CITY COUNCIL MEETING
August 3, 2015

The Faulkton City Council met in regular session on August 3, 2015 in the City Hall meeting room with Finance Officer Sallie Traver and the following council members present: Linda Bartholomew, Sheilah Fischer, Dave Hadrick, Danny Ramsdell, Mark Toennies and Steve Wanner. Others present: Tim Bormann, Brent Koens, Bill Melius, Jan Melius Jodi Moritz, Jerod Raethz, Candice Seguin, Kevin & Sharron Tanner, and Gary Wegner. Mayor Slade Roseland called the meeting to order at 7:00 p.m. with all those present reciting the "Pledge of Allegiance".

2015.8.106 Minutes: Councilman Toennies made the motion, seconded by Hadrick, to approve the July 6, 2015 meeting and Special Meeting Minutes of June 29 and July 15, 2015. Unanimous.

2015.8.107 Financial Report: Motion by Councilman Hadrick, seconded by Bartholomew, to approve the finance report. Unanimous.

2015.8.108 Claims: The following bills were approved for payment on a motion by Councilman Wanner seconded by Bartholomew. Unanimous. **Payroll Total: $21435.31**, Mayor: $400.00, Finance Officer: $3120.00, Street Department: $4433.13, Water & Sewer Department: $4562.70, Carousel 323.00, Rubble Site: 208.25, Summer Help $1471.88, Pool $6916.35

ALLIANCE CONTRACTING	GA TERMINAL CONSTRUCTION COST	$39,285.00
ASSOCIATED SUPPLY COMPANY, INC	POOL CHEMICAL	$107.32
BERMAC INC.	DIESEL, GAS, CAR WASH	$747.00
BORMANN LAW OFFICE	ATTORNEY FEES	$435.00
BRAD MANNING DIGGING	JET SEWER LINES AT POOL	$260.00
CITY OF FAULKTON, PETTY CASH	POSTAGE	$35.90
DAKOTA DUST-TEX	MAT & BATHROOM SUPPLIES	$45.90
FAULK COUNTY RECORD	CAROUSEL BROCHURES	$512.04
FAULKTON HRC	HRC PARCIAL BOND PAYMENT	$2,475.88
HANSONS INC.	REPAIR SEWER @ POOL	$1,098.01
HEALTH POOL OF SD	HEALTH INSURANCE	$3,675.80
HELMS & ASSOCIATES	ENGINEER FEES FOR TAXI LANE IMPROVMENTS	$16,148.00
HOMAN ACE HARDWARE	SUPPLIES	$315.89
INTERNAL REVENUE SERVICE	941 TAXES	$4,548.06
MCKEON, BECKY	REFUND WATER METER DEPOSIT	$100.00
NORTH WESTERN ENERGY	STREET LIGHTS	$3,547.12
NORTHERN WIRELESS COMM.	SHOP INTERNET	$79.90
NORTHWEST PIPE FITTINGS	WATER SUPPLIES	$657.61
POSTMASTER	POSTAGE	$238.00
RURAL DEVELOPMENT	WATER PROJ. DEBT PMNT PHASE 1	$4,256.00
SD DEPT. OF HEALTH (LAB)	LAB FEES	$277.00
SD ONE CALL	SD ONE CALL LOCATES	$40.95
SD RETIREMENT	RETIREMENT	$1,505.25
SD SUPPLEMENTAL RETIREMENT PLA	SDRS SUPPLEMENTAL RETIREMENT	$100.00
SONNYS AUTO PARTS & REPAIR	SUPPLIES	$25.00
SORENSEN, APRIL	POOL CONCESSIONS	$178.13
SOVELL, EMILY J.	ATTORNEY FEES	$1,113.70
TRAVER, SALLIE	TONER	$331.96
VENTURE COMMUNICATIONS COOP	PUMP HOUSE PHONE	$451.93
WEB WATER	WEB WATER	$8,026.24

City Maintenance Report: Raethz informed the council the carousel is closed because the main drive shaft is stripped down so far it broke. He is having Homan Welding make a new shaft and parts for the carousel. He hopes to have this back running before the season is over. Raethz stated he will increase mosquito spraying starting this week as July was a dry month and didn't need to spray as much. The swimming pools last day is August 22nd.
His summer help, Brice Cunningham, will be working some hours until the 22nd of August.

Mayors Report: Mayor Roseland stated he spoke with Trevor Cramer, Faulk County Director of Equalization, who informed him the city will receive a 10% growth on their tax base. Finance Officer Traver stated she has not yet received confirmation on this figure from the County Auditor so this increase is not included in the budget ordinance presented later in tonight's meeting.

