

**CITY OF CUSTER CITY
COUNCIL PROCEEDINGS- SPECIAL SESSION
NOVEMBER 7, 2007**

Mayor Harold D. Stickney called to order the special meeting of the Common Council for the month of November, 2007 at 7:30 p.m. Present at roll call were Councilpersons Pischke, Murphey, Culberson, Starr, and Schleining. Christine read a statement from Councilperson Boyer stating due to an appearance of a conflict interest, I will not be attending tonight's meeting based on the recommendation of the City Attorney. We have been in negotiations with a restaurant that potentially is looking at the Pamida site as well. Our negotiations with the restaurant were terminated on Nov. 5 but due to the proximity of the Pamida vote, I have chosen to take the City Attorney's advice and not participate in tonight's meeting. Chris Beesley, City Attorney, Lynn Moran, Assistant City Attorney, and Rex Harris, Community Development Director (by teleconference) were also present. The Pledge of Allegiance was stated.

AGENDA

Councilperson Schleining moved to approve the agenda. Seconded by Councilperson Pischke, the motion unanimously carried.

MINUTES

Councilperson Starr moved, with a second by Councilperson Pischke, to approve the minutes from the November 5th, 2007 Regular meeting. Councilperson Culberson stated a clarification of a section of the minutes where it read, Councilperson Culberson decided the vote was not legal; he said that he questioned the validity of the vote. The motion carried.

CONFLICTS OF INTEREST

No conflicts were stated other than Councilperson Boyer. Councilperson Culberson stated he is upset about the rumors going around that he is on the list of or involved with the local investors that were looking at doing a Pamida Store if given the opportunity. He has absolutely no investment or interest, and anyone who say that is off base; he doesn't appreciate the innuendo which is a bunch of crap.

REASON FOR SPECIAL MEETING

Councilperson Murphey stated that this meeting and pending action is confusing for the residents; the residents should be able to trust the Council. This is an unusual circumstance; we passed a resolution, the 20 day publication notice took effect, the resolution is ratified, and we should be good to go on the advice of our counsel. However, there is a question at the State level as to whether or not the Resolution creates debt for the City; if it does then the previous note needed to be a super majority of 4 voting yes. The City's position in the past is that it is not debt which was in agreement with our auditors. However, DLA is stating different. Since there is the disagreement on the debt issue and it could adjudicate the previous Resolution, the Council has decided to look at this issue again. We apologize for the late action.

RECONSIDER RESOLUTION #09-27-07E

Councilperson Culberson moved, with a second by Councilperson Schleining, to reconsider Resolution #09-27-07E TIF #3 Project Plan. The motion unanimously carried.

The Mayor offered the opportunity for public comment.

Craig Walz stated that he was a business owner for nearly 26 years and he is not against new business coming to town. He always felt that he was fortunate to have a business in Custer. He was never aware of requesting TIF assistance and the comment has been made that he just never asked. He believes Pamida will come and everyone just wants fairness and equality in competition. It has been said that a TIF doesn't cost anything but everything costs something. A group of local investors came forward but were told no due to timing. The "mom and pop" businesses give 3 ½ times more to the community than outsiders. Please give the locals the same opportunity.

Joe McFarland questioned the change in the total amount of the TIF from the meeting that was in basement of the Coldwell Banker Office. It was stated that it would be a \$300,000 TIF with \$300,000 interest. Rex stated that he had contact Pelstar and they apologize if there was a misunderstanding from that day. The financing has changed a lot over the time period. This TIF has been written no different than the others we have written and the interest is always mentioned later. Joe also questioned that the TIF would not pay off in 15 years. Rex stated that the projections do work when you consider that there is a restaurant pad that will be developed also. The tax payments are projected at about \$44,000 and with the pad they will be about \$56,000. Joe also mentioned that the School will still get their money from re-spreading of the increment amount to all county residents. Rex stated that is not true due to this being an economic development TIF rather than residential. Christine stated that since this is an economic development TIF, the taxes are not re-spread like the other two residential TIF's already in place. The fact that the base is set, the School District does not suffer from increased property value; therefore, they receive more from the state aid formula.

Mike Tennyson said he was glad to have this issue revisited; he is in favor of Pamida and TIFs. He does have four concerns. The first concern is an unfair advantage to the retail businesses and they should have a level field. No one locally was offered a TIF. The second concern is that it is not needed. He showed the Council a spreadsheet projection of Pelstar's profit in different scenarios. The third concern is that it has been misrepresented by allowing the building foundation and that the interest amount has not been discussed. The Mayor asked Mike about the \$685,000 TIF he received and that in the end, it becomes a \$1.2 million dollar TIF. Mike agreed and stated that his other TIF is larger than that. Pamida does answer the #1 need from the community study but there is still confusion on the project costs. The fourth concern is the City's TIF capacity limit and what about future TIF's? What about future businesses such a Pacer or one from BH Vision that isn't retail, but we don't have the capacity left? Mike requested that this TIF be denied or at least greatly reduced.

