



Council may take formal action on any item appearing on this Agenda. However, formal action WILL NOT be taken at this meeting on any item of business first identified during the course of the meeting as a change to the Agenda, other business, or Citizen, Councilmember and Staff Comments.

A G E N D A

**Delta City Council
Regular Meeting**

**September 6, 2016
7:00 p.m.**

- A. Pledge of Allegiance**
- B. Changes to the Agenda**
- C. Minutes**
- D. Citizen Comments**
- E. Appointment of Substitute Municipal Judge**
- F. City Attorney Comments**
- G. City Manager Comments**
- H. Councilmember Comments**
- I. Executive Session**
For a conference with the City Attorney for the purpose of receiving legal advice on specific legal questions (potential settlement of Stantec litigation) under CRS Section 24-6-402(4)(b).
- J. Approval of Stantec Settlement Agreement**
- K. Executive Session**
For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e).

Item A:

Pledge of Allegiance



Item B:

Changes to the Agenda

Mayor Ed Sisson called the meeting to order at 7:00 p.m. Also present were Councilmembers Bill Raley, Ron Austin, Christopher Ryan and Gerald Roberts, along with City Manager David Torgler and City Attorney David McConaughy. A meeting notice was posted in the south window at City Hall at least twenty-four hours prior to the meeting.

Pledge of Allegiance

The Mayor led everyone present in the Pledge of Allegiance.

Changes to the Agenda

The Clerk stated that the public hearing regarding the sales tax license has been removed.

Minutes

The Clerk amended the minutes to reflect that David McConaughy was not present.

Councilmember Ryan stated that under citizen comments he would like to have the minutes reflect city staff and city officials.

It was moved by Councilmember Roberts and seconded by Councilmember Raley to approve the minutes of the August 2, 2016 regular meeting as amended. All in favor, motion carried.

Citizen Comments

There were none.

Letter of Intent to Participate in the Delta County Multi-Jurisdictional Hazard Mitigation Plan

Interim Chief of Police Charles Kettle explained that the Delta County Hazard Mitigation plan has expired. The Pre-Disaster Mitigation (PDM) Program provides funding on a nationally competitive basis for plans and for natural hazards mitigation projects. Eligible activities include local hazard mitigation plans, property acquisition and demolition, elevation or relocation, minor localized flood reduction projects (i.e., detention ponds, improved culverts, channel stabilization), structural retrofitting of existing buildings, infrastructure retrofits, construction of tornado safe rooms, and wildfire defensible space or fuels reduction projects.

City Manager David Torgler requested that Council include a letter stating there is not any financial obligation from the City.

Jeff Wright, Delta County Emergency Management stated that they are applying for a federal grant and if there are any costs it will come out of the emergency management fund.

It was moved by Councilmember Austin and seconded by Councilmember Raley to authorize the Mayor to sign a Letter of Intent to Participate in the Delta County Multi-Jurisdictional Hazard Mitigation plan subject to the City of Delta not having any financial obligation. All in favor, motion carried.

Rezone Recommendation from the Planning Commission for 755 Crawford Avenue

Community Development Director Glen Black stated that the Planning Commission at their meeting on August 1, 2016 held a Public Hearing to review a Zoning Amendment/Rezone Request for 755 Crawford Avenue from MHR to B-2. After a properly noticed public hearing, the Planning Commission made the decision to recommend "No Change" to the zoning map to City Council.

Mr. Black explained that Council shall decide how they wish to proceed. Council has two options:

1. To accept the recommendation of denial from the Planning Commission and take no action, unless an appeal is filed. (No appeal was filed within the allowed time frame)
2. The Council may decide in its discretion to hear the matter de novo as set out in 17.04.290.H.1. and 17.04.290.H.3

Regular Meeting, Delta City Council, August 16, 2016 (cont.)

Rezone Recommendation from the Planning Commission for 755 Crawford Avenue (cont.)

It was moved by Councilmember Roberts and seconded by Councilmember Raley to accept Planning Commission's recommendation for no change to the rezone request at 755 Crawford Avenue. All in favor, motion carried.

Proclamation – Anna Marie Suppes Day

Mayor Sisson read the Proclamation.

Auditor's Report

Tim Mayberry with Holscher, Mayberry & Company, LLC presented the 2015 audit report and answered questions from Council.