Law Enforcement Report: Deputy Brent Koens updated the council on the flashing speed signs. There are new state regulation of were these flashing speed signs can be placed. He will place the first sign on the east end of town and will be placing another sign on the west side of town once the school zone flashing lights are properly placed by the State.

Development Corporation Report: No Report.

Old Business

Sewer Project: Income Survey. Traver stated the council completed 113 surveys on July 15th. This is about half of what needs to be completed. Traver thanked the council for their help. Traver stated her office staff continues to work on the remaining calls and hope to have all surveys completed in the next week.

2015.8.109 GA Terminal Pay Request & Update: Traver updated the council on the GA Terminal. There are a few items that need to be completed but the building is ready to be moved into. Traver then asked the council to approve a pay request to Alliance for $39,285.00 for the construction of the GA terminal. Motion was made by Hadrick, seconded by Wanner, to approve the submitted pay request for $39,285.00. Unanimous.

Hanger Taxilane Improvement Grant Offer Received: Mayor Roseland stated the city did receive the funding for the Taxilane improvements.

Bike Trail Funding: Jan Melius informed the council the bike trail estimate came in at $448,320.00. She felt this was too costly and have changed their focus to applying for a $150,000.00 grant to replace a few sidewalks. They application is not due until July 15, 2016. Fund will become available in 2017 and recipients will have 3 years to use the funds. In order to apply the group needs a government agency to keep the books. They are not looking for matching funds at this time. They will be fundraising for the local match of $27,075.00. After more discussion the council did not have a problem with the city doing the bookkeeping.

Resolution of Annexation # 2015-4 Public Hearing: Mayor Roseland stated the public hearing for the annexation of property at 7:28 pm. Roseland opened the floor to Sharron Tanner. Tanner thanked the council for the process and want the council to know she does have the city of Faulkton in their best interest. After reviewing the Annexation study she has 7 questions for the council. #1. Has any new or prospective business requested that the city expand its boundaries adjacent to the west of our property? Mayor Roseland stated as of now no, #2. Has any new or prospective residence requested that the city expand its boundaries adjacent to the west of our property? Mayor Roseland stated as of right now no one has but we are also not a realtor. Tanner stated in the intent to annexation meeting on July 2nd the council stated the property to the west of them will remain agricultural in the foreseeable future which leads me to question #3 Then is it not true that the City of Faulkton has no intention what so ever to develop any property adjacent to the west of their property. City Attorney Bormann stated in speaking for the city at this time, the city doesn't have any plans to develop land on its own. Any developments that would be taking place adjacent to the city or in the future property that would may be annexed by the city would hopefully be undertaken by a private party but then would become part of the community. At this point in time there has not been any discussion with anyone willing to make a development in the area although some conversations have been talked about property to the west of 15th Ave. for residential and light commercial. While there are no definite plans that the city has heard of for development next to you the property would remain agricultural that is how it sits right now. The current annexation that we are talking about would create a straight line which would allow a future annexation with just one land owner when and if that day comes. Mrs. Tanner Thanked Bormann for his reply and continued stating

the city has already annexed the property across highway 212 to the west of Faulkton. Yet your study shows a decline in population. Question #4. Isn't that annexation sufficient to take care of the possible growth and devolvement of Faulkton? Bormann replied the land to the west of Faulkton, to his knowledge, has always been part of the city and is agriculture land at this time. The Owner of that land has not sold it that he is aware of. Any future plans for this area have been geared to residential and small commercial development. Speaking for the city, what their looking at is to keep their avenues open for the allowance of expansion of more than just residential development. Tanner continues with Question#5. The annexation study states the city of Faulkton is providing our property and us with benefits. As county residence how can this be true? Bormann stated "I believe the assertion from the city in that aspect as to the benefits they are providing to you are water and sewer and mosquito spraying, he can't say clearing the streets because you are on highway 212. Tanner asked "is it because we are on the peripheral of town that the mosquito spraying comes in our yard or are you saying they purposely drive by our place to spray. Raethz stated that he does drive on the West side of their property all the time when spraying for mosquitoes. Tanner's continues with question #6. Is there a road or a street that the city maintains adjacent to our property? Mayor Roseland answered no. Tanner continues with her final questions. Have we given the city of Faulkton any reason to believe that we desire services from the city? Hadrick stated the question implies that you don't want the services. Tanner stated that's true you got it. Tanner asked if anyone had any questions. Bormann asked Tanner why do you not want to be annexed into the city. Tanner reply's, in a nut shell I believe the city is trying to annex us for additional tax base without giving us additional benefits or services. Councilman Ramsdell stated that the city advertises their business on the cities website and asked Tanner if she uses the rubble site. Tanner stated she would answer that in a bit. Tanner then addressed the council with the following.

