

Informational City Council Meeting 4 PM

Carnegie Town Hall

Sioux Falls City Council

235 West 10th Street

Members Present: Christine M. Erickson, Michelle Erpenbach (arr. 4:02 p.m.), Greg Neitzert, Rex Rolwing, Marshall Selberg, Pat Starr, Theresa Stehly, Mike T. Huether

Members Absent: Rick Kiley

1. Call To Order

Council Vice-Chair Christine M. Erickson called the meeting to order at 4 p.m.

2. Urbanized Development Commission (UDC)

A. Thursday, September 21, 2017

Jim David, Operations Manager, stated that the UDC approved a letter in support of a Federal grant for Tea to reconstruct Heritage Parkway and approved the 2018 - 2021 Transportation Improvement Plan.

3. City Council Open Discussion

Council Member Pat Starr discussed meetings he and Council Member Theresa Stehly attended with two neighborhood groups, Norton Acres and the Oakview Neighborhood. The Norton Acres meeting included approximately 35 residents who discussed their decision making process as it relates to whether they are zoned appropriately or not. Representatives from Code Enforcement, Planning, Police, and Fire Rescue were also in attendance. Members of the Administration were also in attendance at the Oakview meeting.

Council Member Rex Rolwing noted City Attorney Dave Pfeifle's new job and thanked him for his service to the City.

4. Presentations

A. Events Center Settlement Agreement by City Administration

Presentation: Approximately 30 minutes followed by discussion

Mayor Mike T. Huether opened the presentation by providing an overview of the intent of the presentation which included answering questions provided by the Council and from the media; and answering additional questions by the Council based on the presentation. City Attorney Dave Pfeifle discussed: who is at fault, the need to hire an expert, legal fees, and whether the public would see the Judgment Allen Group report. Mark Cotter, Director of Public Works, explained why the siding was not replaced, the risks associated with replacing the siding today, and the system's warranty. Tracy Turbak, Director of Finance, explained: the composition of the \$1 million settlement, who paid cash to the City, why the City released money under the agreement, where the cash received by the City went, and how the money has been/ will be used to include projects completed and projects

in progress or upcoming. Karen Leonard, Deputy City Attorney, discussed: the cost to replace the siding, why the City Council was not included in the negotiations, the actual amount of the construction manager's contingency remaining at the end of the project before and after the settlement, and whether the City of Sioux Falls counted money that already belonged to the taxpayer as part of the \$1 million amount. Huether explained: why the City of Sioux Falls agreed to the settlement, why the agreement was confidential, why the City told citizens it was a \$1 million settlement, and the options available three years ago.

Council Member Marshall Selberg asked what the cost to replace the siding today would be; Cotter provided an approximate value based on work to the west side of the building. Selberg further asked what the City saved from the settlement; Pfeifle explained types of legal fees that were avoided by not entering into litigation. Selberg also asked what could have been done differently; Huether discussed the need to provide information sooner, the complexity of the settlement process as it relates to risks and rewards, the impact of the settlement on current Events Center operations, and the challenge of construction projects; Pfeifle explained why private entities desire confidential settlements.

Council Member Theresa Stehly thanked citizens who attended or are watching the meeting. She explained that the public deserves to know what is going on in City government, where tax dollars are spent and about projects and contracts. She discussed the lack of information provided to the Council and public by providing examples and noting discussions held with the Council in July, 2014. She recommends that an independent audit take place to determine what steps should be taken next. She asked why we didn't have a more stringent warranty. Cotter explained the 3-year installation and 20-year finish warranties.

Council Member Greg Neitzert asked for clarity on Section 5.2.1 of the contract with Mortenson; Leonard explained the meaning of the section and the meaning of Section 13.7 in the General Conditions which addresses latent defects. Neitzert asked whether the City would be able to have the contractor fix problems with the panels or the roof in the future; Leonard explained that no parties agreed to waive any claims for latent defects that may be discovered during the 10-year period.

Council Member Pat Starr asked "what was settled" as part of the agreement. Pfeifle discussed the arena roofing membrane warranty and resolution of the Events Center siding aesthetic issue. He explained the meaning of latent defects and protections the statute of repose provides. Starr further asked what the \$1 million is for. Cotter explained why it can be said the panels are structurally sound and why it is an aesthetic issue. The settlement was a financial contribution used for purposes other than to fix an aesthetic issue. Starr asked for clarity about the decision to not release the Judd Allen Group decision. Pfeifle discussed why the Group was first consulted and retained and why a final report was not compiled. He also addressed the nature of the draft report and state law on the release of draft reports. Starr noted that the report is the one outside opinion which can show whether the siding is structurally sound.

Neitzert asked for clarification on the decision to not release the draft report. Pfeifle reiterated the state statute. Neitzert showed the invoice from Judd Allen and asked for clarification about "e-mail on corroding edges" and in what form t

he preliminary report was in. Pfeifle noted it was an attachment.

Stehly asked Pfeifle if he's heard any statements from the Administration during the meeting that were inaccurate. He indicated "no." She also asked the Council to consider an independent auditor to determine what has taken place.

Selberg asked if another settlement would be required for a latent defect and if it would be prorated. Leonard stated that contract terms and law would be followed to resolve issues.

Council Member Rex Roling commented on news coverage of the settlement, information provided by Council Members, the Judd Allen report, and the potential impact of the Supreme Court's decision.

Erickson asked whether latent defects are always in Construction Manager At Risk (CMAR) contracts. Leonard stated it is in CMAR contracts. Erickson asked whether or not we had to bring Mortenson into the lawsuit. Leonard noted that our contract was with Mortenson, not the subcontractors; the construction management contingency, according to the contract, could also be used to correct the work of their subcontractors. Erickson also asked if we used "value siding." Cotter explained the Full Enclosure Study; he also noted the desire for an attractive and functional building exterior along with an enhanced spectator experience inside. Erickson and Cotter also discussed the use of contingency funds for fan enhancements. Erickson also referenced the Judd Allen report and urged that it be released. Huether emphasized the need to move forward, the success of the Events Center, and that the City can provide additional assurance that the siding is structurally sound.

Starr stated that the Council needs to determine the next steps and suggested that leadership work with the Administration to conduct a follow-up. Erickson stated she will discuss next-steps with Council Chair Rick Kiley and recommended that Council Members re-submit their questions if they were not addressed. Stehly stated her support for a follow-up meeting.

Council Member Michelle Erpenbach also agreed with having a follow-up meeting or working session and also recommended the Administration post a question and answer webpage.

## 5. Adjournment

Council Vice-Chair Christine M. Erickson adjourned the meeting at 5:40 p.m.

Thomas M. Greco

City Clerk