Ramona Flaig Bradeen, local realtor, mentioned that their meeting rooms are a donation to the community for various organizations. She mentioned that there could be another conflict of interest here tonight; she mentioned that there is Plan A for Pelstar which is the land west of town. Then there is Plan B which would mean that Pelstar would purchase property from Mike Tennyson. Mike is also one of the group local investors. Would this not be a conflict of interest? Chris stated no since he is not on the Council; otherwise he is just a local business person speaking his opinion.

Dave Ressler, Chamber of Commerce Director, stated that the entire Chamber Board whole heartedly supports new business of any kind. However, they cannot take an official stand on the TIF issue since they were not in all conversations. They believe that the Council is elected to handle the City's money and will vote for their constituents.

Rex stated that in conversations with Pelstar today, they are the exclusive developer in this area for Pamida and they will not work with anyone else to bring a Pamida in. Rex asked Mike if he had received a letter regarding this statement and Mike said he had not received anything. He doesn't have a dog in this fight. Rex discussed the positives that Pamida will be bringing in substantial new value to the community by the additional revenues. In his discussions with the business community, they really aren't worried about the competition. With the 30 new jobs, payroll, and that money circulates approximately six times, and the additional sales tax, that is somewhere around \$30 million over a 15 year period. Is this good for the community or not? This gives our residents the opportunity to shop locally since there is an inability to go elsewhere; especially with the fuel prices.

Tim Behlings, co-owner in a small local business, stated that there are concerns for local businesses when they take a position on an issue. He and his wife are not opposed to Pamida. They would support a TIF but are against this TIF's numbers. They are expanding their business in downtown. The community has been good to us and we didn't ask for help from a TIF. He didn't know to ask, maybe should have but didn't. Since he is on the Planning Commission, he does think that the City needs to look at adopting guidelines for future Districts and to make sure that the numbers provided are accurate.

Terry Reitz wondered and is baffled as to why this is being brought up again. The survey conducted showed 338 for and 11 against. All elected officials are supposed to represent the residents; he's not seeing this here tonight. This is a great benefit for all. He also questioned that tonight there is a lot of smokescreens since there are the ones who are for the Pamida and yet against the TIF. Culberson stated that he would be more comfortable with the survey if it had said in favor of Pamida in Custer with a \$1 million dollar TIF; I am in favor of the Pamida just not the \$1 million dollar TIF. Terry stated that the money would be paid back through their taxes.

John Carson stated he had been to most of the meetings and that we can support Pamida but not the TIF. TIF's are for infrastructure and he is against the building foundation being in the TIF since it is not level and fair. The figure has always been \$600,000.

Rex discussed that this is not negative; every man, woman, and child will realize \$3,000 a piece; it's a win win situation for all sides. If we want Pamida, it will take a \$600,000 TIF; if no TIF then they won't look here again until 2012. The fact that Pelstar has an exclusive contract may put the City over a barrel; but is the progress worth the TIF?

Mark Elysis stated that Pamida is good and will be an asset to the Community, they are aware of TIF's, the spirit of the law, and encourages the Council to keep a level playing field.

RESCIND & ADOPTION RESOLUTION 09-27-07E

Councilperson Culberson moved, with a second by Councilperson Schleining, to rescind Resolution #09-27-07E. The roll call vote is Councilperson Starr, Pischke, Murphey, Schleining, and Culberson voting yes. The motion unanimously carried.

Discussion was held on adopting a new project plan. Lynn stated that BH Council is the one who developed the Plan and they would only use legitimate expenses; however Blaise is not available for tonight's

meeting to clarify why the foundation is in the plan. Chris stated that there are other allowable costs available to be looked at by Blaise, Rex, and himself. Councilperson Murphey stated that the project will be bid according to State law; if the prices are lower, then the TIF will be lower. Councilperson Culberson stated that this is a moving target and a pig in poke with the change made to the Plan. Councilperson Culberson stated that the Council has not had information in a timely manner; they want it, so we'll give it. The Mayor wondered if Councilperson Culberson knew the tax payment is the difference between the base value and the new value. Councilperson Culberson stated he knew all about TIF's; he just wants a level playing field. Councilperson Starr discussed being on Council when the first TIF came about. It was a learning curve and at that time it was stated that there isn't a level playing field; the citizens even said no. Now you have the opposite effect which has evolved more into the law as an economic development tool. Councilperson Starr also discussed being irritated and offended about Mike presenting a spreadsheet regarding someone else's profit and trying to hold their feet to the fire. Mike stated he had provided those sheets at the Planning Commission and he would still show the sheets. Councilperson Starr stated that the numbers are only projections and that we can't assume they are over funded. The Mayor mentioned that 20 years ago, Hot Springs gave Pamida a \$400,000 TIF; imagine the cost today. Councilperson Murphey stated that yes this is good, the residents want Pamida no matter what, we're not increasing taxes, and the fact is that people want to buy stuff here that they can't get now. The newest Pamida ad had 14 pages of items that we can't currently get in town.

