

# City of White Sulphur Springs

The regular meeting of the City Council was held on November 1, 2021, at 7:00PM. Mayor Rick Nelson called the meeting to order with the following members present:

Pattie Berg  
Ron Coleman  
Stacy Menard  
Lee Blanchard

## **A. Call Regular Meeting to Order**

## **B. Roll Call**

## **C. Pledge of Allegiance to Flag**

## **D. Read & Approve - Accept or Reject Minutes**

### 1. September 7<sup>th</sup> Meeting – Regular Session

*Possible Motion: Move to Accept Minutes as presented or as amended.*

Motion accepted for September 7<sup>th</sup> minutes

### 2. September 21<sup>st</sup> Meeting – Regular Session

*Possible Motion: Move to Accept Minutes as presented or as amended.*

Motion accepted for September 21<sup>st</sup> minutes

### 3. October 4<sup>th</sup> Meeting – Regular Session

*Possible Motion: Move to Accept Minutes as presented or as amended.*

To be approved at next meeting

### 4. October 19<sup>th</sup> Meeting – Regular Session

*Possible Motion: Move to Accept Minutes as presented or as amended.*

To be approved at next meeting

**E. Public Comment:** Public comment will be accepted on public matters not listed on this agenda and are within the jurisdiction of the City Council and having a significant interest to the public. During a regular session, there will be time after each agenda item for comment about that item.

1. Step up to the podium and state your name and address for the record.

2. Please limit your comments to THREE (3) minutes.

## **F. Receive/Accept Reports**

### 1. City Engineer's Report – City Engineer Terry Threlkeld

Coming soon is another ARPA Training round about how to apply for a 2<sup>nd</sup> round of competitive grants for the water project. There is a conference call scheduled with the DEQ to discuss all that's progressing. City Engineer, Mr. Terry Threlkeld, is planning to put some time into working on issues with Mr. Bodie Morrison of Big Belt Excavation.

2. Public Work's Report - City Public Works Supervisor, Rocky Vinton (City Public Works Employee, Marc Pryor, stepped in for Rocky) There were 2 curb stops replaced as well as a tap for a guy who bought a lot and needed water service to the lot. They are closely monitoring willow creek; sand filter and 4 meters were replaced. They are keeping track of the turbidity and since they have been monitoring, they have not gone above 1.0 since starting the sand filter. Willow creek could be online by the very next day. City Council Member, Pattie Berg, wasn't clear on the sand filter statement and asked for further clarification. Mr. Pryor stated that a big issue is turbidity and what is required by the State. It was having high turbidity ratings up until they blew out the lines and then they realized the dials within each meter needed to be replaced

due to being outdated. Once these were replaced the turbidity levels have been all below 1.0. The cells have maintained .70 since the replacement so the turbidity is in good shape. Ms. Berg wanted to know the last time the vials were changed. Mr. Pryor was not sure but stated that typically the vial will have an outdated date on the vial itself. City Council Member, Stacy Menard, asked what the replacement date was and how long ago it was done, according to the date on the vial. Mr. Pryor stated less than a year. Mayor Rick Nelson, said, approximately 6 months. 2 more vials are coming in that are used to test for the state. Once those come in, we can retest and prove to the state that our turbidity levels are where they are supposed to be. We then can get back online. The mayor believes we could do that in the 4<sup>th</sup> quarter.

#### 7. Animal Control Report – Marc Pryor

There was only 1 ticket issue which has been a consistent violation, this is a 2<sup>nd</sup> offense, with court on November 8, 2021. After speaking with the judge, it was decided the amount was to be determined as she had various questions. There are the usual barking and loose dogs. One gentleman received a ticket, from a middle of the night call and the dog was being held by the person who called in. Mr. Pryor took to the dog to the pound and had him 32 hours and had to feed and water it through night. Once the gentleman picked up the dog, Mr. Pryor went back to the person who had held the dog and explained that they could be liable for the pound fees. He let him know that containing an animal makes you responsible. Mr. Pryor is familiar with dog and the dog always goes back home. Then today a bat in the Bank of The Rockies had to be removed. He never did find the skunk or the mayo jar.

#### 8. Parks Committee Report – Pattie Berg

There is a meeting scheduled on the 10<sup>th</sup> of November and they have the minutes from October. The committee will look at all applications for the 2 open slots on the Parks Committee. Public Comment from Marcy Joyce who wanted to know who applied and wanted to know if the qualifications have been put out to the public. Mayor Rick Nelson answered with a yes and that the applicants are Chris Morgan and Candi Short Richardson.

