

- 22. No. PW020910-15 – Authorize Staff to not allow sanitary sewer service connection to the newly installed sanitary sewer main until a Construction Fee has been established or an agreement

between the property owner and City of Rapid City has been executed for city cost recovery. Easy Street Sanitary Sewer Extension, Project No. SS09-1829 / CIP No. 50776.

24. No. 10TP001 – Approve 2010-2014 Transportation Improvement Program Amendment No. 10-002R.
25. No. PW020910-17 – Approve a request by Good Samaritan Society for authorization to prepare H-Lots located in the SE1/4 and the SW1/4 of Section 29, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota and authorize acceptance of the deed.
26. No. PW0209-10-18 – Approve Change Order No. 6 to RCS Construction, for Vickie Powers Park, Project No. PR08-6002, to authorize an expenditure from the Allowance Amount included in the contract in the amount of \$8,000.00 for materials and labor to install additional storm water drainage infrastructure.

Legal & Finance Committee Consent Items

27. No. LF021010-01 - Approve changes to Beautification Committee Bylaws.
28. No. LF021010-02 – Approve event permit for American Institute of Chemical Engineers (Student Chapter) to hold Dublin Dash on March 20, 2010 from 7:00 A.M. to 9:00 A.M.
29. No. LF021010-03 – Approve event permit for Great Black Hills Duck Race to be held on July 25, 2010.
30. No. LF021010-04 – Approve event permit for United Blood Services for free parking on various dates and places.
31. No. LF021010-05 - Request authorization to charge administrative fees per State Wiring Bulletin ARSD 20:44:20:12 and Rapid City Municipal Code 15.16.
34. No. 10TP004 – Authorize Mayor and Finance Officer to Sign 2009 Unified Planning Work Program Amendment 2009-04.
35. No. 10TP005 - Authorize Mayor and Finance Officer to Sign a No Cost, Time Extension with Felsburg Holt & Ullevig to December 31, 2010 for the Chapel Valley Access and Route Alignment Study.
36. No. 10TP006 - Authorize Staff to seek Request for Proposals for the Preparation of the Arterial Street Safety Review and Recommendation for the City of Rapid City.
37. Acknowledge the Following individuals for Workmen’s Compensation Purposes: Antonio Garcia, Christopher Cox, Adrianna Jumping Eagle, Theodore Hahn, Hafiza Farzami.
39. Declare an emergency and authorize the purchase of \$250,000.00 in salt for ice removal on streets.
40. No. LF021010-10 – Approve Renewal of 2010 Ice Cream Vendor’s License for Keith Storm, d/b/a Pied Piper.
41. Confirm the appointment of Bill Waugh, Patti Martinson, Karen Olson, Jim Preston and Dale Tech to a committee to review the Real Estate Broker RFP’s on the Wally Byam Property.

42. No. LF021010-11 - Authorize Mayor and Finance Officer to sign Amendment to Developer's Agreement for TID 56.
43. No. LF021010-12 – Authorize Mayor and Finance Officer to sign Assignment between City of Rapid City, BankWest, Inc., and Doeck, LLC, Regarding TID 67.
44. No. LF021010-13 – Authorize Mayor and Finance Officer to sign Second Revised Contract for Private Development TID 61.
45. No. LF021010-14 - Authorize Mayor and Finance Officer to sign Assignment Agreement between the City of Rapid City, U.S. Bank, and Villagio, LLC.
46. No. LF021010-17 – Acknowledge raffle request from Mount Rushmore Chapter Barbershop Harmony Society.
47. No. LF021010-18 – Acknowledge raffle request from Timberline Little League.
48. No. LF021010-19 – Acknowledge raffle request from Western Dakota Tech.
49. No. LF021010-20 – Acknowledge raffle request from Counts of the Cobblestone Car Club.
50. No. LF021010-21 – Acknowledge raffle request from Children's Home Foundation.
51. No. LF021010-22 – Acknowledge raffle request from A Cappella Showcase Chorus.

END OF CONSENT CALENDAR

Motion was made by Costello, second by Hadcock, to (No. PW020910-16) Approve the Solid Waste Master Plan. Mike Coleman, HDR Engineering, gave a brief presentation explaining the Solid Waste Master Plan and their recommendations. Responding to Weifenbach, Coleman explained that their recommendation is to increase the tier cost for the larger containers as it will create an incentive to recycle. Chapman requested a copy of the 8th slide which included rate information, and Hadcock questioned the recommendation to require that haulers offer recycling. Coleman indicated that idea was brought up through citizen comment. Motion carried.

Motion was made by Olson, second by Chapman, to (No. 10TP002) Authorize Mayor and Finance Officer to sign the 2010 Unified Planning Work Program Amendment 2010-01. Elkins indicated the recommendation is to send the items back to Legal and Finance committee due to some changes.

Substitute motion was made by Hadcock, second by Weifenbach and carried to continue to the February 24, 2010 Legal and Finance Committee (No. 10TP002) Authorize Mayor and Finance Officer to sign the 2010 Unified Planning Work Program Amendment 2010-01 and (No. 10TP003) Authorize Mayor and Finance Officer to Sign Amendment Number 1 to Agreement Number 811009 between the City of Rapid City and the South Dakota Department of Transportation for accomplishing the Rapid City Area Transportation Planning Process.

Motion was made by Olson, second by Hadcock, to (No. LF021010-08) Direct appropriate change of Wards and Precincts Adding Annexed Areas. At the request of Alderman Hadcock, Preston presented the map and explained the changes. Motion carried.

CONTINUED CONSENT ITEMS – Items 52 – 58

Motion was made by Olson, second by Costello and carried to approve the following items as they appear on the Continued Consent Items:

Continue the following items until March 1, 2010:

52. No. 08PL145 - A request by Sperlich Consulting, Inc. for Ronald Shape for a **Preliminary Plat** on Lot 13 of Block 6, Lots 2 thru 11 of Block 7, Lots 2 thru 11 of Block 8 of Homestead Subdivision, located in a portion of the SE1/4 of the NE1/4, Section 3, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, legally described as a portion of the SE1/4 of the NE1/4, Section 3, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located at the eastern terminus of Homestead Street and north of Carl Avenue.
53. No. 09PL040 - A request by Centerline, Inc. for Lazy P-6 Land Co., Inc. for a **Layout Plat** on Lot 1 in Block 1 and Lots 1 thru 4 in Block 2 of _____ Subdivision, located in the W1/2 SW1/4 of Section 19, T1N, R8E and E1/2 SE1/4 of Section 24, T1N, R7E all located in BHM, Pennington County, South Dakota, legally described as a parcel of land located in the W1/2 SW1/4 of Section 19, T1N, R8E and E1/2 SE1/4 of Section 24, T1N, R7E all located in BHM, Pennington County, South Dakota, located at the southeast corner of the intersection of Fifth Street and Catron Boulevard.
54. No. 09PL047 - A request by Centerline, Inc. for PLM Land Development, LLC for a **Preliminary Plat** on Lots 36 thru 53 of Block 1 of PLM Subdivision, located in the N1/2 NW1/4 and the unplatted SW1/4 NW1/4 of Section 24, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, legally described as the unplatted balance located in the N1/2 NW1/4 and the unplatted SW1/4 NW1/4 of Section 24, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, located eastern extension of Conestoga Court.
55. No. 09PL072 - A request by Renner & Associates for Royal Nielsen for a **Preliminary Plat** on Lots A and B of Lot 15 Revised of Hillsvie Subdivision, Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, legally described as Lot 15 revised of Hillsvie Subdivision and the sought 293 feet of Lot 6 of Marshall Subdivision, located in the NE1/4 of the SE1/4 and in the SE1/4 of the NE1/4, Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located adjacent to the north side of East S.D. Highway 44 between Rockhill Road and Hillside Drive.
56. No. 09PL074 - A request by Fisk Land Surveying & Consulting Engineers for Ehli Family Trust for a **Preliminary Plat** on Lots C, D and E of Mahoney Addition No. 2, located in the SE1/4, Section 25, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, legally described as the east 90 feet less north 8.5 feet of Block 103, the west 50 feet less the north 8.5 of Block 102, the east 115 feet less the north 8.5 feet of Block 102 all in Mahoney Addition No. 2, located in the SE1/4, Section 25, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, located at 125, 131 and 133 MacArthur.
57. No. 09PL086 - A request by Dream Design International, Inc. for a **Layout Plat** on Lots 1, 2 and 3 of Lots 5R and 6R of Block 1 of Spring Canyon Estates, Section 6, T1S, R7E, BHM, Pennington County, South Dakota, legally described as Lots 5R and 6R of Block 1 of Spring Canyon Estates, Section 6, T1S, R7E, BHM, Pennington County, South Dakota, located at 5703 and 5707 Pioneer Circle.

Continue the following items until March 15, 2010:

58. No. 09PL083 - A request by Fisk Land Surveying & Consulting Engineers for Stephen M. Gowan for a **Preliminary Plat** on Lots A and B of Mahoney Addition No. 2 and dedicated right-of-way,

located in the SE1/4, Section 25, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota, legally described as the east 90 feet of Block 122 and the west half of Block 123 of Mahoney Addition No. 2, located in the SE1/4, Section 25, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota, located at 134 Anamosa Street.

END OF CONTINUED CONSENT ITEMS

NON-CONSENT ITEMS – Items 59 – 77

Motion was made by LaCroix, second by Olson and carried to open the public comment for items 59 – 75. Talbot Wieczorek spoke regarding the procedures for the public hearing for the censure resolution. He said he feels the Council does not have the authority to censure Alderman Kooiker for the complaints or activities registered. He raised a constitutional issue of procedural due process and substantive due process and said the procedure is flawed in that he and Kooiker cannot cross examine factual witnesses. He feels the burden is placed on Alderman Kooiker to disprove the allegations. Wieczorek noted that Alderman Kooiker's participation in the hearing is not a waiver of his constitutional rights or admission that the procedure meets his constitutional requirements. Gary Denker spoke in support of Kooiker and stated his concern that the Council is considering taking someone's first amendment rights away. He said someone is trying to punish Kooiker for doing his job, and he commended him.

Motion was made by Costello, second by Olson and carried to close the public comment for items 59 – 75.

Ordinances

Ordinance 5580 (No. LF021010-07) An Ordinance Regarding Supplemental Appropriation No. 2 for 2010. Motion was made by Olson, second by Chapman and carried that Ordinance 5580 be placed upon its first reading, and the title was fully and distinctly read and second reading set for Monday, March 1, 2010.

Ordinance 5581 (No. LF021010-15) An Ordinance Increasing the Income Threshold for the City's Water Rate Relief Program by amending Section 13.04.590 of the Rapid City Municipal Code. Motion was made by Olson, second by Costello and carried that Ordinance 5581 be placed upon its first reading. Responding to Olson, Ellis briefly explained the new levels. The title was fully and distinctly read and second reading set for Monday, March 1, 2010.

Ordinance 5582 (No. LF021010-16) An Ordinance Increasing the Income Threshold for the City's Sewer Rate Relief Program by amending Section 13.08.370 of the Rapid City Municipal Code. Motion was made by Olson, second by Weifenbach and carried that Ordinance 5582 be placed upon its first reading, and the title was fully and distinctly read and second reading set for Monday, March 1, 2010.