The reason that we are here tonight is to call upon this Council to act with intellectual integrity. We are asking that you vote against the proposed resolution to annex our property. In preparing for this hearing, we have reviewed the Annexation Study which was prepared as required by the South Dakota statutes, and we were struck by the thought that it is nothing more than a complete rationalization designed to justify its conclusion.

The power to annex is an extraordinary power granted to a municipality by State statute. Strict compliance with the state statute is required. This means that the City must do more than go through the motions in making its decision as to whether a property may be annexed or not. The City must actually do what the annexation statutes require.

At the end of this hearing, we would request that each of you ask yourself, did the City meet this burden of strict compliance? What is the true motivation for the annexation? Is it really about the orderly growth and development of the City of Faulkton? Is there really a demonstrable need for annexation of our property? Do we or does our property really receive uncompensated benefits from the City of Faulkton? The answer to these questions is NO.

Is the real reason for the annexation to obtain additional tax revenue? If you find that that the goal of the annexation is simply increased tax revenue, we will ask you to visit with your City Attorney so that he can tell you that the law prohibits using increased tax revenues as a justification for annexation. Look at your annexation study…not once does it cite that the reason for annexation is increased tax revenues…the reason it does not is because increasing the city tax base is not supposed to be part of the consideration you make in annexation of properties.

The reasoning cited in the annexation is suspect. The study suggests that Faulkton has a need to annex the property for orderly growth but the annexation seeks to add only one property and that property has existed in its current form outside the city limits of Faulkton for over one hundred thirty years. The study suggests that Faulkton is a growing City but we all know that the population is declining. There is no indication that Faulkton is going to have an increase in population at this time and even if it did how would adding a single property to the municipality assist in the development of the community? The study states that the City of Faulkton supplies our property with services as a justification for annexation. However, the City of Faulkton is experiencing no uncompensated burden by providing the services the annexation study states it is providing. Some of the services such as water, sewer and rubble site are contract services which are made available for a fee. Police protection, ordinance enforcement and street and road services, cited in the annexation study are actually provided by the State of South Dakota or Faulk County, not the City of Faulkton. Planning and zoning, ordinance enforcement and building inspection are not even services the City of Faulkton provides in the normal course of business, much less to a county resident. We are required by law to be connected to the City of Faulkton's water and sewer, and we pay the fees for these services so the City is compensated. We have never asked the City for any other services nor do we plan to in the future.

In numerous places the annexation study uses information that is inapplicable and even wrong. The study states that annexation of the lands affects the health and\or safety of the residents of the City. Really? If there were health or safety concerns, the study would actually lay out each and every concern with an explanation of how annexation would resolve the concerns. The study says there is or will be population growth but the facts cited show the opposite to be true. The study says that there is a demonstrable need for annexation but does not cite a single fact

to support the statement. That is intellectually dishonest and just plain wrong.

The annexation statutes affirm that the resolution must contain the cost the citizens will incur as a result of the proposed annexation. The study states that no cost will be incurred. Stating the annexation will result in no cost to the citizens of Faulkton is incorrect. It will obligate Faulkton to begin providing services to us and our property at the same level as it provides to the other citizens of Faulkton. Even if that is just mosquito spraying and a street light, there is a cost and the citizens of Faulkton should have had the opportunity to weigh in on this resolution knowing the associated costs. Even if it were true that the annexation would not result in any cost to the Citizens of Faulkton, the resolution should have contained a statement that no cost would be incurred as a result of the annexation. The resolution did not direct residents to review the study in regard to the costs or lack of costs of annexation. The resolution was silent about costs, and I believe this by itself is fatal to the resolution if you pass it.

If this were real development, wouldn't there be some kind of plan? Wouldn't you be considering a proposed subdivision of the City of Faulkton west of this property you propose to annex? The study contains no reference to a plan or goal of any kind. The study, which is supposed to provide the basis for the need for this annexation, is simply a Boilerplate Recital of the statute without any factual information. This is reasoning turned on its head. It is not logical to start with the conclusion you want and then cite jargon to support that conclusion, especially, when the jargon is unsubstantiated by factual information. If Faulkton was exploding at the seams with new residents or businesses that needed a place within the City limits, I would not be standing here. But that is just not the case. Nothing has changed to merit annexing a property that has existed outside the City Limits for over 130 years.

Kevin and I have written a letter which outlines our reasoning for opposing the zoning resolution. We would like to READ this letter INTO
THE RECORD.