It was moved by Councilmember Roberts and seconded by Councilmember Ryan to accept the auditor's report for 2015. All in favor, motion carried.

City Attorney Comments

There were none.

City Manager Comments

There were none.

Councilmember Comments

The Council commented on the retreat that was held.

Executive Session

It was moved by Councilmember Raley and seconded by Councilmember Roberts to convene an Executive Session for a conference with the City Attorney for the purpose of receiving legal advice on specific legal questions under CRS Section 24-6-402(4)(b) – update on litigation. All in favor, motion carried.

At 7:31 p.m., Mayor Sisson recessed the Regular Meeting and convened the Executive Session.

At 8:35 p.m., the Mayor reconvened the Regular Meeting and announced that the Executive Session had been concluded. He stated that in addition to himself, the participants in the Executive Session were Councilmembers Ron Austin, Christopher Ryan, Bill Raley and Gerald Roberts as well as City Manager David Torgler, City Attorney David McConaughy, Utilities Director Steve Glammeyer and Community Development Director Glen Black. For the record, the Mayor asked any person participating in the Executive Session who believed that any substantial discussion of any matters not included in the motion to go into Executive Session occurred during the Executive Session in violation of the Open Meetings Law, to state his or her concerns for the record. No concerns were stated.

The meeting was immediately adjourned.

Item D:

Citizen Comments



MEMO

To: City Council
From: Jolene E. Nelson, CMC, City Clerk
Date: September 6, 2016
Subject: Appointment of Substitute Municipal Judge



Office of the City Clerk

Recommendation:

Judge John F. Baier is recommending appointing W. Bruce Joss as a Substitute Municipal Judge.

Background:

Pursuant to CRS 13-10-105 the municipal governing body may appoint substitute judges as circumstances may require. From time to time circumstances may arise that both Judge John F. Baier and Substitute Judge Brad Kolman would have a possible conflict with a case at which time another judge would need to be called. Currently there is one such case where both Judge Baier and Judge Kolman have a conflict.

Judge Baier was contacted earlier this year by W. Bruce Joss stating he would welcome the opportunity to serve as a substitute judge in Delta Municipal Court. Mr. Joss' resume is attached to this memo outlining his experience.

Actions To Be Taken if Approved:

The Clerk will notify Mr. Joss and complete the oath of office should Council choose to appoint Mr. Joss.

W. BRUCE JOSS
1540 SE Stonebridge Drive
Cedaredge, Colorado 81413
303-907-1417
wbjoss71@gmail.com

Professional Summary

More than 37 years of professional legal experience as a partner and shareholder in Louisville's oldest law firm, Rautenstrauss and Joss, PC. Licensed to practice law in the State of Colorado in 1974. Represented individuals, business clients, fire districts; served as prosecutor in the Louisville Municipal Court; and served five years as City Attorney for the City of Louisville. I was appointed Presiding Judge for Louisville Municipal Court in December 2001. I represented clients in Municipal Courts, County Courts, District Courts, the Colorado Court of Appeals, and the Colorado Supreme Court.

Professional Experience

Rautenstrauss & Joss, P.C. Retired from the firm **2012**

Municipal Court Experience, 1975 to present

- Prosecuted all municipal court violations in the Louisville Municipal Court and have tried many cases to both the Municipal Court Judge and to juries. Helped draft various ordinances which were presented to the City Council for adoption, including the decriminalizing of most traffic offenses
- Served as a substitute prosecutor in Broomfield, Lafayette, Federal Heights and Sheridan Courts
- Appeared in Municipal Courts in Boulder, Lafayette, Longmont, Arvada, and Broomfield representing private clients
- Implemented a number of innovations in the Louisville Municipal Court, including:
 - Mediation for neighborhood disputes
 - Deferral of prosecution for first time juvenile defendants
 - Use of community service in sentencing
 - Referral of defendants to classes for aggressive driving, shoplifting, etc.
 - Program for evaluation, sentencing of minors in possession of alcohol, marijuana

- Appointed Presiding Judge for Louisville Municipal Court in December 2001
- Reserve Judge for Boulder Municipal Court since 2005
- Associate Judge in the Thornton Municipal Court since 2007
- Associate Judge in the Longmont, Edgewater, and Broomfield Municipal Courts
- Appointed Judge in the Erie Municipal Court for an Ethics Complaint and to conduct a jury trial involving a member of the Town Board as a complaining witness.