Ordinance 5583 (No. 10RZ004) An Ordinance Amending Section 17.06 of Chapter 17 of the Rapid City Municipal Code, Rezoning the within Described Property as requested by City of Rapid City for a **Rezoning from No Use District to Mobile Home Residential District** of Lot 31 of Melody Acres No. 2, Section 9, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located at 2708 Cactus Drive. Motion was made by Olson, second by LaCroix and carried that Ordinance 5583 be placed upon its first reading, and the title was fully and distinctly read and second reading set for Monday, March 1, 2010.

Ordinance 5584 (No. 10RZ005) An Ordinance Amending Section 17.06 of Chapter 17 of the Rapid City Municipal Code, Rezoning the within Described Property as requested by City of Rapid City for a **Rezoning from No Use District to Mobile Home Residential District** of Lot 10 of Melody Acres No. 2, Section 9, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located at 2900 East Fairmont Street. Motion was made by Olson, second by Waugh and carried that Ordinance 5584 be

placed upon its first reading, and the title was fully and distinctly read and second reading set for Monday, March 1, 2010.

Ordinance 5585 (No. 10RZ006) An Ordinance Amending Section 17.06 of Chapter 17 of the Rapid City Municipal Code, Rezoning the within Described Property as requested by City of Rapid City for a **Rezoning from No Use District to General Commercial District** of Lots 7-12 of Block 3 and Lots 7-12 of Block 4, and the 20 foot wide E. St. Francis Street right-of-way located adjacent and south of Block 3 and Block 4, and Sedivy Lane located west and adjacent to Block 4 and the 20 foot wide E. St. Francis Street, and the 20 foot wide Pecan Lane located adjacent to Lots 7-9 of Block 3 and the 20 foot wide E. St. Francis Street, and the 40 foot wide Beechwood Lane, all located in Rapid Valley Subdivision, Section 8, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located east of Sedivy Lane and north of E. St. Francis Street. Motion was made by Olson, second by Chapman and carried that Ordinance 5585 be placed upon its first reading, and the title was fully and distinctly read and second reading set for March 1, 2010.

Growth Management Department Items

Motion was made by Olson, second by Chapman and carried to approve (No. 09PL075) A request by Fisk Land Surveying and Consulting Engineers for Walter J. Bradsky for a **Preliminary Plat** on Lots 5A and 5B of Aspen Estates Subdivision, Section 12, T1N, R6E, BHM, Pennington County, South Dakota, legally described as Lot 5 of Aspen Estates Subdivision, located in Section 12, T1N, R6E, BHM, Pennington County, South Dakota, located at 7800 Elkhart Road with the following revised stipulations: 1. Prior to Final Plat approval by the City Council, the covenant agreement previously submitted to demonstrate road maintenance for Canterbury Road, Kenosha Road and Elkhart Road shall be reviewed and approved by the City of Rapid City; and, 2. The approved Preliminary Plat for which no grading, construction or other improvements have been initiated within two years of the date of approval of the plat shall be deemed as expired. However, the owner or applicant of the plat may, prior to the termination of the two year period, request a one year extension subject to approval by the City Council.

Motion was made by Olson, second by Costello and carried to continue to the March 1, 2010 City Council meeting (No. 10PL001) A request by D.C. Scott Surveyors, Inc. for Brian Dail for a **Layout Plat** on Tract 1 of Dail Subdivision, located in the N1/2 of the NW1/4, Section 23, T1N, R8E, BHM Pennington County, South Dakota, legally described as the unplatted portion of the N1/2 NW1/4, Section 23, T1N, R8E, BHM, Pennington County, South Dakota, located southeast of the intersection of Reservoir Road and Green Valley Drive and west of Greenwood Lane.

Motion was made by Olson, second by Kroeger and carried to approve (No. 10PL002) A request by City of Rapid City for a **Preliminary Plat** on Tract A of Block 95 of the Original Town of Rapid City, Section 1, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, legally described as Lots 1 thru 16 of Block 95 of the Original Town of Rapid City, Section 1, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, located south of St. Joseph Street between Fifth Street and Sixth Street with the following stipulations: 1. Prior to Preliminary Plat approval by the City Council, construction plans shall be submitted for review and approval showing a sewer main along St. Joseph Street and Fifth Street or a Variance to the Subdivision Regulations shall be obtained; 2. Prior to Preliminary Plat approval by the City Council, the plat document shall be revised to show the dedication of one additional foot of right-of-way along the western 100 foot of St. Joseph Street or a Variance to the Subdivision Regulations shall be obtained; 3. Prior to submittal of a Final Plat application, the plat document shall be revised removing the delineation of a proposed 20 foot wide storm sewer easement; 4. Upon submittal of a Final Plat application, surety for any required subdivision improvements that have not been completed shall be posted and the subdivision inspection fees shall be paid; 5. Prior to the City's acceptance of the public improvements, a warranty surety shall be submitted for review and approval as required; and, 6. The approved Preliminary Plat for which no grading, construction or other improvements have been initiated within two years of the date of approval of the plat shall be deemed as expired. However, the owner or

applicant of the plat may, prior to the termination of the two year period, request a one year extension subject to approval by the City Council.

Motion was made by Olson, second by Costello and carried to approve (No. 10PL003) A request by Centerline for Founders Park II, LLC for a **Preliminary Plat** on Lot 6 of Founders Park Subdivision, Section 35, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, legally described as the unplatted portion of the W1/2 NW1/4 SE1/4, Section 35, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, located north of Founders Park Drive with the following stipulations: 1. Prior to Preliminary Plat approval by the City Council, construction plans for the 26 foot wide public access easement shall be submitted for review and approval. In particular, the construction plans shall show the street located in a minimum 59 foot wide easement and constructed with curb, gutter, sidewalk, street light conduit, water and sewer or a Variance to the Subdivision Regulations shall be obtained; 2. Prior to Preliminary Plat approval by the City Council, the plat document shall be revised to show the dedication of 6 additional inches of right-of-way for Founders Park Drive or a Variance to the Subdivision Regulations shall be obtained; 3. Prior to Preliminary Plat approval by the City Council, the applicant shall demonstrate that the existing approach is located within the proposed 26 foot wide public access easement or the public access easement shall be widened to accommodate the existing approach; 4. Prior to submittal of a Final Plat application, the plat document shall be revised to show the book and page of the previously recorded utility and access easement located on existing Lot 7. In addition, the plat document shall clearly delineate the existing utility and access easement located on Lot 7 from the proposed utility and access easement to be located on Lot 6; 5. Upon submittal of a Final Plat application, surety for any required subdivision improvements that have not been completed shall be posted and the subdivision inspection fees shall be paid; 6. Prior to the City's acceptance of the public improvements, a warranty surety shall be submitted for review and approval as required; and, 7. The approved Preliminary Plat for which no grading, construction or other improvements have been initiated within two years of the date of approval of the plat shall be deemed as expired. However, the owner or applicant of the plat may, prior to the termination of the two year period, request a one year extension subject to approval by the City Council.

Legal & Finance Committee Items

Motion was made by Olson, second by Chapman, to set the timelines for the Vision 2012 discussions as follows: 1) Citizen Committee applications due on March 5, 2010; 2) Program applications due April 2, 2010; 3) Public hearings to be held in the month of April, 2010; 4) Citizen Committee to make recommendations to the 2012 Committee in May, 2010; 5) 2012 Committee and City Council to deliberate recommendations in June; and 6) Begin new round of 2012 program in July or August. Chapman explained that the timelines were extended due to lack of citizen participation, and he encouraged citizens to get involved. Motion carried.

Motion was made by Olson, second by LaCroix and carried to (No. LF021010-06) Authorize Mayor and Finance Officer to Sign Agreements with Morgan Stanley Company for Investment of 2009 Water Bond Proceeds.

Motion was made by Olson, second by Weifenbach and carried to (No. LF021010-09) Authorize Mayor and Finance Officer to Sign Memorandum of Agreement between the City of Rapid City and Rushmore Lions Club for Rushmore Lions Nature Park.

Public Works Committee Items

Motion was made by Costello, second by Weifenbach, to acknowledge the report on (No. PW020910-01) Sidewalks on North Side of Saint Patrick Street. Ellis reported that an order was given and the stay request was granted. He explained that the property owner did not bring forward development plans, so

staff will order the sidewalk in pending approval by Council. LaCroix indicated that the notice letter was mailed to the wrong address.

Substitute motion was made by LaCroix, second by Kroeger, to continue this item to the March 1, 2010 City Council meeting. LaCroix explained that he would like to see the letter attached to the agenda and suggested sending another letter to property owner. Responding to Weifenbach, Green confirmed the process to install the sidewalk has taken place and said that continuing the item will keep Public Works from taking any steps in the meantime. The following voted AYE: LaCroix, Chapman, Olson, Kroeger, Hadcock, Waugh and Martinson; NO: Kooiker and Weifenbach. (Alderman Costello was absent from the Dias during the vote.) Motion carried.

Bids

The following companies submitted bids for (No. CC021610-02.1) WRF UV Disinfection System HVAC Project No. WRF09-1822 / 50773 opened February 9, 2010: Action Mechanical Inc., Tessier's Inc. and Precision Mechanical Inc. Staff reviewed the bids and recommends bid award to Precision Mechanical LLP. Motion was made by Weifenbach, second by Chapman and carried to award the bid to the lowest responsible bidder, Precision Mechanical LLP, in the amount of \$34,371.00.

The following companies submitted bids for (No. CC021610-02.2) Rapid City Parks Restroom Renovations opened February 10, 2010: Rangel Construction Company, GBA Inc., SECO Construction Inc., J Scull Construction Services Inc., MAC Construction Company Inc., and Heavy Constructors Inc DBA Gustafson Builders. Staff reviewed the bids and recommends bid award to GBA Inc. Motion was made by LaCroix, second by Chapman and carried to award the bid to the lowest responsible bidder, GBA Inc., for the base bid plus alternate for \$359,200.00.

Council Items & Liaison Reports

Motion was made by Olson, second by Hadcock, to approve (No. CC021610-03) Adoption of Procedure for Public Hearing on Resolution #2010-004 per the version linked to the agenda. Weifenbach expressed his concern with spending funds for an outside attorney to be at the meeting tonight. He said the Council should have voted on spending public funds for this. Green explained the motions from the October 5, 2009 and November 16, 2009 meetings and said the motion from October 5th was sufficient to authorize expenditure of funds to have the outside attorney present. Additionally, he indicated that the matter was discussed with the Mayor and Council leadership prior to making the decision. Responding to Costello, Green explained that once the resolution is before the Council each Council member has the opportunity to speak twice on a motion and said that Council can ask as many direct questions as they want during the hearing. It was confirmed that the Council can choose any form of action at this point except the private warning. Responding to Hadcock, Green confirmed that the vote on October 5, 2009 to spend the funds on this matter was unanimous. Chapman expressed concern about breaks during the procedure, and Mayor Hanks suggested pressing forward until a natural break comes up. Motion carried with one NO from Weifenbach and with Kooiker abstaining.

Motion was made by Olson, second by Hadcock, to open the public hearing for (No. CC021610-04) Public Hearing on Resolution #2010-004. Motion carried with Kooiker abstaining.

Explanation of Procedure

Green briefly reviewed the procedure for the hearing. He explained the definition of censure and the differentiation from censor. Green read Resolution #2010-004 and a statement by Rich Sagen.