August 3, 2015

Kevin & Sharon Tanner
PO Box 247
Faulkton, SD 57438

The City of Faulkton
PO Box 21
Faulkton, SD 57438

Mayor Roseland and City Council:

We object to the city forcibly annexing our property because it significantly increases our taxation while providing us no additional benefits and because the annexation is not lawful. Despite more than doubling our taxes, the City will give us no additional services. Also, South Dakota state law and South Dakota Supreme Court rulings clearly outline when annexation is appropriate, and the proposed annexation certainly does not fall within these bounds. This letter will demonstrate that the proposed annexation of a single property is arbitrary and that the City has failed to prove a valid need to annex our property.

Per SDCL 944.1, in order to lawfully annex a property, a city must first demonstrate a valid need for the annexation. Not only has the City failed to prove that there is "reasonable present or demonstrable future need for annexing" but the reasons written in the Annexation Study are contradictory to the reasons stated in the 2 July 2015 City Council Meeting. The actual reasons for the annexation are confusing and inconsistent but, nonetheless, we will demonstrate that none of the reasons stated constitute a lawful need for annexation of our property.

Reason for Annexation: Straight Lines for Orderly Annexation to the West of our Property (Annexation Study page 3)

A.....Declining population Per the City's own Annexation Study, between the 2000 Census and the 2010 Census, Faulkton experienced a 6.2% population decrease. We fail to see how this population decline demonstrates a "reasonable present need" for expansion west of our residence.

B. .....Need Not Demonstrated According to SDCL 944.1, the City must conduct a study to determine need for the annexation. The City's Annexation Study contains no facts supporting a need to annex our property. Four definitions of annexation are listed as the "need". Is the City stating that all four of these definitions apply to the "need" to annex us? Or are only one, two, or three definitions applicable to our case? And if so, how specifically does its "definition" relate to the City's "need" to annex our particular property? We suggest that the City is only using vague jargon that is being parroted from the code and case law. The essential core of the study, establishing need, is not stated and therefore invalidates the annexation process.

C. .....City Council statement Perhaps the most telling evidence that this City Council has no intention of expanding to the West of our property was Councilman Wanner's response to our question as to why the Council was not planning to annex the Geisen land on the West side of our property. He stated that *"as of right now, in the near future, **I don't see that ever being anything but ag ground."** (Transcript of 2 July 2015 City Council Intent to Annex Meeting)* We absolutely agree with the Councilman's statement that there is no need to annex the land to the West of our property at any time in the near future. Thus, the only written, official reason that the Council gave for the proposed annexation is, by the Council's own admission, not valid.

Conclusion: The declining population of Faulkton, the Need not being established as documented by this City Council's Annexation Study, and the statements of this Council are evidence that there is no reasonable present need for the annexation of our property.

Now that we have had the opportunity to address the written, official reason for the proposed annexation, we would like to address the reasons verbalized in the 2 July Council Intent to Annex meeting.

Reason for Annexation: Tanners have City Sewer and Water

During the 2 July City Council meeting discussion regarding why the Council desired to forcibly annex our property, the issue of City water and sewer was raised by Council members nine times. *(Transcript of 2 July 2015 City Council Intent to Annex Meeting*: 01:18, 01:26, 01:46, 02:36, 02:45, 04:31, 06:00, 08:07, 08:43)

Clearly it is of great concern to this Council that we receive City water and sewer but are not within City limits. Further examination of this concern, however, will demonstrate that the fact we are connected to the City sanitary system is not at all a legal basis for annexation.

A. .....South Dakota State Law requires us to be connected to City water and sewer Per SDCL94728 "Each building in which plumbing fixtures are installed shall connect to a public water supply system if available. A public water system is available to a premise used for human occupancy ***if the property line of the premise is within two hundred feet of the system***." Similarly SDCL 94853 states the same is true for sewer.

The South Dakota Supreme Court ruled in Verry v. City of Belle Fourche that this law is binding both to us as property owners and to the City. Therefore, we are not taking advantage of Faulkton by connecting to the sanitary system, nor is Faulkton magnanimously providing us the services. Rather, we are both merely complying with state law because our property *is within 200 feet of the City sanitary system.*

B. .....The water and sewer provided to us are *compensated* services In the July meeting to discuss the Intent to Annex, Council members brought "fair share" and "taxes" into the discussion eight times with reference to the fact that we receive City water and sewer. *(Transcript of 2 July 2015 City Council Intent to Annex Meeting*: 01:16, 01:18, 01:46, 02:09, 02:41, 02:45, 06:00, 06:12) We are unsure why the Council believes that we are not paying our "fair share" when we have faithfully paid our water and sewer bill. And we will continue to pay that "fair share" each month. Finally, it is not clear to us why this is suddenly an issue in 2015 when our homestead property has been connected to the City sanitary system for nearly nine decades.