### **G. Unfinished Business - Items for Discussion and/or Actions**

#### **1. Request for Approval of Property Division - Jen Brunson**

Application for Subdivision request to split/subdivide property identified as: N ½ Block B Woodson Addition into 2 lots.

Request approved. Shed removed and maps can be signed.

*Possible Motion:*

*Motion to direct City Engineer and City Attorney to review submitted material for compliance with Subdivision policy and legal requirements; OR Motion to authorize Mayor to execute necessary documents to approve subdivision request, or Motion to continue to another meeting.*

City Council Member Pattie Berg motioned to authorize the mayor to execute the necessary documents to approve subdivision request, City Council Member, Stacy Menard seconded the motion. All said Aye and this was unanimously passed.

### **H. New Business - Items for Discussion and/or Actions**

#### **1. Ratify Alteration to Lincoln Street Project from October 19 Meeting**

Consider informal action taken to re-award the Water Main Replacement Project (Phase 3), also known as the Lincoln Street Project to C&C Excavation. Basis: The bid award was to

the lowest responsible bidder; however, the contract documents have not been signed and the bidder is requesting more money in the contract before he will sign, and the resulting contract price is in excess of the other responsible bidder's price, and the other bidder was willing to retain the bid price.

City Engineer, Terry Threlkeld communicated to Bodie Morrison of Big Belt Excavation that they were moving on to the 2<sup>nd</sup> bidder. Mr. Morrison had a meeting with the mayor and was very unhappy. He stated that he was taking the City to court. City Attorney, Susan Wordal, reviewed the boilerplate contract and it's written to favor the City. Mr. Threlkeld stated he had not heard from Mr. Morrison at all, no calls, or emails, and wondered if anyone else has. Ms. Wordal stated that an email went to Mr. Morrison before his meeting with the mayor. As a result of the meeting with the mayor, Ms. Wordal reviewed documentation from both Mr. Morrison and Mr. Threlkeld and stated the contracts are stock standard and can't be changed. Contracts have always been designed to be standardized for industry with little to no wiggle room for changes. The bid notice was sent to Mr. Morrison later than intended and it stated, "this is your notice of award, you now have 15 days to review the documents and execute them." Ms. Wordal said Mr. Morrison had way more than that before we exercised our option. Ms. Wordal stated that if the docs are not signed, we can walk back and that's what we did. The decision was made informally 2 weeks ago so that we could tell people what's happening. Ms. Wordal stated that if Mr. Morrison decides to file a lawsuit, we are going to have a lot of problems since funding agencies are based on bonding, and we have to ratify the bonding resolution. Part of that is to declare that there are no pending lawsuits.

Ms. Wordal also said that if Mr. Morrison decides to move on his choice that the City will have no choice but to move on his bond since he had to supply a bid bond. His bid bond was \$55,000. This bond can be acted on in an event that Mr. Morrison either backs out or sues. He is liable to us, and we would notify his bonding company and take action. The best-case scenario is we give him back his bid bond and he no longer intends to sue so that we don't have to notify his bonding company. Mr. Morrison has not signed off and wanted additional money and we can't do that. This puts him over the next, in line, bidder. City Council Member, Pattie Berg, verified that we've talked to our funding sources. They confirmed we would have problems if we were in a pending lawsuit or dealing with a bonding company issue. City Council Member, Stacy Menard asked if we could ratify and officially give it to C&C. Ms. Wordal says Mr. Morrison needs to "fish or cut bait" in the next couple days or we have to call his bond company and alert the funders of the project. The Council would have to ratify or go back and start over with a rebid. Mrs. Menard asked for confirmation about Mr. Morrison being at hunting camp for a week. Mr. Threlkeld stated that on October 22, 2021, Mr. Morrison said he was at hunting camp. Ms. Berg confirmed that the bid notice was sent August 19, 2021, and he could not open so it was resent the following Monday and he could open that one. More than 15 days was given.

August 18 or 19, 2021 the notice of award went out and Mr. Morrison stated he didn't think he should be signing it because there was nothing in it about the increased cost of pipe. Change order requests must be placed on any materials that go up. Mrs. Menard stated that it really bothers her that it took the City 35 days to get him a contract. You must have a contract before you go to a bank to ask for a loan for materials. She feels that there is fault on both sides – the City and Mr. Morrison. Ms. Wordal doesn't believe that the City is legally responsible. Mrs. Menard believes morally the City is responsible and is expressed her disappointment. She stated that he should have signed the bid but that there is fault on the City's part. Mrs. Menard also reminded Mr. Threlkeld that Ms. Berg asked numerous times in a previous meeting, "why this wasn't done earlier." She stated that answer wasn't ever given and would like to know why. Mr. Threlkeld stated he took his foot off the gas a bit and didn't know anything about pipe prices changing until Mr. Morrison emailed him on