Presentation – Alderman Kooiker and his attorney

Talbot Wieczorek introduced himself as Alderman Kooiker's attorney. Green confirmed that the letter in support of Mr. Sagen will be part of the public record as well as anything that was distributed to Council. Mayor Hanks indicated that letters received by the Mayor's office in support of Kooiker and emails received by the Mayor and Council will also be available for public inspection. Wieczorek cited the following cases to support his opinion that Alderman Kooiker cannot be censured: Supreme Court Case of Bond vs. Floyd 395 US 116, State of SD vs. Shun 2008 SD 128, US District Court Wrzeski vs. City of Madison, US District Court of Konsenich vs. Forbes 1977 432 1101; Appellate Court Little vs. City of North Miami 805 Fed Sup 962; and Federal Appellate Court Zichlich vs. Longo 34 Fed Third 359. Alderman Kooiker said that tonight he is being judged on how he represents his constituents as a four-term alderman. He mentioned that none of the correspondence between his attorney and the City Attorney was shared with Council with the exception of one letter and said if that is true it calls into question the fairness of this process. Kooiker said that email is his primary form of professional communication, and he explained that he has worked in the telecommunication industry which relies heavily on email. He talks on the phone frequently with constituents and often follows up with emails to City Hall for assistance. His job and family commitments do not afford him the flexibility to come into City Hall to ask questions. Kooiker then explained the issue with the transit signs which brought about the grievance. He said he was invited to a meeting of 15 City employees last September and was told that Mr. Sagen told them it was \$30,000 for the cost of the change. He said he followed chain of command and indicated that there were six emails exchanged on the issue. Ellis indicated the cost was \$3,000 and the employees disagreed. Kooiker said the pictures of the dumped brochures were compelling, so he asked for the invoices and followed up at the next Public Works Committee meeting. Ellis acknowledged a mistake was made and said the question was fair. Kooiker admitted that he repeated the \$30,000 number but was clear it was from other sources. He also noted that employees brought forth other complaints, and he advised them to meet with Ellis, which they did. When he received the invoices, he thanked Ellis, and the Council acknowledged the report at the following Council meeting with no further discussion. He said Sagen then claimed that Kooiker's comments to his supervisor as well as his comments at the Public Works meeting constituted harassment. Kooiker stated that the resolution says he should have known the figures from employees were inflated. He admitted the figure he was quoted appears to be incorrect but added that the figure offered by Ellis appears incorrect also. Kooiker said that he has never contacted Sagen on this matter and then briefly explained his limited contact with him. He pointed out that the resolution lacks a foundation and said the emails are over a period of 2 1/2 years. He said no one ever said his contacts were excessive or abusive, and he indicated that his being on committees involves interaction with Public Works. He addressed the 2004 issue and said no one has recollection of any wrong doing, which is another reason minutes should be kept for executive session. He said he and Preston met and have worked well together since 2004. He pointed out that his response to constituent requests has resulted in positive change and said many of his emails involve requests for ADA curb cuts. His inquiries involve city business, and he does not know what is excessive and abusive about his emails to Ellis. He stated that he has the right to ask questions and said that City Council has shown value of his questions by taking action on citizen requests. Talbot Wieczorek took the floor again and said there have been a lot of general allegations. He did not get to see documents before they were made public and was only allowed to see Sagen's complaint. He further suggested that if he could have looked at the evidence before it went public perhaps the waste of City dollars and publicity of the grievance could have been avoided. He indicated that no one had looked at the emails before this went public, and he then read the definition of harassment. He pointed out the last email to Sagen was a thank you in 2008 and said Kooiker's emails have been professional, courteous and raise legitimate issues. Wieczorek then referred to the email regarding the maps being thrown away. He indicated Ellis said it was \$3,000, but it was actually over \$5,000. He reviewed the email from Kooiker to Ellis regarding a meeting with RTS employees and said that Kooiker urged employees to follow the grievance process. Referring to an email from Richie Nordstrom, he said Nordstrom confirmed that employees were convinced that the cost of the brochures was \$30,000. He referenced the full minutes from the September 15, 2009 Public Works meeting and pointed out that Ellis brought up the \$30,000 number. Kooiker did not insist that the cost was \$30,000 but said he has multiple, credible sources. He asked for receipts, and Ellis later reported the costs of the brochures in a report. Wieczorek said to claim Kooiker

lied is incorrect. Kooiker accepted that his number was overstated but Ellis' number was understated. He noted that Morris was only looking at what happened in September. He spoke of Morris' summary and briefly discussed Sagen's complaint. The resolution shows several factual findings regarding the discarded material, and Wieczorek said the resolution was drafted when no one had seen the emails. He pointed out that several of the email messages are repeated, which adds up to about 500 pages, and he then showed examples. He noted the times that Kooiker sends his emails pointing out that he cannot send them during his work hours. He reviewed the resolution and said it was inappropriate say Kooiker should be punished because the city hired an outside investigator. He said the resolution is clearly incorrect and some comments are misleading. None of Kooiker's emails are hostile, raise inappropriate subject or are aggressive, and there is no policy on emails. He said the inclusion of the previous complaint in the resolution is unfair and said the statements about the cost of the investigation, blaming Kooiker, are offensive. Wieczorek indicated that he does not see a pattern of harassing conduct. He also referred to emails that Kooiker brought forward regarding the landfill, and Wieczorek asked if the city would still be defrauded if Kooiker had been censured before sending the emails regarding the landfill. He ended saying that there is no smoking gun.

The Chair recessed the meeting at 9:45 p.m. and reconvened at 9:58 p.m.

Council Questions to Alderman Kooiker and his attorney

Martinson asked Kooiker when he last attended a meeting for the Mayor's Committee on Disabilities. Kooiker indicated the meetings are held at 3:30 p.m. so he has not been to a meeting for some time. Costello asked how Kooiker determined the credibility of his sources. Kooiker responded that he has developed relationships with employees over the last eight years; they trust him and he trusts them. Referring to a quote from Kooiker in the February 5, 2010 Rapid City Journal regarding the 2005 complaint stating, "We talked about the situation. We worked out our differences and he does business differently as a result," Costello asked what Kooiker does differently as a result of the conversation with Preston. Kooiker said they get along fine. He stated there was no finding, and he offered to meet with Preston. Costello restated his question, and Kooiker responded that they both communicate well together. In regards to the February 8, 2010 Rapid City Journal online chat, Kooiker was asked, "To avoid something like this in the future yet still do your job as you believe you should, what suggestions have you given yourself in future conduct?" Costello posed the same question. Wieczorek requested that the entire quote is given in the questions, so Costello read in the entire question and answer from the chat session. Costello said he is asking the question again because he does not feel it was answered. At Kooiker's request, Costello read his answer from the chat session again, and Kooiker then said one suggestion is to not ask questions. When asked if he as considered any other suggestions, Kooiker said he is allowed to trust by verifying, which is what he did at the Public Works meeting. He said it was an appropriate question. LaCroix referenced the document that was approved to state that Council can speak with employees and asked Kooiker if he contacted the Mayor to tell him what was going on when he met with the employees or if he tried to get the employees to sit down with the Mayor. Kooiker indicated that on September 2, 2009 he sent an email to Hanks, Ellis and Thom. Kroeger asked if Kooiker was aware, prior to the Pubic Works meeting, that the brochures were close to \$3,000 and documents to prove that fact would be forthcoming. Kooiker said he asked for the invoices at the Public Works meeting and was provided the information. Wieczorek said it does not appear there was a response from Ellis stating that he would provide the invoices. Kroeger asked for clarification that Kooiker is stating that prior to his speaking on September 15, 2009 he was not aware that the basic cost was around \$3,000 and that the invoices would be forthcoming. After reiterating his question again, Kooiker stated that he had not received a response so he brought it up at the Public Works meeting which was the following day. Kroeger again reiterated his question asking for a yes or no answer. Wieczorek explained the sequence of emails and said the statement of \$3,000 was made but invoices were not available yet. From the answer given, Kroeger asked for confirmation that Kooiker did not know prior to the Public Works meeting if the cost of about \$3,000 and that the invoices would be forthcoming. Wieczorek pointed out the statement of \$3,000 is there but the invoices are not. Kroeger indicated his

frustration with the lack of an answer to his question, and Kooiker said the day before the meeting he asked if it was possible to pull the invoices. Since he did not get a response, he solidified his request at the committee meeting. Responding to Kroeger, Kooiker confirmed it was correct to say that he was not aware of the dollar amount and that the invoices would be forthcoming prior to making the comments at the committee meeting. Martinson referred to a statement made by Kooiker in the February 3, 2010 Rapid City Journal article that the effort by the Rapid City Council to censure him is politically motivated because he has upset some influential people. She asked who the influential people are. Wieczorek said there is concern that the landfill issue has made people edgy. After Martinson repeated her question at the request of Mayor Hanks, Kooiker said there are several more than the names he is giving, but the three people are Robert Ellis, Alan Hanks and Jason Green. Weifenbach asked Kooiker if he believes that Weifenbach is credible. Kooiker responded, "Yes." Weifenbach continued by stating that Kooiker would have reason to believe that he is a credible source if he were asked a question today. Weifenbach asked if Kooiker would still think he is credible if he later gave information that Kooiker believed was false and came back again with information Kooiker would believe to be true. Kooiker responded, "Not as much." Weifenbach then asked if Kooiker heard the phrase proverbial woodshed, and Kooiker responded, "I'm in one." Weifenbach asked if he has ever taken Kooiker to the proverbial woodshed, and Kooiker said that he has and that he has done the same to him. Hadcock referenced the statement that there was a morale problem and said there has not been a complaint or grievance filed against Sagen in 22 years. She asked where Kooiker got that there was a very serious morale problem and what did he base that on – the 5 employees or the 26 union members. Kooiker said the report referenced Ginny Nelson training in 2005 or 2006 regarding other issues and said at least some of the 5 employees met with Ellis at Dunn Brothers. He pointed out that step one of the grievance process is to talk to the department head. Kooiker further explained that not everyone expresses concerns. He said 5 people from a small business unit can be construed as a good sample of what might be happening and noted that a lesser number of sources helped him uncover the situation at the landfill. Mayor Hanks spoke of the importance of keeping to direct questions and answers. Hadcock then asked if Kooiker felt he was being objective by listening to only 5 of 26 employees. Kooiker responded, "Yes." Hadcock asked how the influential people previously mentioned are influencing the public. Kooiker indicated he did not understand the question. Hadcock restated her question and asked what he meant by influential people and who are they influencing. Kooiker replied that as more information was released it was clear that there was considerable foot dragging regarding concerns raised about the landfill. Hadcock asked if he believes that this is how this censure came about. Wieczorek and Kooiker declined the answer the question. Chapman referred to the statements that were made at the Public Works meeting on September 15, 2009. He asked if Kooiker knew prior to that meeting that the dollar amount was not near \$30,000. Kooiker indicated he did not know. Chapman asked if he received the email on September 8th stating what Ellis thought the dollar amount was, and Kooiker said he did but asked for verification. Chapman clarified he is asking if he knew if the dollar amount was anywhere near \$30,000. Kooiker said he did not know because his sources said it was \$30,000 so he asked for invoices to verify. Chapman asked what made those sources more credible than the Public Works Director. Kooiker again said he asked for invoices to verify. Chapman said Kooiker's reaction is to side with the employees and bring it up at a public meeting as opposed to waiting for the information. Kooiker responded by saying he had not received a response to his question asking if it was possible to get the invoices. He said employees had told him Sagen said the cost was \$30,000, so he asked for the invoices. Chapman then asked, when in doubt, would it be better to say something that might not be true as opposed to not saying anything and waiting for the information. Kooiker said that either or both avenues work. Referring to the meetings with RTS employees, Chapman asked if Kooiker encouraged them to file a grievance. Kooiker indicated he encouraged them to follow procedure which meant to file a grievance and/or speak to the department head. Chapman reiterated his question specifically asking about filing a grievance, and Kooiker said per the message sent on September 9th he urged them to file a grievance or visit with Ellis. Chapman mentioned that Kooiker said he manages employees. He then asked what Kooiker's reaction would be if someone from outside his employee's chain of command filed a grievance against him. Wieczorek declined to answer as it is not fair context for what happened Chapman restated his question, and Wieczorek said Kooiker told them what to do if they want to follow policy. Costello asked if Kooiker's