Lon Edwards stated he was glad not to be in the Council's shoes but he did wonder who here has the knowledge on costs; who is protecting the taxpayers so the wool isn't pulled over anyone's eyes. Rex stated that Blaise and City staff have experience as well as other ways to justify the costs. The State bid process monitors construction costs also. Mike Neilson wondered if there was an itemized list of costs from Mike and if there was a list from the developer. Christine stated that there is a list and that is where the allowable costs came from. Lynn stated that Blaise is qualified, certified, and BH Council assists with all the TIF plans; they know the statues back and forth. Councilperson Culberson wanted it explained as to why the foundation was included. Lynn stated that Blaise was out of town and the fact remains that Pelstar wants a \$600,000 TIF. The money can be apportioned correctly without there being a problem.

Christine proposed a motion to approve the Resolution #09-27-07E TIF #3 Project Plan in the amount of \$600,000 plus finance costs to be apportioned among section #1 items one through 6; this is to more closely reflect State Law regarding public vs. private improvements said modification to be established through Black Hills Area Council Representative, Blaise Emerson, Custer Community Development Director, Rex Harris, and The Custer City Attorney. Councilperson Murphey so moved, with a second by Councilperson Starr. The roll call vote is Councilperson Pischke, Murphey, Schleining, and Starr voting yes. Councilperson Culberson voted no. The motion carried.

RESOLUTION 09-27-07E

RESOLUTION APPROVING THE PROJECT PLAN FOR TAX INCREMENT DISTRICT NUMBER THREE AS SUBMITTED BY THE CUSTER CITY PLANNING COMMISSION AND AMENDED

WHEREAS the Council of the City of Custer City has determined that it is in the best interest of the City to implement plans which promote economic development and growth in the City; and

WHEREAS the Council embraces the concept of Tax Increment Financing as a tool to encourage this desirable growth and redevelopment; and

WHEREAS there has been established Tax Increment District Number Three; and

WHEREAS the Council deems desirable to promote economic development and create jobs in the corporate limits of the City of Custer City; and

WHEREAS the Project Plan submitted helps make this development feasible by assisting in the development of public and private improvements to serve Pelstar Subdivision; and

WHEREAS the Project Plan submitted will assist with the costs of streets, sewer and water improvements, and site improvements; and

WHEREAS the use of Tax Increment Funding to promote this development is in keeping within the statutes adopted by the South Dakota State Legislature; and

WHEREAS there has been developed a Project Plan for this Tax Increment District which proposes these improvements; and

WHEREAS the Council has considered the Project Plan submitted by the Planning Commission and determined that the Project Plan for Tax Increment District Three is economically feasible; and

WHEREAS the Council has further determined that this Project Plan is in conformity with the adopted Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED by the City of Custer City that the Tax Increment District Project Plan for Tax Increment District Number Three be, and is hereby, approved as submitted by the Custer City Planning Commission and amended.

Dated at Custer City, Custer County, South Dakota, this 7th day of November 2007.

s/Harold D. Stickney, Mayor

CONTRACT FOR PRIVATE DEVELOPMENT

This Contract for Private Development takes the liability from the City and puts it with the developer. Christine proposed a motion to approve the Contract for Private Development Agreement in the amount of \$600,000 plus finance costs to be apportioned among section #1 items one through 6; this is to more closely reflect State Law regarding public vs. private improvements said modification to be established through Black Hills Area Council Representative, Blaise Emerson, Custer Community Development Director, Rex Harris, and The Custer City Attorney. Councilperson Schleining so moved, with a second by Councilperson Pischke. The roll call vote is Councilperson Murphey, Schleining, Starr, and Pischke voting yes. Councilperson Culberson voted no. The motion carried.

ADJOURNMENT

With no further business, Mayor Stickney adjourned the meeting at 9:03 p.m.

ATTEST:

CITY OF CUSTER CITY

Christine Redden
Finance Officer

Harold D. Stickney
Mayor