

August 12, 2019 Regular City Council Meeting

MINOT CITY COUNCIL – SPECIAL MEETING – AUGUST 12, 2019 AT 5:30 P.M.

ROLL CALL

Members Present:

Jantzer (via phone), Olson, Pitner, Podrygula, Sipma, Straight, Wolsky

Members Absent:

None

PLEDGE OF ALLEGIANCE

Mayor Sipma presiding and led the City Council in the Pledge of Allegiance.

CONSIDERATION OF A SUBSTANTIAL AMENDMENT FOR THE GATHERING SPACE

Mayor Sipma gave a brief history of the NDR Program and application process.

He then invited Mr. Zakian to elaborate on additional information and options for the Council to consider. Mr. Zakian said, he received communication from Terrance Ware, the HUD representative for Minot and the other NDR grantees, which states, “HUD required a benefit cost analysis for the activities approved NDR application. A revised benefit cost analysis for this project would likely indicate that a more costly site within the same vicinity of less costly sites might fail the analysis. It also reduces the amount of available funds for implementation, i.e. construction. When other less costly sites are available within the same area, why is the location of the site more important than the function it is to serve? Particularly when located within the Souris River Flood Plain whose function is to serve as a gathering place during disasters. The function, programing, and accessibility to the gathering place should be the major determinates in its location. In this case, it seems as though the location is driving the other elements of the project.”

Mr. Zakian then explained the three options he brought before the Council. He cautioned that two of the options will take additional time and there is no guarantee that either option would be approved by HUD. If a course of action is taken for a substantial amendment, conversations need to take place with HUD and if they do not give the green light to move forward, then the City cannot continue. The Council can stay the course and extend the deadline, do a substantial amendment reducing the size of the gathering place to about 1.2 acres, or do a substantial amendment changing the activity to become an economic development activity and the National Objective LMI.

He emphasized that a public facility cannot be affected by property owners of one of the sites being chosen. He brought an option that would require the City change the national objective and the activity. If that is chosen, they could then negotiate a development agreement where property owners could remain beneficial property owners with certain terms and conditions that link back to economic development. Without a development agreement the substantial amendment would fail.

He described why the substantial amendment would take about 18 months to go through. The City would have to start from the beginning to identify every potential site in the downtown, select a criteria committee, conduct public meetings and then draft the substantial amendment.

The other substantial amendment would probably take six months but it would require all work stop until the substantial amendment is completed. He said, regardless of what action is taken, the City cannot acquire properties unless we can justify the cost is necessary and reasonable and meets HUD standards.

The Mayor clarified some additional sites that were considered for the Gathering Space, including the public school grounds along Third Street. He said, we cannot use that area because HUD guidelines prohibit it from being shared space. He also mentioned the idea for swapping land but that also is not permitted by HUD guidelines.

Alderman Straight asked for clarification on the two-acre requirement. Mr. Zakian said, he believes he can defend to HUD if it was close to two acres but would accept nothing less than 1.8 acres. He then explained that HUD would say, it must be two acres.

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Alderman Straight then asked about the City's continued involvement with the space since a sub-recipient agreement with the Park District has been discussed. He also emphasized the desire for indoor space and how that relates to the classification as a "park".

Mr. Zakian responded by saying, the design and construction will be a public process but is controlled by the City. The City needs to demonstrate to HUD that the design, configuration, and uses are strictly to the benefit of the 48,000 members of the public. In the application, the City classified the project as a public facility described as a park. The reason it was approved was because during the flood, parks around the City were flooded and there was no place for the community to gather. The application said the downtown would be the best place to locate a gathering space.

Alderman Straight requested the regulations from HUD be distributed to the Council, to which Mr. Zakian said, he will send the information but warned, it is probably about 3,000 pages.

Alderman Podrygula asked about the decision to reduce the funding from what was requested but not proportionately reduce the size of the project.

Mr. Zakian explained, when the City was chosen as one of the recipients of the grant, the award was reduced by more than half, so there were extensive debriefs between HUD and City staff to downsize or eliminate projects. The original amount requested for the Gathering Space was about \$8.7 million. The City voluntarily chose to downsize to \$6 million but maintain the size of two-acres. The application listed in-kind contributions of \$2 million, which is assumed to be the value of the land that was going to be used for the project. The City had the opportunity to change the size and scope of the project but didn't.

Upon questioning by Alderman Pitner, Mr. Zakian elaborated on the options. He responded by saying, if they change the national objective to LMI and the activity to Economic Development, they would identify at least one property owner within the gathering space block and negotiate a development agreement. The agreement would give more flexibility to determine what is included in the space and it benefits the community by providing jobs to low to moderate income residents. Right now, as a public facility, the City cannot be influenced by and cannot benefit one property owner.