course of action will differ the next time he is presented information from a source he deems credible. Kooiker indicated that it depends on the information and the context. Costello requested that Kooiker offer a hypothetical context where it would be appropriate to bring it out on the Dias before being sure of the number and one where it would be best to thoroughly investigate before bringing up the issue at the Dias. Kooiker responded that it is difficult to come up with something without data points. Weifenbach asked if Kooiker received a copy of the attorney client communication marked February 1st. It was later confirmed that the document was dated December 3, 2009. Weifenbach referred to text on page 8 of this document and asked if a reasonable person would believe that if an employee had a problem with someone in their management they would tell them to file a grievance. Wiczorek stated that the policy was followed by Kooiker. Weifenbach withdrew his question and said that he is concerned that we do not know the policy. Weifenbach asked Kooiker if he recalled the date of their phone call when Kooiker made a remark about the landfill. Kooiker said it was the end of July. He asked Kooiker if he recalled the conversation, and Kooiker said he recalled most of it. Weifenbach asked if he recalled his response when he asked if he heard what was happening at the landfill. Responding to Mayor Hanks regarding speaking about the landfill issue, Green said his main concern would be discussions from executive session. Kooiker said he recalled Weifenbach answering yes and saying that he had spoken with Mayor Hanks more than two years prior. Weifenbach then asked if he recalled what happened next, and Kooiker said that he and Weifenbach insisted on an investigation. Weifenbach requested that an email from May be read in reference to the conclusion of the investigation regarding the landfill. He then withdrew his request. Waugh asked Wiczorek to expound on his comments that he felt these proceedings were illegal. Wiczorek explained that he is not saying it is a crime and explained that Council can only punish a member for disorderly conduct or bribery. LaCroix asked Kooiker if he believes morale is lower because some employees do not follow the chain of command. He then restated by asking Kooiker if he feels morale is lowered by listening to just a few employees. Kooiker said 5 of 26 is 20% and said if they are motivated enough to take pictures it is a problem. Hadcock asked Wiczorek about his comment that there is no pattern for the issues in 2005 and 2009, and he replied that if you read the reports they are not the same issue. Hadcock referred to the resolution from 2006 and asked how many times this needs to happen before it becomes a pattern. Hadcock restated her question at the request of Kooiker. Wiczorek responded by saying there was no information represented as true in September. He said the resolution Hadcock refers to deals with travel expenditures and the Council then revised how they did travel expenditures. Hadcock again asked if there is a pattern since these are the only two grievances filed in the history of City Council. Wiczorek said he has not looked through the history of City Hall and said the only reason the public knows about this is because it was made public. Hadcock asked if Wiczorek represented Kooiker both times, and he responded that he did. She asked him to confirm that he never checked the history for grievances. He stated he did not believe Kooiker had to go through the process and said had he done a review he doubts he would have found a grievance. Hadcock referred to open government and meetings and asked why this was not brought forward. Wiczorek did not understand what was meant by 'this.' Hadcock then said Wiczorek stated at one time that his client did not get due process and then said she does not believe the city official got due process. Wiczorek said if you allow managers to file grievances about how an alderman does their job there should be an established process. Hadcock asked how they should have a process in place when it has never happened by another council person in a public setting. Wiczorek said the process has not been fair to Sagen or Kooiker as there was no established procedure. Hadcock asked how the Council was supposed to know the process, and Wiczorek said procedures are established everyday for things that could occur in the future. Responding to Hadcock, he said he did not say it happens everyday but it happens everyday in general. Hadcock asked if he bases his process on an issue when it comes up, and Wiczorek indicated he did not understand the question. Chapman asked if all 5 employees took the pictures and who took them. Kooiker said he was unsure who took the pictures and stated most cameras only have one button. Chapman stated that Kooiker said that 'they' took pictures so he wanted clarification. Kooiker said all five were concerned. They gave him pictures but he does not know who took them.

Bob Morris of Day Morris law firm in Belle Fourche briefly explained his background and said he was called upon to perform the investigation in this matter from 2009 as well as the matter is 2005. Costello asked how many harassment claims he has investigated, and Morris said that for employers he has done a dozen or more. Martinson asked why he only interviewed two Rapid Transit employees. Morris explained that there was a meeting on September 9th that included 5 employees and Kooiker declined to give out the names of the individuals. He was unable to interview them to address the allegations. He interviewed two individuals who were at the meeting with Ellis. One employee felt the meeting was a witch hunt to do something detrimental against Sagen, and the other party indicated the parties deviated from the meeting agenda. Morris clarified that he is not an advocate in this case. Martinson also asked Morris about where Ellis got the impression employees had issues with how they were paid. Morris replied that Ellis explained that one of the issues was a pay issue and the employees believed Sagen would not increase their pay. Ellis indicated it is his decision for no pay increase. Morris confirmed that Ellis did not indicate which employees raised the pay issue. Chapman asked if any of the information presented tonight conflicts with his factual findings. Morris said all of the information is in the summary that he felt was relevant to the investigation and allegations made by Sagen. He fully and succinctly set forth the basis for the probable cause determination. Responding to Chapman's request, Morris summarized his findings and briefly reviewed the range of recommendations for forms of discipline. When asked if his opinion has changed regarding probable cause and range of recommendations, Morris responded that he has not heard anything that would cause him to change his determination or range of appropriate discipline. LaCroix asked Morris his opinion of the Code of Conduct for Elected Officials, and Morris stated that it is not unreasonable for a person to understand what is expected of them. LaCroix asked his advice as to the discipline options given, and Morris explained that it is a graduated disciplinary process. LaCroix also asked if Council could do any of the four discipline actions or a combination of them, and Morris said they could. Weifenbach referred to page 3 of Morris' report and asked Morris for explanation. Morris referenced page 94 from the Sagen complaint and said it is an email where the sender is not identified. Weifenbach said the email infers that the charging party is responsible for such conduct and asked if there is someone else responsible. Morris said the message infers that the brochures were thrown away at Sagen's direction. Weifenbach asked if Morris' comments and observations are something they should do in the future, and Morris said the items on pages 7, 8 and 9 were issues in part that caused what led to this investigation. He wanted to make Council aware so they can address what is and what is not the policy of the city. Responding to Weifenbach, Morris said there is no consensus on how the policy should function and said the bargaining agreement contains a process. He said if it is important enough to go to a policymaker then it should be grieved at which time it can be determined if it can be grieved under the collective bargaining unit. The factual information can be developed at that time. Weifenbach asked about the context of the paragraph on page 5, and Morris said he was asked if there was probable cause to believe the Code of Conduct was violated. He reported facts objectively in the appropriate form. He said it then becomes up to the decision makers to weigh the facts. When asked if he had anything to do with facts in the censure, Morris replied that he did not. Hadcock asked if the 5 employees at Dunn Brothers were the same employees at the union hall on September 9, 2009. Morris said there were more than 5 employees at the meeting with Ellis but confirmed those 5 were within that group. She then asked if the two employees who were interviewed had morale problems with Sagen. Morris replied that he should not answer because he is not decision maker and it is not his job to make conclusions.

The Chair recessed the meeting at 12:00 A.M. and reconvened at 12:12 A.M.

Rebuttal – Alderman Kooiker or his attorney

Wieczorek stated that the Council is not stuck with four options as they can decide there is no misconduct. He said that the ethics rules are general and said there are no specific statements about emails. He said the collective bargaining agreement was not violated and pointed out that it is not part of the resolution. He said that Kooiker advised people to file a grievance or talk to Ellis, and he pointed out

that he does not need to disclose names if he promised confidentiality. He said Kooiker only followed up on the cost of city property thrown away. Wieczorek said they were not asked about the 2006 emails in the interview with Morris, so he is unsure why they are so important now.

Comments from Public

Travis Brink stated that nothing seen tonight was an accusation against Rich Sagen directly and the facts do not support that. He also works for a telecommunications company and agrees emailing is how they communicate. Allen Bishop said Kooiker has done nothing wrong and said he tried to save money by correcting an issue. Mike Kenton said he worked with Sagen for 25 years and said he is cooperative, organized and attentive to detail. He said his system is well managed and well led. Bill Boyland said people are speaking against the censure throughout Rapid City as they see it as a farce, travesty and a waste of taxpayer time and money. He suggested that some Council members may not be voted back into office as this proposal could backfire. Don Frankenfeld stated that he is angry about what is being done and would be happy if his council members would follow in Kooiker's footsteps. He pointed out that Kooiker uncovered a scandal, and he said he expects Council to be partial when they make a decision. Aaron Sammeli indicated he is supporting Sam and agrees that the censure is unconstitutional. He said Kooiker has the right to ask questions, and he does not see a breach of Code of Conduct or harassment. Tess Frazen said she reviewed the material and did not find any harassment. She said the emails were polite and represent valid concerns. She suggested that Sam epitomizes what we want in Council members, and she expressed concern that people may not want to run for office based on the way this was handled. Jim Preston said that he has worked with Sagen over the past 14 years. He said Sagen would be able to accomplish even more if he did not have to defend himself against false accusations. By taking a stand, the Council is telling the public and employees that the City will not allow employees to be bullied and that false accusations are not good government. Jordan Mason said Kooiker is only guilty of representing voices. He expressed concern that private information was exposed by making the emails public, and he pointed out that Council is there to serve the people at large. Dirk Jablonski said he was previously Sagen's supervisor. He said Sagen did receive complaints but they were a fraction of a percent of the number of clients served. He stated that Sagen has best interests of city, customers and staff in mind. John Lundeen said he read the emails and noticed a lot of repeats. He indicated that he sees the censure as Council silencing the best venue in City government. He said people in other wards go to Kooiker as they know they will get results and said anyone who brings up a concern to an alderman is a credible source. Mary Renka said we have elected officials to represent us, and she expects them to ask questions and follow through. She said she is embarrassed about the process and also mentioned that Kooiker has sacrificed a lot. Bob Young read a statement from ASFCME Local 1031 which indicated that bus drivers would like to offer more information and said the union has encouraged talking over issues before filing a grievance. He said Kooiker has taken an interest in concerns, and he said ASFCME has a different perspective of what took place at the meeting held at Dunns Brothers. ASFCME encouraged the Council to cast more light on the issue with additional investigations and vote no on the censure. Ted Vore, a previous supervisor, said Sagen was a thorough and knowledgeable manager. He briefly described the flow of directives and requests within the city. He said there are often conflicts and complaints from the public, and he said Council should work through the Mayor to resolve these issues. They should not disrupt the daily responsibilities of division managers as bypassing the proper flow can disrupt the entire department. Marla Murphy confirmed that Kooiker was verbally reprimanded in 2005. She said when he took the word of workers over the Public Works Director he became the unofficial leader. She said he needs to be impartial and is supposed to improve on policy decisions, not encourage disruption. Murphy said his duty is to find the truth which involves coming to City Hall, not sending emails. She said this censure is the next step in the process as he disrespected and slandered Sagen. Mary Renka read a statement prepared by Gideon Oaks. The statement indicated that he supports Kooiker and it would be a shame to censure him. He said this resolution sets a bad precedence in that Council could find themselves in the same position as Kooiker by doing their jobs. Alderman Martinson read a statement from Tom Collins. The statement indicated support for Sagen as he has worked with him on many transit issues. He said Sagen has been able to address many issues that have been