The South Dakota Supreme Court ruled in Verry v. City of Belle Fourche that annexation cannot be linked to sewer and water services This South Dakota Supreme Court case states that under SDCL 941 the City may not require the property owner "to petition for annexation as a condition to providing city water and sewer services". Despite this fact, City Council members have repeatedly stated that we should be annexed because we get city sewer and water as evidenced by the following quotes:

1)..... When Mayor Roseland informed us about the City's Intent to Annex, he said, "*You are on city water and sewer." (1:00 PM, 06/10/2015)*

2).....04:27 Sharon Tanner asked: "So are we the only one being looked at for straight boundaries then?"

04:31 A male councilman responded: "You are the only one using sewer and water." *(Transcript of 2 July 2015 City Council Intent to Annex Meeting)*

These quotes (*see above and additional quotes in Appendix I)* demonstrate that the City is attempting to require annexation of our property as a condition to providing its water and sewer connection which clearly violates the aforementioned Supreme Court ruling.

.....

Conclusion: As you can see, South Dakota state law requires us to be connected to the City's sanitary system, and we compensate the City for the water and sewer services we use at the rates that the City sets. The South Dakota Supreme Court has ruled that City water and sewer may not be used as a reason for annexation. Therefore, the Council's assertion that we should submit to forcible annexation because we are connected to the sanitary system has no legal basis.

Reason for Annexation: Perceived Benefits

The City of Faulkton is experiencing no uncompensated burden by providing the services the annexation study states it is providing. Many of the services are contract services which are made available for a fee. The balance of the services cited in the Annexation Study are provided by the State of South Dakota or Faulk County, not the City of Faulkton. However, in the Annexation Study, the City writes that for "several years" they have provided the following services for our Faulk County property:

1) ....."Street and Road Services" We live on US Highway 212 which is maintained by the state of South Dakota. No Faulkton street or road gives us access to our property.

2) ....."Disposal Services (Rubble Site)" We do use City rubble services but only because we own seven lots within the City limits.

3) ....."Police Protection, Planning and Zoning Services, Building Inspections, Ordinance Enforcement" Faulk County is the provider of these services, not Faulkton.

4) ..... Public Service amenities

a).....Mosquito Abatement: We do not get mosquito *: 08:33)*abatement services. *(Transcript of 2 July 2015 City Council Intent to Annex Meeting*

b).....Lighting: No city lighting is located on our property. We have paid for and installed all of the lighting we require.

c).....Address: 03:19 City Councilman stated: "*You also have a street address. I also have a PO Box, but I have a street address. You know, what we we're trying to do.*" *(Transcript of 2 July 2015 City Council Intent to Annex Meeting)* How does our street address justify annexing our property?

5) ....."Water/Sewer Services" This has already been thoroughly discussed in Section II of this letter.

Conclusion: It is confusing that the City claims it has provided a full complement of services when we are non-residents. With the exception of mandated water and sewer, the County and the State of South Dakota, not the City, have furnished all our services. Yet, the City appears to want to annex us merely for the additional tax revenue.

Reason for Annexation: Increased Taxation

We already have demonstrated that we are willing to pay City taxes by owning and operating two businesses on

seven lots in the City of Faulkton. Although these businesses do not use any water or sewer, we pay our "fair share" of City taxes on these properties. However, we object to the City attempting to seize our county property for the sole purpose of garnering additional "fair share" taxes from us.

It appears that the true reason the City is singling out our Faulk County property for annexation is to increase its tax base without the intent of providing additional services.

The South Dakota Supreme Court, in Big Sioux Township v. Streeter, states, "Appellant has demonstrated a total lack of commitment to create an outflow of services and facilities to the proposed annexed area in return for an increased tax base. Such a lack of commitment defies the mandate set forth by this Court."

As the City states in its Annexation Study (page 2), it anticipates "no additional cost to the City" for municipal services. Does this mean the City does not plan to create an outflow of City services for our property? The City's Annexation Study (page 3) also states "in consideration of long term benefits." It appears these "long term benefits" refer to increased tax dollars as a result of our annexation.

The South Dakota Supreme Court has clearly established on multiple occasions that annexation shall not be done for the expressed purpose of raising taxes:

1) ..... In Johnson v. Incorporated Town of Castlewood the Court states: "Municipal boundaries should not be revamped for purely tax reasons."

2) ..... In Big Sioux Township v. Streeter the Court says that "the limits of a municipal corporation should not be extended for the sole purpose of increasing the municipal tax base [...]."