July 29<sup>th</sup> stating the pipe quote expired. Mr. Threlkeld says we do not finance materials and stated that Mr. Morrison must come up with bridge financing for us to pay for his materials. Then when materials are on site and he invoices us, we can reimburse him for that. City Council Member, Lee Blanchard, asked Mr. Threlkeld again, why! Mr. Blanchard reminded him that he is still not answering the question. Mr. Threlkeld stated that Mr. Morrison does not have to have a contract, that a quote will secure materials. Mr. Threlkeld says he heard from no one about pipe prices but that he did have the mayor sign the notice to proceed, then Mr. Morrison said he could not open it, so Mr. Threlkeld sent it from another email address. He says it shouldn't have taken so long but stated again that no one said anything to him, and he didn't know anything was critical. Mrs. Menard reminded him that financing requires a contract, and he cannot be expected to cover \$200,000 worth of pipe. Mr. Threlkeld says that pipe costs \$40,000 and that someone would have to pay it and be reimbursed. Mrs. Menard stated that Mr. Morrison receiving the contract as late as he did was unacceptable. Mr. Threlkeld wants to know why Mr. Morrison sat on the contract, but Mrs. Menard reminded him that the City sat on it for a month beforehand. Mrs. Menard told Mr. Threlkeld that he failed the City in doing his job and that she believes he let the ball drop. Mr. Threlkeld said he tried to be proactive and was sorry. Mrs. Menard stated she is not comfortable awarding to someone else without knowing if we can get financing to do the project. Ms. Wordal stated that the Council can ratify their decision subject to Mr. Morrison agreeing not to sue. Ms. Wordal stated that the mayor has a document called a Covenant Not to Sue that could be given to Mr. Morrison. Mrs. Menard stated C&C was required to get a bid bond and now we have to go back on theirs and wonders if this means two lawsuits due to 2 failed contracts. Ms. Wordal says no and that we can still walk back with C&C and award them the bid. The documents are written in favor of the City and State and not in favor of the contractor. Confirmation is needed within 2 weeks, or the council can go back and put out for rebid. Ms. Berg asked the mayor for bid amounts and C&C is 580,000 and Morrison \$558,000 + \$90,000 as of the middle of October. C&C still has pipe on hand, so their price didn't change.

If the contract was signed, then a change order could have been written for the pipe. Mrs. Menard feels we have no option but to go with C&C but is morally torn over doing this to one of our own. Mr. Morrison is local and was here in person to talk and answer questions. Ms. Wordal's advice is one of two things, to ratify the discussion from 2 weeks and add caveats if needed OR decide you're not going to contract anyone and rebid the entire project. Ms. Berg stated it's going to be more expensive due to demand. The mayor stated that Mr. Morrison is the true low bidder, but Ms. Wordal said that since he wouldn't sign and didn't stick by the low bid, then we have to do a change order later. The mayor said we could reject everything and rebid the project, but the Council is too worried about that. The mayor has attempted to reach Mr. Morrison but is only receiving messages that he is at hunting camp. The covenant not to sue is needed as soon as possible since it affects the funds needed for the project.

Public Comment by Marcy Joyce: She would like to know the process for Mr. Morrison since there is fault on the City and this could fall on taxpayers. Mrs. Joyce believes Mr. Threlkeld should be disciplined. Also, giving a contract to someone out of the City doesn't return any dollars to the City. As a citizen she would like to say that money isn't everything and an option is to go back to the table with Mr. Morrison, to renegotiate price since going out of town isn't a great option either. Mrs. Menard reminded everyone that the City liked him because he was the low bidder and local. The money stays here but a raised bid by \$39,000 is tough and for funding, we must go with the low bidder.

To secure funding, we now can't go with Mr. Morrison. ARPA money is only for water, sewer and broadband and is only available now, so therefore pipe prices will keep going up.

Public Comment by Marcy Joyce: she would like to see future processes on this type of thing.

*Possible move to ratify decision to re-award the contract to C&C Excavation as the new low bidder and authorize the City Engineer and the Mayor to execute the necessary documents.*

City Council Member, Pattie Berg, moved to motion to ratify the decision to re-award the contract to C&C Excavation as the new low bidder and authorize the City Engineer and the Mayor to execute the necessary documents, with the stipulation that this be done after the City receives Mr. Morrison's covenant not to sue. City Council Member, Stacy Menard, seconded the motion. All were in favor and said Aye.