brought to the Mayor's Committee for People with Disabilities and they often get same day or next day resolution. Kurt Pochardt asked everyone to examine their roles here. He said when he has an issue he talks to Kooiker. He said defense of Sagen is out of place as it is up to the Council to decide if Kooiker is to be censured for doing his job. He said it might be appropriate to censure in an extreme case but this is not one. Dan Michael said he has sent emails to Kooiker and said he would get a response. He appreciates his effort and has developed a relationship with Kooiker and trusts him. He expressed concern that there may be issues in the future that cannot be addressed by Council for fear of censure. Michael said Kooiker is a spokesman for Ward 2 as well as the City of Rapid City. Glenda Kulkman said she has not heard of anything tonight to think any less of Kooiker. She hopes the Council can admit this was an ill conceived venture, and she does not think he should be censured or censored. Robert Ellis, Public Works Director, said that this is about Sagen as he was in the situation that forced him to file the grievance. He spoke of the new fixed route service, which fine tuned the system causing the brochures to be thrown away, but said the benefit is that more people are riding the buses. He listed several other improvements to transit and said over the last four years Sagen has received \$10 million for Rapid City. He said that it has become difficult for him to do his job when he is continually made to look incompetent. Ron Sasso said an injustice is happening. He said Kooiker does a little more for the City and he asks tough questions. He said Rapid Transit has improved but it is not flawless. He always directs people to Kooiker as he will get something done, and he said Kooiker should be praised, not censured. Clif Vanderbush stated his support for Kooiker and said he agrees with his position on most issues. He said Kooiker watches out for the taxpayers and expressed appreciation for a Council person who cares about what is thrown in the dumpster. Tom Eves stated that he cannot find justification to censure Kooiker and said there is no indication that he violated any code of conduct. He said it is difficult to understand that the Council can spend \$17,000 on what appears to be an attempt to keep Kooiker from doing his job. He indicated he had Kooiker as a supervisor and said Kooiker is always interested in details and will not be satisfied until he has answers. He encouraged Council to vote no on this resolution. Ellen Rook asked Council if they read the emails and suggested they may have moved forward without a lot of facts. She said the receipts added up to \$10,000, and she said there has been conflict between some Council members and Kooiker because he speaks his peace. Robert Ball expressed his support for Kooiker and said we need a man like him in any level of government. Jennifer Kooiker thanked the community for their support. She spoke of Kooiker's concerns with constituents and the Council. She said throughout this situation Kooiker has never said one ill word about Sagen. Ms. Kooiker said her husband's heart is to serve people and this community, and he loves Rapid City more than you will know.

Motion was made by Chapman, second by Olson, to close the public comment for a (No. CC021610-04) Public Hearing on Resolution #2010-004. Motion carried with Kooiker abstaining.

Motion was made by Olson, second by Hadcock, to approve (No. CC021610-05) Resolution #2010-004 Resolution of Censure of Ward Two Alderman Sam Kooiker. Olson said this has been a difficult issue but a larger issue of proper conduct and respectful treatment of people is at stake. Council decisions include no decisions more important than how we treat those who work for us in the City. This is a personnel issue, not free speech, and since the complaint is addressed to an elected official, a public hearing was necessary to provide the appropriate remedy. She spoke of the Code of Conduct and mentioned that statements made at the Public Works meeting were known to be untrue. The information has confirmed her belief that a pattern of bullying and harassment has occurred, and she said an apology is called for. LaCroix said he likes Kooiker as he will work hard for you, but the censure is warranted. He said Kooiker is a good council person but said the comments were unwarranted when he had the information before. He indicated that over the past years there has been more than just this incident. Costello said one reason for the resolution was that there was compelling evidence that information from executive session was being leaked to the media. Responding to Costello regarding correspondence from Wieczorek, Green said it is common practice for attorneys to deal with other attorneys when a party is represented by a lawyer and said that was appropriate given his client is the body as a whole. If he had passed along all letters and arguments, Green would spend a lot of time explaining why he believes they are inaccurate, and he felt it would distract the Council from the issue at hand. He believes there is solid

legal ground to take the proposed action. In response to Costello, Thom said it was not represented that the grievance would be confidential. Morris explained that the information he gathered was confidential, and the only body that can release information is the client. Weifenbach said he intended to listen to the information proposed and is flabbergasted that someone could come tonight with a prepared speech. He apologized to Sagen that people read about his confidential grievance process and does not question that Sagen wants to do his job. He then apologized to Ellis and said he is sick about how the Council decided to handle this. He said the facts will be proof, and he said he is standing up for what he thinks is right. Weifenbach said it is clear that we do not have accurate facts on the censure. He read the mission statement of Council, and he said he is willing to challenge any one of the facts. He said if we are going err in judgment we should err on the side of freedom of speech. Martinson said both Sagen and Kooiker do well in what they do and she has heard praise regarding Kooiker. She pointed out that, as a council member, she is not the boss of city employees and said when it comes to a grievance procedure there is not much she can do legally. Martinson indicated she is not sure Kooiker did the right thing by accusing Sagen of causing morale problems in his own office. She said we need to do something in the future and said perhaps the code of ethics is not a good solution anymore. Hadcock stated that she likes input, questions and email and said she does what she thinks is right. She pointed out that this is not the first time a grievance was filed against this alderman, and she believes this is a pattern. She asked the community if they expected them to do nothing and asked what would happen if this was a union employee. She said if we want to not protect non-union employees then we should do nothing tonight. Hadcock said the process is not the same as last time as there was no process in place. She appreciates that Kooiker asks questions and sends emails, but they are there to protect all employees. She said we did not do this to Sam but are the ones who have the burden of what they are supposed to do to an elected official. Hadcock stated that a grievance was filed and there has to be a process. Chapman said this is a serious matter and he has not taken it lightly. He apologized to all six gentlemen interviewed during process of investigation as they were probably under the assumption their comments were private. The complaint could not be resolved in the usual manner as the council member is not in the chain of command, and he briefly explained what happened during this process. Chapman mentioned that council members must act in concert to get things done. He said it is a problem to inject one self in the day-to-day operations of the organization as an elected official, and he spoke of what an alderman is not. He noted there was erroneous information mentioned at a public meeting which hampered someone's ability to feel like they could do their job, and this is not the first time it has happened. He felt the Council actions have been proper and professional and he is in support. He said the Code of Conduct has been violated. Responding to Weifenbach, Green said the resolution reflects comments in the investigative report by Ellis. Green also confirmed he looked at the emails but did not read them all. When asked, he also said he would consider the pages of attachments part of the correspondence. Green also responded that he does not know that anyone counted the emails to indicate Kooiker sends more than other council members. It was confirmed there is no policy on how many emails or phone calls a council member can send or receive. Green indicated that anonymous accusations are difficult to investigate as it puts people responding in an unfair position. He also explained that he cannot answer questions about the landfill since the investigation is not complete. Weifenbach stated that it is up to the Council to determine the facts and said if Council would have taken the time to have the facts checked he would have felt more comfortable moving forward. Waugh said that he is in favor of the censure as Kooiker erred at the Public Works meeting and he sometimes makes statements at public meetings that cause stress.

Amendment motion was made by Waugh, second by Hadcock, to strike the following text on page two of the resolution: "WHEREAS, the investigative report shows that the Transit Division Manager provided 110 pages of email correspondence with Alderman Kooiker dating back to 2003 to provide context and in support of his complaint; and WHEREAS, the investigative report shows that during the first 18 months of his tenure the Public Works Director reported more than 1000 pages of email correspondence with Alderman Kooiker; and WHEREAS, Alderman Kooiker's extensive use of email to City employees far exceeds the amount of email correspondence of the rest of the Council combined; and," Motion carried with NO votes from Weifenbach and Martinson and with Kooiker abstaining.

The motion on the floor is the original motion as amended. Mayor Hanks indicated that when a grievance is filed we have a responsibility to investigate. He said he takes all grievances very seriously, and he expressed his appreciation that Council held all comments to this hearing. He indicated that he does not have a role in this process unless the grievance proceeds to a step two grievance. He stated that it was appropriate to hire outside council because if the investigation would have been done internally there would have been allegations that information was not unbiased. The council collectively and unanimously voted to go to outside council. Upon vote being taken, the following voted AYE: LaCroix, Chapman, Olson, Kroeger, Hadcock and Waugh; NO: Costello, Weifenbach and Martinson. Motion carried with Alderman Kooiker abstaining.

RESOLUTION #2010-004
RESOLUTION OF CENSURE OF
WARD TWO ALDERMAN SAM KOOIKER

WHEREAS, the Rapid City Common Council adopted by resolution a "Code of Conduct for Elected Officials" on November 6, 2006; and

WHEREAS, the Code of Conduct for Elected Officials requires elected officials to "demonstrate the highest standards of conduct, personal integrity, and honesty" and to "undertake their duties in a fair and impartial manner" and to insure that the workplace is free from "hostility or harassment"; and

WHEREAS, at the Public Works Committee meeting on September 15, 2009 Ward 2 Alderman Sam Kooiker added an item to the agenda regarding bus routes. During discussion of this item, Alderman Kooiker stated, in part, that "very, very serious concerns have been raised regarding the new routes and the fact that multiple boxes of the old flyers were thrown away and apparently the cost is in the tens of thousands of dollars."; and

WHEREAS, after being informed at the public meeting by the Public Works Director that the dollar value of the discarded brochures was significantly less than the amount alleged by Alderman Kooiker, Alderman Kooiker went on to state, "the information that I've received from multiple and credible sources, and Robert we can talk about this later, is that it was three thousand dollars worth of signs that were changed; but it was thirty thousand dollars and dozens of brand new multi-color flyers that were thrown away in the dumpster, and I have pictures." Alderman Kooiker went on to state, "There is a very serious morale problem in this department as a result of this and other related issues . . ."; and

WHEREAS, as a result of the comments made by Alderman Kooiker, a formal harassment complaint was filed by the Transit Division manager alleging that Alderman Kooiker violated of the Code of Conduct for Elected Officials based upon Alderman Kooiker's conduct over the past several years, culminating in the comments made by Alderman Kooiker at the September 15, 2009 Public Works Committee meeting; and