Court Experience, 1974 to present

Represented clients in various criminal cases in municipal and county courts. Cases included traffic, assaults, DUIs, and DWAI's

Represented individuals and business clients in various civil matters. Cases included commercial litigation, probate litigation, domestic relations, and real estate issues

Represented private clients before local liquor authorities on licensing issues and violation allegations

Appeared in County and District Courts throughout the State of Colorado, the Colorado Court of Appeals, and the Colorado Supreme Court

City of Louisville Relationships, 1974 to present

City Attorney for City of Louisville, 1976 to 1981

Involved in the first formal codification of the Louisville Municipal Code. Drafted numerous ordinances dealing with land use development, trees, animals, and various other subjects. I represented the City in an annexation case before the Colorado Supreme Court.

Advised members of the City Staff, Police Department, City Boards, and the City Council on legal issues

Prosecuted liquor code violations before the Louisville Liquor Authority

Professional Associations

Admitted to practice in the United States District Court for the District of Colorado, 1974

Boulder County Bar Association

Colorado State Bar Association

Director, Colorado Municipal Judges Association from 2006 to 2008

President, Colorado Municipal Judges Association 2012

Community Affiliations

Board of Directors, University of Colorado Alumni Association, 1978-1982

Advisory Committee for Planned Giving, Humane Society of Boulder Valley, 1998 to present

Board of Directors, Fire Service representative, Boulder County Communications Center, 1997 to 1999

Capital Campaign Government Committee, Humane Society of Boulder Valley, 1999 to 2000

Director, Heritage Bank, 1990 to 2007

Director, Humane Society of Boulder Valley, 2006 to 2011 Chairman of Board of Directors, 2010 to 2011

Director, Animal Assistance Foundation, 2013 to 2015

Professional References

Honorable John F. Stavely
Boulder County Court
1777 6th Street
Boulder, Colorado 80302
303-441-3721

Honorable Linda Cooke
Presiding Judge, Boulder Municipal Court
1777 6th Street
Boulder, Colorado 80302
303-441-1844

Paul Swift, Esquire
1230 West Ash Street, Suite C
Windsor, Colorado 80550
970-460-0266

Items: 7 8 9

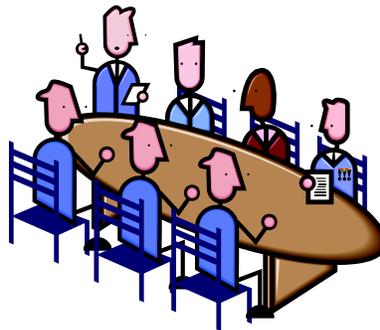
Attorney Comments



City Manager Comments



Councilmember Comments



Item I:

Executive Session:

For a conference with the City Attorney for the purpose of receiving legal advice on specific legal questions (potential settlement of Stantec litigation) under CRS Section 24-6-402(4)(b).

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”), effective the ___ day of _____, 2016, is hereby entered into by and between City of Delta, a Colorado home rule municipality (“Delta”) and Defendants, Stantec Consulting Inc. and Stantec Consulting Services Inc. (collectively, “Stantec”). Delta and Stantec may be referred to collectively herein as the “Parties.”

RECITALS

WHEREAS, Delta filed a civil action against Stantec on August 31, 2015, which became the action *City of Delta v. Stantec Consulting Inc. and Stantec Consulting Services, Inc.*, Delta County District Court, Case No. 2015CV30129 (the “Action”);

WHEREAS, Stantec entered into an agreement with Delta to provide design and construction administration services for the alternative truck route constructed in Delta, Colorado (“the ATR Project”);

WHEREAS in the Action Delta made allegations of deficiencies in the design and construction of the ATR Project;

WHEREAS, Stantec filed counterclaims against Delta in the Action for unpaid fees;

WHEREAS, the Parties wish to avoid further costs, inconvenience, and uncertainty of litigation, and enter into this Agreement upon the terms and conditions set forth below;

AGREEMENT AND RELEASE

In consideration of the Recitals, promises, and covenants provided for in this Agreement, the Parties agree as follows:

1. Delta’s Release of Claims. In exchange for good and valuable consideration recited herein, Delta, on behalf of itself, its elected officials, employees, department heads, divisions, successors, assigns, agents, contractors, affiliates, subsidiaries, successors-in-interest, representatives, insurers and/or attorneys, hereby releases, acquits and forever discharges Stantec, and their officers, directors, shareholders, employees, successors, assigns, principals, agents, contractors, affiliates, parents, subsidiaries, representatives, insurers and attorneys, from any and all past, present, and future claims, causes of action, demands, losses, costs, damages (actual and consequential), and any other legal liability or obligations of any nature and extent whatsoever, whether known or unknown, asserted or unasserted, whether now existing or to arise in the future, in law, equity or otherwise, and which arise from or otherwise relate in any way to the design and construction of the ATR Project, and/or the Action.

2. Stantec’s Release of Claims. In exchange for good and valuable consideration recited herein, Stantec, on behalf of itself, its officers, city council members and officers, directors, shareholders, employees, successors, assigns, principals, agents, contractors, affiliates,

parents, subsidiaries, representatives, insurers and/or attorneys, hereby releases, acquits and forever discharges Delta, and their officers, directors, shareholders, employees, successors, assigns, principals, agents, contractors, affiliates, parents, subsidiaries, representatives, insurers and attorneys, from any and all past, present, and future claims, causes of action, demands, losses, costs, damages (actual and consequential), and any other legal liability or obligations of any nature and extent whatsoever, whether known or unknown, asserted or unasserted, in law, equity or otherwise, which arise from or otherwise relate to the ATR Project, and/or the Action.

3. Stipulation for Dismissal with Prejudice. Following the execution of this Agreement by the Parties, and as part of the consideration therefor, the Parties, through their legal counsel, shall execute and file a stipulation to dismiss with prejudice Delta's claims asserted against Stantec in the Action and Stantec's counterclaims against Delta in the Action.

4. Representations and Warranties. Each Party represents and warrants that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Agreement, and that no Party has sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action released or referred to in this Agreement. Each Party represents and warrants that it has full capacity and authority to settle, compromise, and release their claims as provided for in this Agreement and that no other person or entity has or will in the future acquire or have any right to assert against any person or entity released by this Agreement any portion of that Party's released claims.

5. Entire Agreement. This Agreement constitutes the full and complete understanding of the Parties with respect to the subject matter described herein and supersedes any and all prior agreements and understandings, whether written or oral. No addition, deletion or amendment shall have any force or effect, except as mutually agreed to in a writing signed by all Parties to this Agreement. The Parties acknowledge that no promise, inducement or agreement not expressed herein has been made, and that the terms of this Agreement are contractual and not a mere recital.

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, devisees, agents, employees, officers, directors, trustees, conservators, guardians, beneficiaries, heirs, successors and/or assigns of each Party.

7. No Assertion of Released Claims. Each Party agrees that it shall not make any request or demand for payment, and shall not assert, file, commence or pursue any demand for arbitration or any lawsuit, with respect to any claim that has been released pursuant to the terms of this Agreement.

8. No Admission of Liability. Nothing in this Agreement is intended as, nor shall be construed as an admission of fault or liability of any Party, and said fault and liability are expressly denied by each Party.

9. Severability. In the event that an arbitrator or court of competent jurisdiction enters an award or judgment declaring that any material provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect, and the remaining provisions shall be deemed modified to the extent necessary to comply with the award or judgment declaration.

10. No Waiver of Breaches. No waiver of any breach of any one or more of the terms, conditions or covenants of this Agreement by any Party hereto shall be deemed to imply or constitute a waiver of any other breach of that same condition or covenant or a waiver of a breach of any other condition or covenant.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of Colorado, without reference to its choice of law provisions.

12. Attorney Fees. The Parties agree that each Party shall be responsible for its own attorney fees and costs incurred in connection with this Agreement and with the Action.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement. Facsimile and electronic signatures shall carry the same force and effect as an original signature.

14. Miscellaneous. Each Party represents that it has had an opportunity to consult with its own legal counsel regarding this Agreement, and that each Party hereby enters into the Agreement with the knowledge and intention that such Party will be forever bound by the terms herein.

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Item K:

Executive Session:

For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e).