Alderman Pitner said, even if they change the activity to Economic Development, it doesn't solve the issue of reaching two-acres. Mr. Zakian said, he can reasonable argue up to two acres so if the Soo Line does not agree, it would be within reason, of 1.79 acres. Mr. Zakian also reminded, the City cannot acquire property they cannot justify as current market value.

He then explained further, if we reach an agreement with all property owners, we still need to conduct the cost-benefit analysis, and it needs to show that the cost of acquiring these properties is not significantly more than the cost of acquiring the properties at the other two sites.

Alderman Pitner stated, the substantial amendments will cause delays that the City cannot afford since time is running out to spend the funds. He reminded the Council, they established a deadline and should stick to it. The City made a commitment to HUD and it appears like a bait and switch situation if we keep requesting changes.

Mayor Sipma commented that the selection of the sites may be inaccurate and having one of the sites in the flood plain should not have been considered in the first place.

Alderman Olson asked if extending the deadline would be beneficial, to which Mr. Zakian said, optimistically, they could reach an agreement with the property owners by extending the deadline. He shared additional information regarding the City's record with purchasing properties at market value assuring the Council that the market estimates are accurate.

Mayor Sipma asked about the negotiations with the railroad. Mr. Zakian said, that was one property owner who suggested a land swap and he has since found out that is not permitted by HUD but he still believes the door is open for negotiation.

Upon questioning by Alderman Wolsky on the Soo Line property, Mr. Zakian said, their first communication with them stated they were not in a position to sell property but could entertain a 15-year lease. HUD requires a 99-year lease so after further communication, the railroad suggested a land swap. Mr. Zakian further clarified, any activity that benefits a project funded by HUD is covered by HUD rules. What was proposed by the property owners was a transaction rather than exchanging dollars. The URA only contemplates cash transactions.

Alderman Wolsky said he is uncomfortable making a decision based on information received during the meeting. He then asked for the language specifying that the two-acres must be contiguous.

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Mr. Zakian said, the City cited this as an acceptable project because during the flood, all parks and gathering spaces were affected by the flood resulting in a need for a similar gathering space outside the flooded area where the community could gather in the event of another disaster.

Alderman Wolsky then asked about the initial two-acres the City planned to construct the Gathering Space. Mr. Zakian said, according to the application, the City said they would provide, meaning the City would pay for the land. It did not specify where the land was going to be located.

Mayor Sipma said, he attended the meetings in 2015 and it was discussed that the greenspace on Third was the presumed location. It is used by Minot Public Schools and was therefore eliminated from consideration.

Alderman Wolsky asked about the independent appraisals done by the property owners and if they can be used to determine the value. Mr. Zakian said, HUD will not allow the City to accept the appraisal at face value. Past practices have relied on our independent appraisal or the City Assessor's opinion. In both situations with these property owners, the City Assessor has given numerous reasons for why the independent appraisals are not valid and do not reflect current market value.

Alderman Wolsky asked if properties previously acquired by the City are an establishment of value. Mr. Zakian said, each case was filed with a memo demonstrating why it met the standards of acceptable current market value or justifiable necessary and reasonable costs. His basis for judgement is the City Assessor or the independent appraiser engaged by CDM Smith. He added, to clarify information misrepresented by the property owners, the City was urged to move expeditiously in acquiring properties. Under voluntary acquisition, they can either engage an appraiser or use the assessed value. The initial offers were made in February when the only established values were the 2018 assessments. He did not know when updated assessments would be made. After communication went out to the property owners, the counteroffers made were then updated to reflect the 2019 assessments.

Alderman Straight asked about the process of negotiation and if mediation could take place since the City Assessor found reasons why the property owner's appraisals were not valid. Mr. Zakian said, this is a voluntary acquisition and from HUD's perspective, the location is not important. A site that meets what the City represented is all that's needed. Mediation is not allowed for voluntary acquisition and extraordinary action cannot be made to stay on one site. It was represented to HUD that there are multiple sites for consideration, which is the only reason the City got the substantial amendment that it did.

Alderman Straight said, he hasn't heard this project described as enhancing economic development and he asked Mr. Zakian to share his opinion on its economic impact. Mr. Zakian said, he hasn't addressed the economic impact because their hands are tied and this is a public project meeting urgent need. He said, the potential for this project to attract people to the downtown area, regardless of which site it is located, can be a phenomenal economic growth engine for the City, provided all businesses downtown realize what they are getting as a public asset once it's in place.

