

**CITY OF CUSTER CITY
COUNCIL PROCEEDINGS- REGULAR SESSION
JANUARY 16, 2007**

Mayor Harold D. Stickney called to order the second meeting of the Common Council for the month of January, 2007 at 5:30 p.m. Present at roll call were Councilpersons Schleining, Starr, Pischke, Culberson, Scherer, and Chris Beesley, Attorney. The Pledge of Allegiance was stated.

AGENDA

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

MINUTES

Councilperson Schleining moved, with a second by Councilperson Pischke, to approve the minutes from the January 2nd, 2007 regular meeting. The motion carried. Councilperson Culberson abstained.

CONFLICTS OF INTEREST

No conflicts were stated.

RESOLUTION #01-02-07A – CABLE FRANCHISE AGREEMENT CHANGE

The Council received the following Resolution with the Cable Transfer Agreement. Rex Harris, Community Development Director, questioned the technical aspects such as the high speed internet, the packages, and the overall costs. Will Hayford, Wildcat Computers, stated that the local guys have been doing a great job and he has never had problem with the service but he is concerned that the internet speed will change. It's presently at 8 mg for Midco and Golden West offers 1.5 mg. There is a large difference between the two. Greg Olson, Golden West, stated that the cable modems will remain at the high speed rate. They will be looking at different platforms and decide which route is the best way to go. Dwight Flat, Golden West, stated that the cable modems will probably be used within the City and the existing Midco infrastructure and the DSL will be used across the County. Greg stated that he doesn't see any changes in the foreseeable future and no changes in the price. Discussion was held on what the definition of "foreseeable future" is which no one would venture a guess. Councilperson Starr questioned the purchase and how that will play into the rates charged to this area and how the expenses are spread out within their Corporation. The programming costs are the largest expense with the physical plant and personnel being the second. Of course there is "blue sky" expense but that will be spread further out. Because Custer is already upgraded, the strengths here can be leveraged to other communities. Attorney Beesley questioned whether they will be honoring the annual update sessions so the Council can air their concerns. Greg stated they would come to the Council twice a year to keep communications open. Dwight stated that they can't just arbitrarily raise their rates due to other competition. Councilperson Scherer stated that the lack of competition was one of his main concerns due to previously experience. Greg stated that previously the internet change in speed was not due to competition; it was the time for upgrades across the State. Mayor Stickney discussed the 13 year old promise of being brought into the Co-op and that the City is sending a formal request. Rex stated that there lies the trust issue. Councilperson Culberson questioned the capitol credits for those in the Co-op and being larger due to Custer not being brought in; Dwight stated that is not the case. Councilperson Culberson moved to adopt Resolution #01-02-07A. Seconded by Councilperson Schleining, the motion unanimously carried.

RESOLUTION NO. 01-02-07A

**RESOLUTION OF THE CITY OF CUSTER, SOUTH DAKOTA, APPROVING THE TRANSFER OF THE
FRANCHISE AND CABLE TELEVISION SYSTEM OF MIDCONTINENT COMMUNICATIONS TO
GOLDEN WEST CABLEVISION, INC.**

WHEREAS, Midcontinent Communications ("Franchisee") owns, operates, and maintains a cable television system ("System") in the City of Custer, South Dakota ("Franchise Authority"), pursuant to a cable television franchise ("Franchise"), and Franchisee is the duly authorized holder of the Franchise;

WHEREAS, on December 15, 2006, Franchisee and Golden West Cablevision, Inc., a South Dakota Corporation, ("Transferee"), entered into an Asset Purchase Agreement ("Agreement") pursuant to which the System and Franchise will transfer ("Transfer") from Franchisee to Transferee;

WHEREAS, Franchisee and Transferee have requested the Franchise Authority's consent to the Transfer in accordance with the Franchise requirements and have filed an FCC Form 294 with the Franchise Authority; and

WHEREAS, the Franchise Authority has reviewed the qualifications of the Transferee and finds it to be a suitable transferee;

SECTION 1. The Franchise Authority consents to the Transfer in accordance with the terms of the Franchise.