WHEREAS, the Council hired an outside attorney to conduct a factual investigation into the allegations and to report the findings to the Council; and

WHEREAS, after reviewing the outside attorney's factual report on the investigation, the Council asked the attorney for an opinion regarding the existence of probable cause to believe that Alderman Kooiker violated the Code of Conduct for Elected officials; and

WHEREAS, the outside attorney has provided the Council a written opinion in response to the Council's request; and

WHEREAS, the Council has reviewed the opinion of the outside attorney; and

WHEREAS, the factual investigation shows that Alderman Kooiker engaged in an email exchange with the Public Works Director beginning on September 2, 2009 regarding the allegations made at the Public Works Committee meeting on September 15, 2009; and

WHEREAS, based on that email exchange, Alderman Kooiker received information from the Public Works Director prior to the Public Works Committee meeting that the cost of the brochures was significantly less than the tens of thousands of dollars Alderman Kooiker publicly stated at the dais; and

WHEREAS, despite the information provided in response to Alderman Kooiker's email inquiries and the verbal information provided by the Public Works Director at the September 15, 2009 Public Works Committee meeting, Alderman Kooiker continued to insist that thirty-thousand dollars in brochures had been disposed of and that the department suffered from a "very serious morale problem" ; and

WHEREAS, it is clear that Alderman Kooiker had received information prior to the September 15, 2009 Public Works Committee meeting showing the value of the brochures which were disposed of was grossly overstated by the City employees. Nonetheless, Alderman Kooiker insisted the value was thirty thousand dollars and further implied that mismanagement was occurring in the Transit Division through his comments about a "very serious morale problem" in the Transit Division; and

WHEREAS, Alderman Kooiker either knew, or should have known, that the statements he made at the September 15, 2009 Public Works Committee Meeting were inaccurate; and

WHEREAS, the statements made by Alderman Kooiker at the September 15, 2009 Public Works Committee meeting regarding the value of the brochures and the state of employee morale were untrue; and

WHEREAS, Alderman Kooiker's comments show unfairness and partiality on the part of Alderman Kooiker and lack the honesty required by the Code of Conduct for Elected Officials; and

WHEREAS, the comments made by Alderman Kooiker at the September 15, 2009 Public Works Committee meeting, a public forum, were designed to question the effectiveness of the management of the Transit Division without any good faith basis to do so, given that Alderman Kooiker was, or should have been, aware of the inaccuracy of the information he claimed to have received; and

WHEREAS, Alderman Kooiker's inaccurate comments unfairly cast the Transit Division manager in a poor light and were hostile in nature; and

WHEREAS, Alderman Kooiker's email to the City staff is excessive, abusive, and adversely impacts the employees' ability to carry out their duties; and

WHEREAS, the Council finds that Alderman Kooiker has violated the Code of Conduct for Elected Officials by making untrue statements at the September 15, 2009 Public Works Committee meeting; and

WHEREAS, the current complaint is the second formal complaint filed against Alderman Kooiker by a City employee; and

WHEREAS, the previous formal complaint filed against Alderman Kooiker was investigated by outside counsel as well; and

WHEREAS, the previous formal complaint against Alderman Kooiker was filed under a City policy that had never been formally adopted by the Council, but had been circulated to all City employees; and

WHEREAS, as a result of the investigation into the previous formal complaint against Alderman Kooiker and considering the fact that the policy under which the complaint had been filed was never formally adopted by the Council, each member of the Council privately expressed his or her personal disapproval of Alderman Kooiker's conduct to Alderman Kooiker instead of taking formal public action; and

WHEREAS, as a result of learning of the invalidity of the policy under which the previous complaint was brought, the Council directed the drafting of the current Code of Conduct for Elected Officials; and

WHEREAS, the Council is of the opinion that its prior private conversation with Alderman Kooiker did not effectively alter his conduct; and

WHEREAS, the Council has previously found, by resolution approved on November 6, 2006, that public statements made by Alderman Kooiker and another former Alderman were false; and

WHEREAS, a public apology is in order, given that the untrue statements made by Alderman Kooiker were made in a public forum; and

WHEREAS, Alderman Kooiker's conduct has seriously negatively impacted the efficiency of the delivery of services to the citizens of Rapid City, by improperly implying mismanagement of the Transit Division and by causing the City to expend in excess of \$10,000.00 to investigate this matter. This is in addition to the more than \$7,000.00 the City spent to investigate the previous allegation of harassment. In addition, a significant amount of staff time has been diverted from productive duties to addressing the complaint made against Alderman Kooiker as well as responding to an excessive number of email messages; and

WHEREAS, given the nature of the current violation of the Code of Conduct, the Council's previous private efforts to change Alderman Kooiker's conduct, the Council's previous actions regarding false statements, and the totality of the circumstances surrounding this investigation, it is appropriate to publically censure Alderman Kooiker for his violation of the Code of Conduct for Elected Officials..

NOW, THEREFORE, BE IT RESOLVED by the Rapid City Common Council that the Council finds the statements made by Alderman Kooiker at the September 15, 2009 Public Works Committee meeting regarding the value of the discarded brochures as well as the statements that implied mismanagement of the Transit Division were inaccurate and unsupported by the facts and that Alderman Kooiker either knew or should have known, of the inaccuracy of his statements at the time he made them; and

BE IT FURTHER RESOLVED by the Rapid City Common Council that Alderman Kooiker's actions leading up to and at the September 15, 2009 Public Works Committee meeting represent an ongoing pattern of harassing conduct that creates a hostile work environment adversely impacting the efficient and effective provision of services to the taxpayers; and

BE IT FURTHER RESOLVED by the Rapid City Common Council that Alderman Kooiker has violated the Code of Conduct for Elected Officials; and

BE IT FURTHER RESOLVED by the Rapid City Common Council that the complaint filed by the Transit Division manager is substantiated and the Council apologizes to Mr. Sagen for the unfair and inaccurate comments made by Alderman Kooiker at the September 15, 2009 Public Works Committee meeting; and

BE IT FURTHER RESOLVED by the Rapid City Common Council that Ward Two Alderman Sam Kooiker is hereby CENSURED.

Dated this 16th day of February, 2010.

ATTEST:
s/ James F. Preston
Finance Officer

CITY OF RAPID CITY
s/ Alan Hanks, Mayor
*See attached

(SEAL)

SD State Law specifically states that only the City Council can judge and discipline one of its members.

Alderman Kooiker’s censure began as and is a result of a harassment complaint filed by a city employee. After six hours of reviewing facts from all sides, the city council concluded that Alderman Kooiker knowingly made statements he knew to be untrue, which is in violation of the City Council’s Code of Conduct.

The City Council voted for a public censure of what most people would call a public reprimand of Alderman Kooiker. This means that they have made a public statement that, “You did something you should not have done.”

Nothing in the council’s public reprimand does anything to restrict Alderman Kooiker from performing his duties as an alderman or restrict his first amendment rights. It is simply a public statement.

I want to make it clear that as a result of the City Council’s public reprimand, Alderman Kooiker:

- Has not lost his right to speak.
- Has not lost his right to ask questions.
- Has not lost his right to vote on the city council.
- And has not lost his right to send emails.

It would not be appropriate to interject the Mayor’s Office into an issue which by South Dakota Law clearly states that only the City Council can judge and discipline one of its members.

It is time to move forward and for the city to get back to work on the important issues: creating and protecting our jobs, providing city services and assuring a positive and productive environment for our city employees.

END OF RESOLUTION #2010-004

Alderman Kooiker left the meeting at 2:35 A.M.

The Hockey Team item that was added to the agenda by Alderman Hadcock was not discussed.

PUBLIC HEARING ITEMS – Items 78 – 94

Motion was made by Chapman, second by Olson and carried to open the public hearing for items 78 – 94. Teresa Carlson, Mark Koppel, John Ziegler, Julie Mueller and Mike Mueller turned in speaker request forms for item 88 (No. 09CA002) but were no longer in attendance of the meeting. No other comments were offered.

CONTINUED PUBLIC HEARING CONSENT ITEMS – Items 78 – 81

Motion was made by Weifenbach, second by Costello and carried to approve the following items as they appear on the Continued Public Hearing Consent Items.

Continue the following items until March 1, 2010:

78. No. 09SV015 - A request by Centerline, Inc. for Lazy P-6 Land Co., Inc. for a **Variance to the Subdivision Regulations to reduce the pavement width from 12 feet to 11 feet per lane as per Chapter 16.16 of the Rapid City Municipal Code** on Lot 1 in Block 1 and Lots 1 thru 4 in Block 2 of the _____ Subdivision, located in the W1/2 SW1/4 of Section 19, T1N, R8E and E1/2 SE1/4 of Section 24, T1N, R7E all located in BHM, Pennington County, South Dakota, legally described as a parcel of land located in the W1/2 SW1/4 of Section 19, T1N, R8E and E1/2 SE1/4 of Section 24, T1N, R7E all located in BHM, Pennington County, South Dakota, located at the southeast corner of the intersection of Fifth Street and Catron Boulevard.
79. No. 09SV025 - A request by Fisk Land Surveying & Consulting Engineers for Ehli Family Trust for a **Variance to the Subdivision Regulations to waive the requirement to allow a one foot public access and utility easement in lieu of a one foot right-of-way dedication and to reduce the pavement width from 27 feet to 24 feet as per Chapter 16.16 of the Rapid City Municipal Code** on Lots C, D and E of Mahoney Addition No. 2, located in the SE1/4, Section 25, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, legally described as the east 90 feet less the north 8½ feet of Block 103, the west 50 feet less the north 8½ feet of Block 102, the east 115 feet less the north 8½ feet of Block 102 all in Mahoney Addition No. 2, located in the SE¼ of Section 25, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, located at 125, 131 and 133 MacArthur.
80. No. 09SV028 - A request by Dream Design International, Inc. for a **Variance to the Subdivision Regulations to reduce the pavement width from 27 feet to 20 feet and to waive the requirement to install curb, gutter, sidewalk, street light conduit, water and sewer along Pioneer Circle, to reduce the width of the private access and utility easement from 49 feet to a verifying width of 46.9 feet to five feet, to waive the requirement to install pavement, curb, gutter, sidewalk, street light conduit, water and sewer along the private access and utility easement, to reduce the width of the access easement from 49 feet to a verifying width of 40 feet to 20 feet and to waive the requirement to install pavement, curb, gutter, sidewalk, street light conduit, water and sewer along the access easement as per Chapter 16.16 of the Rapid City Municipal Code** on Lots 1, 2 and 3 of Lots 5R and 6R of Block 1 of Spring Canyon Estates, Section 6, T1S, R7E, BHM, Pennington County, South Dakota, legally described as Lots 5R and 6R of Block 1 of Spring Canyon Estates, Section 6, T1S, R7E, BHM, Pennington County, South Dakota, located at 5703 and 5707 Pioneer Circle.
81. No. 10VR001 - A request by FMG, Inc. for Good Samaritan Society for a **Vacation of Right-of-Way** on the St. Martin's Road right-of-way located in the S1/2, Section 29 excepting the southern 60.3 feet of said right-of-way, Section 29, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, located west of S.D. Highway 79 (Sturgis Road) and Hidden Valley Road.

END OF CONTINUED PUBLIC HEARINGS CONSENT ITEMS

Motion was made by Weifenbach, second by LaCroix and carried to close the public hearing for items 78 – 94.