During the 2 July meeting about the Intent to Annex, the City Council verbalized its true motivation when speaking to us: "People approach me about you [the Tanners] ... paying fair share," and "*You* [the Tanners] *aren't paying taxes just like they are… And they don't think that that's [sic] fair!" (Transcript of 2 July 2015 City Council Intent to Annex Meeting: 01:08,05:47)*

In addition to increasing real estate taxes, the City states that it is seeking annexation to add 2% sales tax to our county business:

1) When Mayor Roseland originally informed the Tanners about the City Council's Intent to Annex, he explained: *"Now that you have the business."(1:00 PM,*
06/10/2015)

2) During the Council meeting regarding the Intent to Annex:
06:17 Councilman Ramsdell stated: "And your sales tax is 2% lower than your competitors..."
06:28 Councilwoman Bartholomew added: "It's isn't fair to the rest of the city." (Transcript of 2 July 2015 City Council Intent to Annex Meeting)

The South Dakota Supreme Court case, Smith v. City of Rapid City,reads: "from the lips of appellant's mayor, the true motive behind annexation and the collection of tax revenues may be found". These two exchanges are representative of the Faulkton City Council's true motives for annexation of our property:

1) .....*102:45 Councilman Hadrick stated: "So that … we have some money in the coffers. And what we're asking ... is that you guys to allow us to to annex your property into the city,"*

01:18 Councilwoman Bartholomew responded: "Right, sewer and water, and they think you should be part of the city. Yes, paying city taxes."
(Transcript of 2 July 2015 City Council Intent to Annex Meeting)

2) .....*05:47 Councilwoman Fischer stated: "The first thing the first thing when I was made a council person, the first, the first thing people come up to me and say, "When are Tanners going to become part of the city? … Because you aren't paying taxes just like they are and you get sewer and water just like the rest of us, but you're not paying taxes. And they don't think that that's fair." (Transcript of 2 July 2015 City Council Intent to Annex Meeting)*

We believe the City is seeking annexation for the expressed purpose of raising taxes which has been ruled illegal.

CONCLUSION:

Section I Reason for Annexation: Straight Lines for Orderly Annexation to the West of our Property

If the City truly was expanding residential or commercial development west of our property, we would be among the first to petition for annexation; consider these statements from the "Intent to Annex" meeting:
07:28 Male councilman stated: "...if things change out that way where the building is going to end up on that side there."
07:38 Kevin Tanner responded: "Well, then it would make sense for us to be included."
07:39 Sharon Tanner added: "We would want to be."
(Transcript of 2 July 2015 City Council Intent to Annex Meeting)

The City officially states in its Annexation Study that it is ensuring the orderly growth of Faulkton. Yet, in the 2 July Council meeting to address the Intent to Annex, the Council stated, "*I don't see that ever being anything but ag ground."* In addition, the **need** for annexation, the essential core of the study, is absent. We have clearly shown that the City has not demonstrated a reasonable present or future need to annex our property.

Section II Reason for Annexation: Tanners have City Sewer and Water
At the 2 July Intent to Annex Council meeting the City emphatically and repeatedly verbalized that because we get sewer and water, we do not pay our "fair share" in taxes.
We have demonstrated that the City has no legal basis to forcibly annex our property merely because we are connected to the City's sanitary system. The City is compensated for this contract service as we faithfully pay our water and sewer bill each month. You as the City Council have done an excellent job of determining the "fair share" that customers should pay by setting City water and sewer rates. The South Dakota Supreme Court has established that this City water and sewer may not be used as a reason for annexation.

Section III Reason for Annexation: Perceived Benefits
We have demonstrated that the County and the State of South Dakota, not the City, have been the sole providers of our services. The City has officially claimed in its Annexation Study that it had been providing a full complement of services to our property "for several years". As nonresidents, the City is only authorized to give us water and sewer. Faulkton is giving us no additional services nor are we requesting these services, but the City nonetheless is trying to raise our taxes.

Section IV Reason for Annexation: Increased Taxation
We have demonstrated the reason the City is trying to annex us: **to increase its tax base.** South Dakota's Supreme Court, however, has clearly established on multiple occasions that a City cannot annex solely to raise tax revenue. You have demonstrated a real sense of fairness; in the 2 July Intent to Annex meeting, you introduced the concept of "fair" five times. Indeed, it does not seem "fair" to us that the city seeks to annex us solely for the purpose of reaching into our pocket, when no additional services are being sought or provided.

In light of the above discussion, there can be no doubt that the proposed annexation of our property is not lawful. Despite the multiple, contradictory attempts by the City to prove a reasonable present or future need for this proposed annexation, the City has categorically failed to do so. It is clear to us that the true motivation behind the annexation is a desire by the City to seize additional tax revenue, a motivation that flies in the face of settled South Dakota annexation law.

