

City Council Agenda

City Council Chambers, City Hall, 612 N. Main Street

Friday, August 9, 2019

8:00 AM

Committee Meetings (if any) will be first; immediately followed by the City Council Meeting.

1. 8:00 A.m. Call To Order

2. Pledge Of Allegiance

3. Roll Call

4. Action On Agreement A2019-37, Acknowledgement And Waiver For 701 N Main Property

Documents:

[AGENDA ITEM- ACTION ON AGREEMENT A2019-37, ACKNOWLEDGEMENT AND WAIVER FOR 701 N MAIN PROPERTY.PDF](#)

[CITY-MITCHELL-ACKNOWLEDGMENT.PDF](#)

5. Action On Agreement A2019-30, Revised 301 N Main Settlement Agreement

Documents:

[AGENDA ITEM- AGREEMENT A2019-30, REVISED 301 N MAIN SETTLEMENT AGREEMENT.PDF](#)

[SETTLEMENT AGREEMENT- FINNELL PRO SE 8-1-2019.PDF](#)

6. Adjourn

Individuals with disabilities who require special assistance to take part in this meeting may contact one of the following at City Hall (605) 995-8420 at least 24 hours prior to the meeting with requests for assistance: Human Resources Officer, Finance Officer, Public Works Director, or City Administrator.

CITY OF MITCHELL

City Council Meeting
Agenda Item Request



The deadline for agenda items is Wednesday at noon, prior to the City Council Meeting

Meeting Date Requested:

Click or tap here to enter text.

Requested By:

Click or tap here to enter text.

Desired Action of City Council:

Authorization
 Ordinance

Approval
 Citizen Request

Resolution
 Discussion

Amount Budgeted in current fiscal year for this item (if applicable):

n/a

Agenda Item:

Action on Agreement A2019-37, Acknowledgement and Waiver for 701 N Main Property

Explanation/Background of Agenda Item Requested:

When the City transferred the 701 N Main Property to the Mitchell Area Development Corporation, the deed contained a number of restrictions. One of these was a Recurring Right of First Refusal that requires MADC, and each subsequent owner, give notice to the city of a proposed sale and an opportunity to exercise the City's right of first refusal in regards to that sale.

MADC did notify the City of a sale by it to a third party. This acknowledgement and waiver recognizes that the City received the notice and is not choosing to exercise its right of first refusal in regards to this proposed sale.

ACKNOWLEDGMENT AND DECLINATION

By Special Warranty Deed dated the 1st day of July, 2019, the City of Mitchell, South Dakota (“City”) granted, conveyed and warranted to Mitchell Area Development Corporation (“MADC”), the following described real property, to-wit:

East Seventy-five Feet (E.75’) of Lots Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14), Block Four (4), M.H. Rowley’s Addition to the Town, now City, of Mitchell, Davison County, South Dakota (the “Property”).

Pursuant to said Warranty Deed the City maintains a Recurring Right of First Refusal to repurchase the Property in the event MADC, or its successors in interest or assigns, should determine to sell or transfer the Property.

The undersigned hereby ACKNOWLEDGES receipt of written notice provided by MADC that it intends to sell the Property to Doerr Properties LLC, 2507 Anthony Avenue, Mitchell, South Dakota, on or about August 14, 2019, for the purchase price of Nine Hundred Dollars and Eighty Cents (\$900.80), and further ACKNOWLEDGES receipt of the details of such purchase and sale. The undersigned hereby DECLINES the current right to repurchase the Property at this time and consents to the sale of the Property to Doerr Properties LLC as set forth above. The undersigned further reserves the Recurring Right of First Refusal set forth in the Special Warranty Deed.

Dated this _____ day of August, 2019.

CITY OF MITCHELL, SOUTH DAKOTA

By _____
Its _____

CITY OF MITCHELL

City Council Meeting
Agenda Item Request



The deadline for agenda items is Wednesday at noon, prior to the City Council Meeting

Meeting Date Requested: Requested By:

Desired Action of City Council: Authorization Approval Resolution
 Ordinance Citizen Request Discussion

Amount Budgeted in current fiscal year for this item (if applicable):

Agenda Item:

Explanation/Background of Agenda Item Requested:

Since the last council meeting on July 15, 2019 when a version of this settlement agreement was brought to council, we have worked through some additional obstacles and have prepared a new (and hopefully last) version of the settlement agreement dealing with the 3rd and Main property.

The agreement was tabled at the last meeting due to clarifying the scope of the project. That question was amplified when the neighboring property owner came in and voiced concern over what would happen with her building and concern over the demolition impacting her business.

After some additional discussion, the City went out and solicited quotes to complete the work instead of relying on engineer estimates. The City asked for a price to demolish just the buildings owned by Finnell and a price to demolish all of the buildings on the corner. The cost difference was significant. To do just Finnell's was \$570,000 and to do all buildings was \$179,000.00 (plus certain other costs).

At this point, the City is exploring which of these alternatives may be the most prudent. Given that the City has no agreement with the neighboring property owner, it is uncertain which alternative will need to be pursued although the City hopes to find a way to keep the project costs down.