CONSENT PUBLIC HEARING ITEMS – Item 82 – 86

Motion was made by Weifenbach, second by LaCroix and carried to approve the following items as they appear on the Consent Public Hearing Items.

Growth Management Items

82. No. 10SV001 – Approve a request by City of Rapid City for a **Variance to the Subdivision Regulations to waive the requirement to install sanitary sewer in St. Joseph Street and Fifth Street and to reduce the right-of-way width for St. Joseph Street from 100 feet to 98 feet as per Chapter 16.16 of the Rapid City Municipal Code** on Tract A of Block 95 of the Original Town of Rapid City, Section 1, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, legally described as Lots 1 thru 16 of Block 95 of the Original Town of Rapid City, Section 1, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, located south of St. Joseph Street between Fifth Street and Sixth Street.
83. No. 10SV002 – Approve a request by Centerline for Founders Park II, LLC for a **Variance to the Subdivision Regulations to reduce the width of the access easements from 59 feet to 26 feet, to waive the requirement to install curb, gutter, sidewalk, street light conduit, water and sewer along the access easements and to reduce the width of Founders Park Drive right-of-way from 60 feet to 59 feet as per Chapter 16.16 of the Rapid City Municipal Code** on Lot 6 of Founders Park Subdivision, Section 35, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, legally described as the unplatted portion of the W1/2 NW1/4 SE1/4, Section 35, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, located north of Founders Park Drive.

Alcohol Licenses

84. Rapid City Library Foundation for a Special Beer and Wine license for an event scheduled for March 27, 2010 at the Rapid City Public Library, 610 Quincy Street.

Assessment Rolls

85. No. PW011210-09 - Approve a Resolution Levying Assessment for the Tower Road Water Main Loop, Project No. W09-1786 / CIP No. 50753

RESOLUTION #2010-025
RESOLUTION LEVYING ASSESSMENT FOR
TOWER ROAD WATER MAIN LOOP
PROJECT W09-1786/CIP #50753

BE IT RESOLVED by the City Council of the City of Rapid City, South Dakota, as follows:

1. The City Council has made all investigations which it deems necessary and has found and determined that the amount which each lot or tract shall be benefited by the property cleanup is the amount stated in the proposed assessment roll.
2. The Assessment Roll for Tower Road Water Main Loop Project W09-1786 / CIP 50753 is hereby approved and assessments thereby specified are levied against each and every lot, piece, or parcel of land thereby described.
3. Such assessments, unless paid within thirty (30) days after the filing of the assessment roll in the Office of the Finance Officer shall be collected by the City Finance Office in accordance with the procedure in Section 9-43-43 to 9-43-53 of the South Dakota Compiled Laws of 1967, as amended, and shall be payable in one annual installment bearing interest at the rate not to exceed nine percent (9%).

Dated this 16th day of February, 2010.

CITY OF RAPID CITY

ATTEST:
s/ James F. Preston
Finance Officer

s/ Alan Hanks, Mayor

(SEAL)

- 86. No. LF011310-10 – Approve a Resolution Levying Assessment for the Cleanup of Miscellaneous Property

RESOLUTION #2010-026
RESOLUTION LEVYING ASSESSMENT FOR
CLEANUP OF MISCELLANEOUS PROPERTY

BE IT RESOLVED by the City Council of the City of Rapid City, South Dakota, as follows:

- 1. The City Council has made all investigations which it deems necessary and has found and determined that the amount which each lot or tract shall be benefited by the property cleanup is the amount stated in the proposed assessment roll.
- 2. The Assessment Roll for Cleanup of Miscellaneous Property is hereby approved and assessments thereby specified are levied against each and every lot, piece, or parcel of land thereby described.
- 3. Such assessments, unless paid within thirty (30) days after the filing of the assessment roll in the Office of the Finance Officer shall be collected by the City Finance Office in accordance with the procedure in Section 9-43-43 to 9-43-53 of the South Dakota Compiled Laws of 1967, as amended, and shall be payable in one annual installment bearing interest at the rate not to exceed nine percent (9%).

Dated this 16th day of February, 2010.

ATTEST:
s/ James F. Preston
Finance Officer

CITY OF RAPID CITY
s/ Alan Hanks, Mayor

(SEAL)

END OF CONSENT PUBLIC HEARING CALENDAR

NON-CONSENT PUBLIC HEARING ITEMS – Items 87 – 94

The Mayor presented (No. 09CA001) A request by City of Rapid City for an **Amendment to the Comprehensive Plan adopting the Spring Creek Neighborhood Area Future Land Use Plan** on that portion of Sections 1, 3, 10, 11, 12, 14 and 15 lying south of Spring Creek, all of Sections 13, 22, 23, 24, 25, and 26, and all of Section 27 less Foster Lode Mineral Survey, Township 1 South, Range 6 East, BHM, Pennington County, South Dakota; that portion in the W1/2 of Section 4 and Sections 5, 6 and 7 lying south of Spring Creek, the W1/2 and SE1/4 of Section 9, the S1/2 of Sections 10 and 11, and all of Sections 1, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, Township 1 South, Range 7 East, BHM, Pennington County, South Dakota; the E1/2 and SW1/4 of Section 25 and all of Section 36, Township 1 North, Range 7 East, BHM, Pennington County, South Dakota; that portion of Sections 29 and 32 lying west of SD Highway 79 and all of Sections 30 and 31, Township 1 North, Range 8 East, BHM, Pennington County, South Dakota; that portion of Sections 5, 8, 17, 20 and 29 lying

west of SD Highway 79 and all of Sections 6, 7, 18, 19 and 30, Township 1 South, Range 8 East, BHM, Pennington County, South Dakota, located generally south of Spring Creek, east of Boulder Hill Road, north of Knotty Pine Road and east of S.D. Highway 79. Motion was made by Olson, second by Hadcock, to approve the request with the removal of the proposed collector road connecting Neck Yoke Road to Spring Creek Road along Wallace Street and identifying a corridor alignment study area. Elkins explained that this is an item that they will look at programming in 3 to 5 years. She also confirmed that the individuals who were previously at the meeting are in support of the motion on the floor. Olson reiterated that the individuals who were concerned were satisfied with the recommendation. Motion carried.

RESOLUTION #2010-021
RESOLUTION AMENDING THE COMPREHENSIVE PLAN
OF THE CITY OF RAPID CITY

WHEREAS, the Rapid City Planning Commission has reviewed the proposed amendment to the Comprehensive Plan and made a recommendation to the Rapid City Council; and

WHEREAS, the Rapid City Council held a public hearing on the 16th day of February, 2010, at which they considered the recommendation of the Planning Commission and the proposed amendment to the Comprehensive Plan; and

WHEREAS, the proposed Amendment to the Comprehensive Plan would incorporate the City of Rapid City's Spring Creek Neighborhood Area Future Land Use Plan into the Comprehensive Plan; and

WHEREAS, it appears that good cause exists to amend the Comprehensive Plan; and

WHEREAS, the Rapid City Common Council finds that it is in the best interest of the City of Rapid City to amend the Comprehensive Plan by adopting the Spring Creek Neighborhood Area Future Land Use Plan.

NOW THEREFORE, BE IT RESOLVED, by the City of Rapid City, that the Comprehensive Plan be amended to incorporate the City of Rapid City's Spring Creek Neighborhood Area Future Land Use Plan, and, along with the accompanying maps, plats, charts and descriptive and explanatory matter as attached to the original hereof, be filed with the City Finance Office.

Dated this 16th day of February, 2010.

ATTEST:
s/ James F. Preston
Finance Officer

CITY OF RAPID CITY
s/ Alan Hanks, Mayor

(SEAL)

Alderman Weifenbach left the meeting at 2:39 A.M.

The Mayor presented (No. 09CA002) A request by City of Rapid City for an **Amendment to the Comprehensive Plan to Revise the Major Street Plan by eliminating, adding and realigning arterial and collector streets in the Spring Creek Neighborhood Area Future Land Use Plan** on that portion of Sections 1, 3, 10, 11, 12, 14 and 15 lying south of Spring Creek, all of Sections 13, 22, 23, 24, 25, and 26, and all of Section 27 less Foster Lode Mineral Survey, Township 1 South, Range 6 East, BHM, Pennington County, South Dakota; that portion in the W1/2 of Section 4 and Sections 5, 6 and 7 lying south of Spring Creek, the W1/2 and SE1/4 of Section 9, the S1/2 of Sections 10 and 11, and all of

Sections 1, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, Township 1 South, Range 7 East, BHM, Pennington County, South Dakota; the E1/2 and SW1/4 of Section 25 and all of Section 36, Township 1 North, Range 7 East, BHM, Pennington County, South Dakota; that portion of Sections 29 and 32 lying west of SD Highway 79 and all of Sections 30 and 31, Township 1 North, Range 8 East, BHM, Pennington County, South Dakota; that portion of Sections 5, 8, 17, 20 and 29 lying west of SD Highway 79 and all of Sections 6, 7, 18, 19 and 30, Township 1 South, Range 8 East, BHM, Pennington County, South Dakota, located generally south of Spring Creek, east of Boulder Hill Road, north of Knotty Pine Road and east of S.D. Highway 79 with the removal of the proposed collector road connecting Neck Yoke Road to Spring Creek Road along Wallace Street. Motion was made by Olson, second by LaCroix and carried to approve the request with the removal of the proposed collector road connecting Neck Yoke Road to Spring Creek Road along Wallace Street.

RESOLUTION #2010-022
RESOLUTION AMENDING THE COMPREHENSIVE PLAN
OF THE CITY OF RAPID CITY

WHEREAS, the Rapid City Planning Commission has reviewed the proposed amendment to the Comprehensive Plan and made a recommendation to the Rapid City Council; and

WHEREAS, the Rapid City Council held a public hearing on the 16th day of February, 2010, at which they considered the recommendation of the Planning Commission and the proposed amendment to the Comprehensive Plan; and

WHEREAS, the proposed Amendment to the Comprehensive Plan would revise the Major Street Plan by eliminating, adding and realigning arterial and collector streets within the Spring Creek Future Land Use Neighborhood Area, on property legally described as that portion of Sections 1, 3, 10, 11, 12, 14 and 15 lying south of Spring Creek, all of Sections 13, 22, 23, 24, 25, and 26, and all of Section 27 less Foster Lode Mineral Survey, Township 1 South, Range 6 East, BHM, Pennington County, South Dakota; that portion in the W1/2 of Section 4 and Sections 5, 6 and 7 lying south of Spring Creek, the W1/2 and SE1/4 of Section 9, the S1/2 of Sections 10 and 11, and all of Sections 1, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, Township 1 South, Range 7 East, BHM, Pennington County, South Dakota; the E1/2 and SW1/4 of Section 25 and all of Section 36, Township 1 North, Range 7 East, BHM, Pennington County, South Dakota; that portion of Sections 29 and 32 lying west of SD Highway 79 and all of Sections 30 and 31, Township 1 North, Range 8 East, BHM, Pennington County, South Dakota; that portion of Sections 5, 8, 17, 20 and 29 lying west of SD Highway 79 and all of Sections 6, 7, 18, 19 and 30, Township 1 South, Range 8 East, BHM, Pennington County, South Dakota, more generally described as being located generally south of Spring Creek, east of Boulder Hill Road, north of Knotty Pine Road and east of S.D. Highway 79; and

WHEREAS, it appears that good cause exists to amend the Comprehensive Plan; and

WHEREAS, the Rapid City Common Council finds that it is in the best interest of the City of Rapid City to amend the Major Street Plan by eliminating, adding and realigning arterial and collector streets within the Spring Creek Neighborhood Area Future Land Use Plan.