For all these reasons we strongly object to this unlawful annexation which will significantly increase our tax burden yet provide us with no additional services. Once again, we call upon this Council to act with intellectual integrity. We are asking that you vote against the proposed resolution to annex our property. If the City of Faulkton proceeds with this annexation, we will pursue other options for protecting our rights as South Dakota citizens.

Thank you for your time and consideration.
Respectfully,
Kevin Tanner

Sharon Tanner

APPENDIX I
(Quotes linking sewer and water to annexation)
Transcript of 2 July 2015 City Council Intent to Annex Meeting:……
When Mayor Roseland informed us about the City's Intent to Annex, the first thing he said was, "You are on city water and sewer." (1:00 PM, 06/02/2015)
02:09 Councilman Ramsdell: "You're getting services from the city of
Faulkton but you're not in the city of Faulkton."
02:34 Sharon Tanner: "And what services are we getting?"
02:36 Male councilman: "City water, city sewer." (Transcript of Faulkton City Council,
07/02/2015)
04:27 Sharon Tanner: "So are we the only one being looked at for straight boundaries then?"
04:31 Male councilman: "You are the only one using sewer and water."
02:45 Councilman Hadrick: "But what he's saying is, I pay for water and sewer at my house, but I also pay taxes to the city to have my house, you know, so that, you know, any other thing that the city does, that we have some money in the coffers to do that."
"The city council members discussed with Mrs. Tanner the intent to annex the property on which their home and business, 212 Lodge, is located. They are on
city water and sewer." (Faulk County Record, July 8, 2015, page 2)
"There are no other instances adjoining the city where home owners get city water
and2015 , page sewer2) and are not in the city paying city assessments." (Faulk County Record, July 8,
"Councilwoman Sheilah Fischer stated: "The city would like to square up the boundary and bring them into the city especially since they are already getting city water and sewer services." (Faulk County Record, July 8, 2015, page 2)
"There are no other instances adjoining the city where home owners get city water and sewer and are not in the city paying city assessments."
(Faulk County Record report, July 8, 2015, page 2)

*At 8:06 pm Councilman Ramsdell left the meeting room and returned at 8:11 pm

Attorney Bormann stated to Tanner that she made a very strong point about the city never providing in their study the approximate cost to extended service to the residence. Tanner stated the resolution did not stated this. Bormann stated the Resolution does not have to. The SD Codified law 9-4-4.2 you are referencing is for municipalizes with population of 1000 or more and requires this information but the city of Faulkton is operating under SDCL 9-4-4.11 which are for population under 1000 and does not require that information. Bormann stated when you say you will procure other avenues are you saying you will be contacting an attorney. Tanner stated first of all she considers the Faulkton area my home and it's very sad to say that we have a phone number and it's very sad to think that that might be a Tanner vs. the City of Faulkton in a supreme court ruling on day but we will do what we have to do. Bormann stated he wanted to clarify that. Bormann stated he would like to request the council call for executive session to consult with legal counsel regarding possible litigation matters. The council decided to finish the agenda items before going into executive session for this issue.

New Business

2015.8.110 FCCLA Fundraising request: Michelle Brand played a video presentation from Chloe Brand. Chloe asked the council to use the pool on Sunday, August 23rd from 6:30 to 8:00 pm as a cancer fund raiser. She would charge $5.00 per person. $3.00 for the use of the pool and $2.00 for the cancer fund raiser. After some discussion, Councilman Hadrick motioned, seconded by Ramsdell, to allow the entire $5.00 entry fee go to the fundraiser as long as there are the correct amount of lifeguards on staff for this event. Unanimous.

Park Water Usage: Mayor Roseland stated there have been complaints about non-residence and non-city park campers using or taking water from the park. After some discussion the council asked Traver to price out a coin machine for the faucet at the park.

2015.8.111 Budget Supplement Ordinance # 33. Mayor Roseland read for its First Reading Ordinance No. 33 entitled, "Supplemental Appropriation Ordinance for the City of Faulkton, Faulk County, South Dakota for the Fiscal Year Commencing January 1st, 2015". Second reading will be on Tuesday, September 8, 2015 at 7:00 p.m. Unanimous.

2015.8.112 2016 BUDGET/APPROPRIATIONS.ORDINANCE NO.34. Mayor Roseland read for its First Reading Ordinance No. 34 entitled, "The Annual Appropriation for the City of Faulkton, Faulk County, South Dakota for the fiscal year commencing January 1, 2016." Motion was made by Councilman Wanner, seconded by Bartholomew, to have the second reading on Tuesday, September 8, 2015 at 7:00 p.m. Unanimous.