The new draft agreement addresses either scenario. Here, Finnell would transfer the building to the City for \$1.00. Finnell would also be agreeing that a judgment would be entered against him for the total costs of the project (whichever is pursued). The agreement establishes that the judgment amount would be at least \$210,000.00 so that it is clear that Finnell will be responsible for at least the costs of the cheaper project if it can be pursued but potentially more if the cheaper project cannot be pursued.

SETTLEMENT AGREEMENT

This Agreement, made and effective as of the date subscribed below, by and between the City of Mitchell, a South Dakota municipal corporation, hereafter “City”, and David Mark Finnell, in his individual capacity, hereafter “Finnell”, and Finnell Properties LLC, a South Dakota limited liability company, hereafter “LLC”, and collectively as the “parties”.

WHEREAS this Agreement relates to property at 301 N Main Street, Mitchell, SD 57301, hereafter “Property”, which is legally described as:

“Lots Eleven (11) and Twelve (12), Block Three (3), Original Town (now city) of Mitchell, Davison County, South Dakota.”; and

WHEREAS the City declared the Property a nuisance in violation of state law and city ordinance due to the condition of the structures thereon; and

WHEREAS the City filed a civil lawsuit in Davison County (File # 17CIV18-146) against Finnell as the record owner of the Property; and

WHEREAS, Finnell did subsequently transfer the Property to LLC after City’s civil lawsuit was initiated; and

WHEREAS a court hearing was held on Monday, July 29, 2019 at which point the Honorable Judge Chris Giles entered an order granting default judgment to the City in the above described civil action, authorizing the City to abate the nuisance, and requiring a hearing at a later date to determine the amount of the judgment to be entered against Defendants, jointly and severally, based on the costs of the abatement; and

WHEREAS the parties have now reached a mutual resolution as to the remaining issues left to resolve in the civil lawsuit and desire to memorialize said resolution via the execution of this Settlement Agreement.

FOR AND IN CONSIDERATION OF this Agreement, the Recitals of which are a contractual part hereof, the City, Finnell, and LLC agree as follows:

1. LLC shall convey the Property to City via General Warranty Deed for “One Dollar_ (\$1.00) and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged”. The Property shall be conveyed in fee simple; free and clear of any and all liens, mortgages, encumbrances, security interests, or other obligations of any kind. Such conveyance shall take place September 3, 2019 at 3:00 PM by physical delivery of the signed Warranty Deed by LLC’s agent to the City’s Finance Office. LLC shall not convey the Property to any other person or entity and shall remain the owner of record for the Property until that time. The parties may, upon written approval of each of the three parties (Mayor as signatory for City), move the date of delivery to a different date.

2. Finnell or LLC shall remain responsible for any utilities, taxes, or other liabilities in relation to the property up until the time of transfer. Finnell or LLC shall pay to City, at the time of delivery of the warranty deed, the amount of \$2,841.20. Such amount reflects the past due and accruing property tax up to June 30, 2019 as well as prorated Business Improvement District tax. In the event actual amounts for these taxes exceed projected values, City shall be responsible for payment of any excess that would otherwise be the lawful obligation of Finnell or LLC.

3. Finnell and LLC shall ensure that all tenants, occupants, or other persons have vacated the Property prior to the time of conveyance. In the event that the Property is not clear of all tenants, occupants, other persons, by the time of conveyance, Finnell and LLC shall cause the lawful removal of any holdover persons at Finnell and LLC's sole expense. Furthermore, Finnell and LLC shall pay to City as liquidated damages, not as a penalty, the amount of \$20 per day until such property is clear of all holdover persons. The conveyance shall be delayed until such time as all holdover persons have been lawfully removed by Finnell and LLC.

4. Finnell and LLC shall ensure that any and all personal property, regardless of owner, is removed from the Property prior to the time of conveyance. All personal property remaining at the time of conveyance shall be removed and disposed of during the demolition process. For purposes of this section, the structures on the Property and any attachments or appurtenances thereto shall not be considered personal property.

5. Subject to the above conditions, City agrees to accept the Property in "as-is" condition.

6. Finnell and LLC agree for judgment to be entered in the above described civil suit based on the total costs of the abatement project contained in this Agreement, including the full costs paid by City or its agent to a responsible contractor to complete the demolition work, the costs to the landfill for accepting the material from the Property, and the costs for any asbestos remediation taking place prior to demolition. The judgment shall not be offset by the amount paid under Section 2 of this Agreement nor for any amount for the value of the Property in its state before or after demolition.

7. Each party, upon the request of the other, agrees to perform any further acts, and to execute and deliver any other documents, which are reasonably necessary to carry out the provisions of this Agreement.

8. In the event the public invokes the public referendum process in relation to this Agreement or the award of the demolition project contemplated herein, then this Agreement shall be deemed contingent upon the election results in relation to such referendum being in favor of proceeding with the transaction and remediation contemplated herein.

9. This Agreement constitutes the full and final agreement of the parties and supersedes any prior agreement, verbal or written, in relation to the subject matter addressed herein.

10. This Agreement does not bestow any rights or interests upon any third party beneficiary and is for the sole benefit of the parties hereto.

Dated this ____ day of _____, 2019.

CITY OF MITCHELL, SD

(seal)

Attest: _____

Robert B. Everson, Jr., Mayor

Michelle Bathke, Finance Officer

FINNELL PROPERTIES LLC

David Mark Finnell, authorized representative of Finnell Properties LLC

David Mark Finnell, in his individual capacity