SECTION 2. The Franchise Authority confirms that (a) the Franchise was properly granted or transferred to Franchisee pursuant to Ordinance NO. 609; (b) the Franchise is currently in full force and

effect; (c) the Franchise will expire on June 30,2020, subject to options in the Franchise, if any, to extend such term; (d) the Franchise supersedes all other agreements between the parties; (e) the Franchise represents the entire understanding of the parties and the Franchisee has no obligations to the Franchise Authority other than those specifically stated in the Franchise; and (f) Franchisee is materially in compliance with the provisions of the Franchise and there exists no fact or circumstance known to the Franchise Authority which constitutes or which, with the passage of time or the giving of notice or both, would constitute a material default or breach under the Franchise or would allow the Franchise Authority to cancel or terminate the rights thereunder.

SECTION 3. Transferee may transfer the Franchise and the System, or control related thereto to any entity controlling, controlled by, or under common control with Transferee. The Franchise Authority acknowledges that any such transfer does not trigger any right it may have to exercise any first purchase right or other right to acquire the system.

SECTION 4. The Franchise Authority consents to and approves the assignment, mortgage, pledge, hypothecation, or other encumbrance, if any, of the Franchise, the System, or assets relating thereto, as collateral for a loan.

SECTION 5. The Franchise Authority waives any consent requirements that may be triggered in the Franchise, local ordinance or state law by the trading stock on a stock exchange or regularly on the over-the-counter markets, to the extent that there is not an actual change in the ultimate working control of Transferee.

SECTION 6. This Resolution shall be deemed effective upon the date of enactment.

SECTION 7. The Franchise Authority releases Franchisee, effective upon the Closing Date of the Agreement, from all obligations and liabilities under the Franchise that accrue on and after the Closing Date; provided that the Transferee shall be responsible for any obligations and liabilities under the Franchise that accrue on and after the Closing Date.

SECTION 8. This Resolution shall have the force of a continuing agreement with the Franchise and Transferee, and the Franchise Authority shall not amend or otherwise alter this Resolution without the consent of Franchisee and Transferee.

PASSED, ADOPTED, AND APPROVED this 2nd day of January, 2007, by the City Council of the City of Custer, South Dakota by the following vote:

Ayes: Councilperson Starr, Scherer, Pischke, Schleining, and Culberson

Absent: Councilperson Boyer

s/Harold D. Stickney, Mayor

ENVISION PROPOSAL FOR WESTSIDE ANNEXATION UTILITY EXTENSION

The Council received the engineering proposal for the Westside annexation utility extension with a cost of \$26,011 for the preparation including the bidding process and \$17,350 for the construction engineering. Rex stated that they will be billing on an hourly basis so that will help with the cost. Councilperson Starr moved to accept the proposal upon approval of the contract by Bob and Chris, City Attorney. Seconded by Councilperson Pischke, the motion unanimously carried.

BROWN BAG LICENSE – CHAMBER MIXER

The Chamber submitted a request for a brown bag permit for their mixer to be held at Ketel Thorstensen on January 25th. Councilperson Schleining moved to approve this brown bag license. Seconded by Councilperson Pischke, the motion unanimously carried.

LIQUOR STORE 4TH QUARTER P&L

The Council received, reviewed, and acknowledged the Liquor Store 4th Quarter P&L Report as well as a 4 year comparison.

FINAL PLATS

Rex presented the final plat from Belva Bennett for the property described as Homestead Addition, Plat of Lots 1, 2, and 3 of Tract Bennett, Tract Bennett 2 and a portion of Lot 29 of Homestead Addition to City of Custer Located in the SW ¼ of the NE ¼ and the SE ¼, NW ¼ of Section 24, T3S, R4E, BHM, City of Custer City, Custer County, South Dakota. This is a subdivision so Belva and her children will have equal parcels; the access easement is good and so are the utility easements. Rex and the Planning Commission recommend approval. Councilperson Schleining moved to approve this plat. Seconded by Councilperson Culberson, the motion unanimously carried.