Alderman Wolsky read a portion of Mr. Zakian's memo and pointed out that no matter where the Gathering Space is located, there will be a benefit to adjacent property owners. He also said, part of the criteria of the selection committee was the economic impact.

Mr. Zakian said, there are a number of standard factors that HUD expects to see when scoring for optional sites and economic development is one of them. He clarified, as long as the configuration, design, construction and use of the gathering space is done entirely by the City for the benefit of the general public and is not influenced by private interests, then anybody who is interested, can take advantage of it afterwards.

Alderman Pitner asked if the downtown could take control and manage the Gathering Space through the use of a BID District or TIFs. Mr. Zakian responded by saying, yes, for example, Rapid City was built by a BID and is operating as a 501c3. He also mentioned, the Rapid City and Caldwell gathering spaces were not funded with Federal funds and were not constrained by the guidelines the City has related to HUD.

Alderman Straight brought up the Creative Economy Summit and asked how they can collaborate more creatively to move forward. He requested Mr. Zakian share his opinions on the economic development aspect of the project and not how the project is constrained according to HUD regulations.

The Mayor prefaced Mr. Zakian's response by saying, he is here because of his expertise in working within HUD guidelines so that the City can accomplish the projects set out in the application without violating any rules and having to return the grant money. It is beneficial to have Mr. Zakian's economic development experience but the bottom line is there are clear guidelines they need to follow.

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Mr. Zakian stated, he wants every project to be successful but he is there to protect the City and the Council to make sure they do not cross any lines or violate any rules. The rules in which they are obligated to operate are not just defined by HUD. He said, he appreciates the approach the property owners are taking but there are limits of what can and cannot be done.

He then explained, the two key economic development engines that can be powerful drivers are non-profit corporations and the creative economy. He gave examples of activities that can be connected to the Gathering Space as long as they are not involved in the construction. He also said, events held at a HUD funded project can charge a fee to participants as long as it is not too costly for the average low-to-moderate-income family and as long as public access is generally granted.

The Mayor said, he would like to see the Gathering Space move forward at the location that was chosen and does not want to see any substantial amendments take place.

Alderman Olson said she would support a deadline of October 30th.

Alderman Pitner reminded the Council, the property owners have been in negotiations since February 20th and have not reached an agreement. The Council established a deadline for a reason and he sees no point in extending it. We told HUD we would negotiate on this site and if it didn't work out, we would move onto the next site. If we eventually move onto the other sites and they don't work out, it could take months of negotiation with those property owners just to realize it won't work and maybe it results in a substantial amendment down the line but we could be out of time.

Alderman Straight asked about the timeline if all agreements were reached. Mr. Zakian said, purchase agreements would be executed followed by closing dates. The Park District has a sub-recipient agreement and will then conduct public input meetings and carry-out design. Alderman Straight expressed his desire to construct the Gathering Space on this site and no other and accepted that maybe it be done by the private sector rather than with HUD dollars. He said, they could compromise and set a deadline of September.

Alderman Olson moved the City Council extend the deadline for negotiations for the voluntary acquisition of site 2 to September 30, 2019. Motion seconded by Alderman Podrygula.

After further discussion by the Council, a vote was taken on the motion by Alderman Olson, seconded by Alderman Podrygula and carried by the following roll call vote: ayes: Jantzer, Olson, Podrygula, Sipma, Straight, Wolsky; nays: Pitner.

AMEND RESOLUTION NO. 3606 – REGULAR CITY COUNCIL MEETING SCHEDULE – APPROVED

Alderman Pitner moved the City Council amend the resolution establishing the schedule for regular City Council meetings to revise the meeting time of the August 19, 2019 meeting to begin at 4:15 pm at the Auditorium to conduct the budget Q & A session. Motion seconded by Alderman Olson.

Alderman Straight asked for clarification of the change in start time, to which the City Manager explained, this was a carry over from when the budget discussions were held during Committee of the Whole meetings, which started at 4:15. It was missed in the original schedule.

Whereupon a vote was taken on the above motion by Alderman Pitner, seconded by Alderman Olson and carried by the following roll call vote: ayes: Jantzer, Olson, Pitner, Podrygula, Sipma, Straight, Wolsky; nays: none.

ADJOURNMENT

There being no further business, Alderman Pitner moved the City Council meeting be adjourned. Motion seconded by Alderman Olson and carried unanimously. Meeting adjourned at 6:59 pm.

ATTEST: _____
Kelly Matalka, City Clerk

APPROVED: _____
Shaun Sipma, Mayor