2015.7.113 Resolution 2015-05 Court's Fine Schedule: Mayor Roseland explained the fine schedule to the council and stated they could change any of the amounts that have been set. After some discussion motion was made by Councilman Hadrick, seconded by Bartholomew, to adopt the following resolution. Unanimous.

RESOLUTION #2015-05

WHEREAS, the City of Faulkton requests that the Circuit Court set fines for certain violations of its Municipal Ordinances so as to allow such fines to be pursuant to the Court's fine schedule rather than requiring an appearance in Court, and;

WHEREAS, the members of the Council have reviewed the ordinances and make this recommendation to the Court.

NOW THEREFORE, BE IT RESOLVED that the City Council hereby requests that violations of the following City of Faulkton Municipal Ordinances be made part of the Court's fine schedule at the fines recommended herein or such other fine as the Court deems appropriate:

6-3-6	Alcohol Beyond Premises	$ 25.00
6-4-4	Allowing Animal to Run at Large 1st Off.	$ 25.00
	Allowing animal to Run at Large 2nd Off.	$ 50.00
	Allowing animal to Run at Large 3rd Off.	$ 100.00
7-1-9	Public Intoxication	$ 25.00
7-1-11	Disturbing the Peace	$ 25.00
7-1-16	Public Indecency	$ 25.00
7-2-1	Injuring Signs	$ 100.00
7-2-6	Interference with City Property	$ 100.00
7-2-7	Injuring Sidewalks, Streets, Etc.	$ 100.00
7-2-8	Destroying City Property	$ 100.00
7-6-1	Illegal Discharge of Firearm	$ 25.00
7-6-2	Illegal Discharge of Fireworks	$ 25.00
9-3-31	Interference with Fire Hydrant	$ 50.00
10-3-8	Failure to Remove Garbage	$ 25.00
10-6-1	Failure to Remove Snow from Sidewalk	$ 25.00
10-6-4	Parking Restriction in Snow Emergency	$ 25.00
11-1-6	Speeding (City streets)	$ 25.00
11-1-6	Speeding School Zone	$ 50.00
11-1-8	Exhibition Driving	$ 50.00
11-1-14	Illegal Parking	$ 25.00
	Illegal Parking by fire hydrant	$ 50.00
11-1-17	Interfering With Traffic	$ 25.00
11-1-19	Prohibited Vehicle Parking	$ 25.00
11-1-26	Obedience to Traffic Signs and Signals	$ 25.00
11-1-27	Interference with Signs or Signals	$ 50.00
11-1-33	Illegal U-turn/Turning Mid-block	$ 25.00
11-1-37	Driving on Sidewalks	$ 25.00
11-1-45	Backing Around Corners	$ 25.00
11-2-2	Violation of Snowmobile Route	$ 25.00

_____
MAYOR

_____
FINANCE OFFICER

Date Adopted: August 3, 2015
Date Published: August 12, 2015

2015.8.114 Mosquito Control Grant Agreement: Mayor Roseland informed the Council the city received a $2,665.00 Grant from the State for mosquito control. Motion was made by councilman Toennies, seconded by Hadrick, to allow the Mayor Roseland to sign the grant agreement. Unanimous.

SDRS Automatic Escalation Provision for Supplemental Retirement Plan. Finance officer Traver explained to the council that SD Retirement System is asking the council to adopt a plan that would automatically enroll new employees into the SDRS supplemental Retirement plan. The employee would have 90 days to decline from enrollment. If employee would stay enrolled the contribution amount would increase annually $10.00 per month. After discussion the council decided not to adopt the plan.

September Meeting Date: The September meeting will be on Tuesday September 8, 2015 at 7:00 pm at City Hall.

OTHER BUSINESS

2015.8.115 Executive Session Time: 8:42 p.m. Motion was made by Councilman Hadrick, seconded by Toennies, to go into executive session for litigation and/or personnel matters per SDCL 1-25-2 Out of executive session at 9:10 p.m**. 2015.8.116.** Motion was made by Toennies, seconded by Ramsdell, to table the vote on the Resolution of Annexation # 2015-4 until the September 8th meeting to allow the city attorney to review the case. Unanimous.
2015.8.117 approve 8-plex bond payment: Motion was made by councilman Hadrick, seconded by Wanner, to approve payments for the 8-plex bond payments. Unanimous.

2015.8.118 Adjournment. There being no other business to come before the council, the meeting adjourned on a motion by Councilwoman Fischer, seconded by Ramsdell. Motion carried. Time: 9:17 p.m.

_____ _____
Slade Roseland, Mayor Sallie Traver, Finance Officer