## **2. Meagher County Chamber – Christmas Stroll – Katie Dailey – Street Closure**

Consider Meagher County Chamber's request to close a section of street for Christmas Stroll. (See submitted diagram)

To shut down Main Street from Central to 3<sup>rd</sup> Ave, just West of Town Pump from 5pm-9:30pm. There are extra fun things planned this year such as fundraisers, decorations, music, and hayrides. The stroll is Friday, December 3, 2021.

*Possible Motion: Move to grant the Meagher County Chamber's request to close a section of XXX street for Christmas Stroll.*

City Council Member, Stacy Menard, moved to grant the Meagher County Chamber's request to close a section of Main St. for the Christmas Stroll. City Council Member, Ron Coleman, seconded the motion. All were in favor and said Aye.

## **Deer Management – JD Walker**

Consider the request of the mayor to turn over the duties under the Deer Management Plan to JD Walker, with associated compensation.

This program will start after hunting season, the mayor stated he would get with new owner of the butcher shop. We don't take the meat to the processor, but we take it to the food bank. The butcher shop would be able to slip some in, here and there. JD Walker was recommended to take this on since he is so good at it. It's a seasonal part-time position with the pay at starting wages coming in as a City employee. The State program funds are in place for the fees associated with the meat and the meat to be dispersed at no charge to those who want it. There is a list of people that want the meat, and it all has to be ground burger.

*Possible Motion: Move to authorize the mayor to turn over duties under the Deer Management Plan to JD Walker.*

City Council Member, Stacy Menard, moved to motion to authorize the mayor to turn over duties under the Deer Management plan to JD Walker. City Council Member, Pattie Berg, seconded the motion. All were in favor and said Aye.



#### 4. Dollar Tree – Variance

Consider the request of Dollar Tree for a variance as to the Van Oil property to allow for construction and encroachment as to storage/garbage, etc. (refer to submitted Variance Request)

There is no official request for the variance from Dollar Tree. The mayor spoke with the lady in charge, who is out of Utah. Maps were reviewed for setbacks, trash receptacles and where trucks can come in to unload product. The mayor let the gal know that there is a highly used sidewalk right there. They will have 6 feet from front of the building to Central. They need to accommodate this. The mayor let Dollar Tree know that the council isn't going to approve trash receptacles over the 6 feet and they understood. (On hand maps show how semis would come in) The lot and building not surveyed yet.

*Possible Motion: Move to grant Dollar Tree variance request.*

Dollar Tree variance was added to agenda for next month and the mayor will have Dollar Tree submit a request for the variance.

#### I. Comments/Discussion

1. Future Business

2. Mayor's Comments—Rick Nelson

The City council mine tour was good, there were many changes and those able to attend got a lot out of it. Fergus Electric will be who supplies the power to the mine, so the City has potential of negotiating with Northwestern to get another line of power into White Sulphur since the current one is undependable. The mayor stated that this power problem and internet is the main reason why businesses don't come to town. There is not a 2<sup>nd</sup> meeting for November. Gift cards will be given instead of a Christmas Party.

3. Council Comments/Discussion

a. President of the Council—Pattie Berg

Ms. Berg would like to see a work session for December 16<sup>th</sup> due to needing the finalization of codification. 6-8pm was scheduled for codification on 12/16/21. We also need to get the City crew going for their CDL, Rocky is the only one who has passed the written.

b. Council Member—Lee Blanchard

c. Council Member—Ron Coleman

We must get the City crew going for their CDL, Rocky is the only one who has passed the written.

d. Council Member—Stacy Menard

#### J. Claims Signing/Motion to Approve the Bills

Claim check #'s 18322-18345, October 5, 2021, thru November 1, 2021, for \$39,758.31

Journal Voucher #'s

Payroll Check #'s 8852-8880 for \$27,041.16

Direct Deposit Check #'s and Electronic Check #'s for \$6,649.86

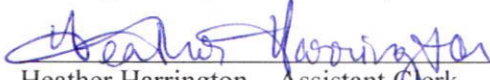
Utility Billing System Adjustments \$-326.81

10-05-2021 thru 11-01-2021 were presented for Council's approval. The mayor asked if there is a motion to pay the bills. Pattie Berg said that there are only two Council Members at attendance in person the bills can't be paid and passed at this time. The mayor said that they will be paid at the next Council meeting.


**K. Motion/Vote to Adjourn the Meeting.**

Motion to adjourn by City Council Member Lee Blanchard, seconded by City Council Member Stacy Menard.

Meeting was adjourned at 8:50pm. All were in favor and said Aye.

  
Heather Harrington – Assistant Clerk

  
Mayor – Rick Nelson

  
Michelle Stidham – Clerk Treasurer