NOW THEREFORE, BE IT RESOLVED, by the City of Rapid City, that the Major Street Plan component of the Comprehensive Plan of the City of Rapid City be amended by eliminating, adding and realigning arterial and collector streets within the Spring Creek Future Land Use Neighborhood Area, on property legally described as that portion of Sections 1, 3, 10, 11, 12, 14 and 15 lying south of Spring Creek, all of Sections 13, 22, 23, 24, 25, and 26, and all of Section 27 less Foster Lode Mineral Survey, Township 1 South, Range 6 East, BHM, Pennington County, South Dakota; that portion in the W1/2 of Section 4 and

Sections 5, 6 and 7 lying south of Spring Creek, the W1/2 and SE1/4 of Section 9, the S1/2 of Sections 10 and 11, and all of Sections 1, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, Township 1 South, Range 7 East, BHM, Pennington County, South Dakota; the E1/2 and SW1/4 of Section 25 and all of Section 36, Township 1 North, Range 7 East, BHM, Pennington County, South Dakota; that portion of Sections 29 and 32 lying west of SD Highway 79 and all of Sections 30 and 31, Township 1 North, Range 8 East, BHM, Pennington County, South Dakota; that portion of Sections 5, 8, 17, 20 and 29 lying west of SD Highway 79 and all of Sections 6, 7, 18, 19 and 30, Township 1 South, Range 8 East, BHM, Pennington County, South Dakota, more generally described as being located generally south of Spring Creek, east of Boulder Hill Road, north of Knotty Pine Road and east of S.D. Highway 79, and, along with the accompanying maps, plats, charts and descriptive and explanatory matter as attached to the original hereof, be filed with the City Finance Office.

Dated this 16th day of February, 2010.

ATTEST:
s/ James F. Preston
Finance Officer

CITY OF RAPID CITY
s/ Alan Hanks, Mayor

(SEAL)

Ordinance 5575 (No. 09RZ057) An Ordinance Amending Section 17.06 of Chapter 17 of the Rapid City Municipal Code, Rezoning the within Described Property as requested by Marcy Morkert for a **Rezoning from General Commercial District to Medium Density Residential District** on the east 35 feet of the west 71 feet of Lot 21 of Block 38 of West Boulevard Addition, Section 2, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, located at 814 Saint James Street having passed its first reading February 1, 2010; motion was made by Olson, second by LaCroix and carried that the title be read the second time. Upon vote being taken, the following voted AYE: Waugh, Martinson, Costello, LaCroix, Chapman, Olson, Kroeger, and Hadcock; NO: None; whereupon the Mayor declared the motion passed and Ordinance No. 5575 was declared duly passed upon its second reading.

Ordinance 5576 (No. 09RZ058) An Ordinance Amending Section 17.06 of Chapter 17 of the Rapid City Municipal Code, Rezoning the within Described Property as requested by City of Rapid City for a **Rezoning from No Use District to Mobile Home Residential District** on Lot 20 of Melody Acres No. 2, Section 9, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located at 2809 Cactus Drive having passed its first reading February 1, 2010; motion was made by Olson, second by LaCroix and carried that the title be read the second time. Upon vote being taken, the following voted AYE: Waugh, Martinson, Costello, LaCroix, Chapman, Olson, Kroeger, and Hadcock; NO: None; whereupon the Mayor declared the motion passed and Ordinance No. 5576 was declared duly passed upon its second reading.

Ordinance 5577 (No. 10RZ001) An Ordinance Amending Section 17.06 of Chapter 17 of the Rapid City Municipal Code, Rezoning the within Described Property as requested by City of Rapid City for a **Rezoning from No Use District to Mobile Home Residential District** on Lot 34 of Melody Acres No. 2, Section 9, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located at 2804 Cactus Drive having passed its first reading February 1, 2010; motion was made by Olson, second by Waugh and carried that the title be read the second time. Upon vote being taken, the following voted AYE: Waugh, Martinson, Costello, LaCroix, Chapman, Olson, Kroeger, and Hadcock; NO: None; whereupon the Mayor declared the motion passed and Ordinance No. 5577 was declared duly passed upon its second reading.

Alderman Martinson exited the meeting at 2:43 A.M.

Ordinance 5578 (No. 10RZ002) An Ordinance Amending Section 17.06 of Chapter 17 of the Rapid City Municipal Code, Rezoning the within Described Property as requested by City of Rapid City for a

Rezoning from No Use District to Mobile Home Residential District on Lot 5 of Melody Acres No. 2, Section 9, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located at 2802 E. Fairmont Street having passed its first reading February 1, 2010; motion was made by Olson, second by LaCroix and carried that the title be read the second time. Upon vote being taken, the following voted AYE: Waugh, Costello, LaCroix, Chapman, Olson, Kroeger, and Hadcock; NO: None; whereupon the Mayor declared the motion passed and Ordinance No. 5578 was declared duly passed upon its second reading.

Ordinance 5579 (No. 10RZ003) An Ordinance Amending Section 17.06 of Chapter 17 of the Rapid City Municipal Code, Rezoning the within Described Property as requested by City of Rapid City for a **Rezoning from No Use District to Mobile Home Residential District** on , legally described as Lot 35 of Melody Acres No. 2, Section 9, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located at 2806 Cactus Drive having passed its first reading February 1, 2010; motion was made by Olson, second by LaCroix and carried that the title be read the second time. Upon vote being taken, the following voted AYE: Waugh, Costello, LaCroix, Chapman, Olson, Kroeger, and Hadcock; NO: None; whereupon the Mayor declared the motion passed and Ordinance No. 5579 was declared duly passed upon its second reading.

Alderman Martinson returned to the meeting at 2:44 A.M.

The Mayor presented (No. 09VR010) A request by Ferber Engineering Company for South Dakota Game Fish and Parks for a **Vacation of Right-of-way** on North 40th Street Right-of-Way located in Section 33, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota more particularly described as: Commencing at a found plastic cap marked Renner #2652 at the Northwest corner of Lot 4 of Block 1 of Tract G of Meadowwood along the southern right-of-way line of Dean Lane, the true point of beginning; THENCE, S01°57'54"W, a distance of 149.60' feet along the east right-of-way line to a found cap marked Polenz #4208; THENCE, S01°57'54"W, a distance of 130.02 feet along the east right-of-way line; THENCE, N88°03'10"E, a distance of 60.06 feet; THENCE, N01°58'10"E, a distance of 279.68 feet along the west right-of-way line to a found cap marked FMG #4225; THENCE, N00°22'58"E, a distance of 89.86 feet along the west right-of-way line to a found cap marked Renner #2652; THENCE, S88°00'09"E, a distance of 60.09 feet along the north right-of-way line; THENCE, S02°03'12"W, a distance of 60.58 feet to the true point of beginning, located at the northern terminus of North 40th Street and west of Sturgis Road. Motion was made by Olson, second by Costello and carried to approve the request with the following stipulations: 1. Prior to City Council approval, a signed utility easement retaining N. 40th Street as a "Public Utility Easement" shall be submitted to the Growth Management Department; and, 2. Prior to City Council approval, a copy of a recorded access easement securing that portion of the turnaround to be located on the adjacent property owned by the Synagogue of the Hills shall be submitted to the Growth Management Office.

RESOLUTION #2010-020
RESOLUTION OF VACATION OF RIGHT-OF-WAY

WHEREAS it appears that the North 40th Street Right-of-Way located in Section 33, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota more particularly described as: Commencing at a found plastic cap marked Renner #2652 at the Northwest corner of Lot 4 of Block 1 of Tract G of Meadowwood along the southern right-of-way line of Dean Lane, the true point of beginning; THENCE, S01°57'54"W, a distance of 149.60' feet along the east right-of-way line to a found cap marked Polenz #4208; THENCE, S01°57'54"W, a distance of 130.02 feet along the east right-of-way line; THENCE, N88°03'10"E, a distance of 60.06 feet; THENCE, N01°58'10"E, a distance of 279.68 feet along the west right-of-way line to a found cap marked FMG #4225; THENCE, N00°22'58"E, a distance of 89.86 feet along the west right-of-way line to a found cap marked Renner #2652; THENCE, S88°00'09"E, a distance of 60.09 feet along the north right-of-way line; THENCE, S02°03'12"W, a distance of 60.58 feet to the true point of beginning, more generally described as being located at at the northern terminus of North 40th Street and west of Sturgis Road is not needed for public purposes; and

WHEREAS the owner(s) of property adjacent to the above-described right-of-way desires said public right-of-way to be vacated and released.

NOW THEREFORE, BE IT RESOLVED, by the City of Rapid City, that the public right-of-way heretofore described, and as shown on Exhibit "A", attached hereto, and incorporated herein, is hereby vacated.

BE IT FURTHER RESOLVED, that the Mayor and Finance Officer are hereby authorized to execute a release of public right-of-way in regard thereto.

Dated this 16th day of February, 2010.

ATTEST:
s/ James F. Preston
Finance Officer

CITY OF RAPID CITY
s/ Alan Hanks, Mayor

(SEAL)

BILLS

The following bills have been audited. Motion was made by Waugh, second by Costello and carried to authorize the Finance Officer to issue warrants or treasurers checks, drawn on the proper funds, in payment thereof.

Payroll Paid Ending 01-30-10, Paid 02-05-10	924,426.42
Payroll Paid Ending 01-30-10, Paid 02-05-10	3,044.00
Pioneer Bank, Taxes Paid 02-05-10	212,895.77
Pioneer Bank, Taxes Paid 02-05-10	214.21
South Dakota Retirement System, Paid 02-02-10	372,676.33
South Dakota Retirement System, Paid 02-02-10	353.60
Berkley Risk Administrator, Paid 02-01-10	33,312.39
Black Hills Electric Coop, Paid 02-09-10	709.93
Black Hills Power, Paid 02-09-10	21,249.52
First Administrators, claims paid 02-03-10	45,018.35
First Administrators, claims paid 02-10-10	71,410.77
West River Electric, Paid 02-09-10	34,980.10
US Bank, Paid 02-09-10	17,517.04
Computer Bill List	<u>3,845,498.51</u>
Subtotal	\$5,583,306.94
Payroll Paid Ending 01-30-10, Paid 02-05-10	2,917.70
Pioneer Bank, Taxes Paid 02-05-10	223.20
South Dakota Retirement System, Paid 02-02-10	322.74
City of Rapid City – Health Insurance	1,010.00
City of Rapid City – Postage	3.18
Ikon Financial Services	12.58
Metropolitan Life Insurance	<u>6.42</u>
Total	\$5,587,802.76

EXECUTIVE SESSION for the purposes permitted by SDCL 1-25-2

Green indicated there would be no executive session.

ADJOURN

As there was no further business to come before the Council at this time, the meeting was adjourned at 2:45 A.M.

ATTEST:

CITY OF RAPID CITY

Finance Office

Mayor

(SEAL)