Rex presented the final plat for 3-G Developers for the property described as Stagecoach Crossing Estates Subdivision, Plat of Lots 1, 24R, 28, Park #1, and Park #2 of Stagecoach Crossings Estates Subdivision of Government Lot 5, MS 829 and MS 830, Located in the SE ¼, SW ¼, of Section 15 and the NW ¼, SW ¼, NE ¼ of Section 22, T3S, R4E, BHM, Custer County, South Dakota. Rex stated this is the last final plat for Stagecoach Crossing with all Council requirements being met; this will give 33 saleable lots. Rex and

the Planning Commission recommend approval. Councilperson Culberson moved to approve this plat. Seconded by Councilperson Pischke, the motion unanimously carried.

Rex presented the final plat for Joan Finch for the property described as Ramsey Subdivision, Plat of Lot A and Lot B of Tract Ramsey of ES 177, Located in the NE ¼ and the NW ¼, of Section 2, T4S, R4E, BHM, Custer County, South Dakota. Rex stated the zoning issues have been addressed, the County acreage change fits this request, and the approach will stay the same. Rex and the Planning Commission recommend approval. Councilperson Schleining moved to approve this plat. Seconded by Councilperson Starr, the motion unanimously carried.

SETBACK VARIANCE

Rex presented a Setback Variance Request from Arley Fadness for the property described as Lot 7 and 8, Block 118, Original Town, City of Custer City, Custer, County, South Dakota. Due to the physical constraints, the vacated area, and there would only be 2 more possible homes, Rex and the Planning Commission recommend approval. Councilperson Starr moved to approve the Variance Request. Seconded by Councilperson Schleining, the motion unanimously carried. Rex stated that with vacated area changes, the setbacks should also change; this will be addressed in the updated planning ordinance.

DISCUSSION

Discussion was held on new Verizon Tower and that the County really needs to address a zoning ordinance. Councilperson Culberson stated we need to protect our views. Rex stated the County has been working on that. Along with that, Councilperson Scherer mentioned the need to watch out for wireless internet providers who have to have several towers for their product to work.

Discussion was held on the Curfew Petitions which there was one turned into the Finance Office with only 16 signatures. There needed to be a total of 77 signatures for a referral. The petition was also turned in past the deadline.

CLAIMS

Councilperson Schleining, with a seconded by Councilperson Pischke, moved to approve the claims. The motion unanimously carried.

2006

Golden West Technologies, Repair & Maintenance, \$55
Culligan Water, Supplies, \$39
SD Unemployment Tax, \$40.88
Total Claims \$134.88

2007

BH Power, Utilities, \$4399.80
Courthouse Museum, 2007 Subsidy, \$5000
Custer Chamber of Commerce, Sales Tax Subsidy, \$7481.69
Community Health Systems, Sales Tax Subsidy, \$30448.75
Custer Co. Treasurer, Law Enforcement, \$75750.00
First Western Insurance, Insurance Premiums, \$37
Golden West, Utilities, \$660.76
Incode, Maintenance, \$7912
Jeri Hewitt, Reimbursement, \$60.35
Scott Kellogg, Reimbursement, \$585
Petty Cash, Supplies, Travel & Conferences, Licenses, \$86
Quill Corporation, Supplies, \$31.26
Gaile Walker, Reimbursement, \$89.97
WEAVE, 2007 Subsidy, \$4000
Wellmark, Health Insurance, \$5799
SD Municipal League, Travel & Conferences, \$150
Wildcat Computers, Repair & Maintenance, \$365
Total Claims \$142,491.58

ADJOURNMENT

With no further business, Mayor Stickney adjourned the meeting at 6:46 pm.

ATTEST:

CITY OF CUSTER CITY

Christine Redden
Finance Officer

Harold D. Stickney
Mayor