



# LOWER PLATTE SOUTH natural resources district

3125 Portia Street | P.O. Box 83581 • Lincoln, Nebraska 68501-3581  
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Agenda Item #8

## Memorandum

**Date:** September 10, 2020  
**To:** Board of Directors  
**From:** Paul D. Zillig, General Manager  
**Subject:** Executive Subcommittee Meeting Minutes

The Executive Subcommittee met at 2:00 pm on Wednesday, September 9, 2020 via video/teleconference. Directors participating were Larry Ruth, Deborah Eagan, Bruce Johnson, Ray Stevens, and Milt Schmidt. Others participating included Steve Seglin, Corey Wasserburger, Nathan Kulhman, David Potter, and myself.

Chair Ruth called the meeting to order and welcomed those participating. Ruth reviewed the agenda and asked for a report on the first item. I reported that the NRD's agreement with the City of Lincoln for use of the former Fire Station #10 property was approved in April for an initial term of 6 months, the agreement is set to expire in mid-October. The agreement allows for an extension of 90 days and the City has requested that the agreement be extended (see attached letter of request). I provided the Subcommittee with a copy of the proposed "Extension of Real Estate License Agreement" (attached). It was moved by Stevens, seconded by Eagan, and unanimously approved by the Subcommittee to **recommend the Board of Directors approve the Extension of Real Estate License Agreement with the City of Lincoln for the former Fire Station #10 property.**

The next item on the agenda was to consider extending several existing authorities approved by the Board due to COVID-19. I reported that these authorizations were approved and/or extended in March, May and June, and needs to be extended again as the pandemic continues to drag on.

The three authorizations are to authorize the Chair to set Board Meeting dates, times and locations; and authorizing the General Manager to set office hours, and grant temporary leave with pay and benefits, all due to the pandemic. It was suggested that these authorities be extended to March 31, 2021. It was moved by Eagan, seconded by Schmidt, and unanimously approved by the Subcommittee to **recommend the Board of Directors authorize the Board Chair to determine regular Board Meeting dates, times and locations, and authorize the General Manager authority to change office hours and to grant temporary leave from job assignments as necessary to respond to emergency conditions, with pay and benefits, thru March 31, 2021.**

The next item on the agenda was a report and discussion on legal counsel's memo on Practical Guidelines for Agendas and Meetings. Wasserburger and Seglin reviewed the memo on the

requirements and reasoning for the legal requirements for agendas and meetings under the Open Meetings Act. A copy of the memo is attached. The Subcommittee appreciated the guidance and asked that the memo also be distributed separately to the Directors.

There being no further business the meeting adjourned at 2:25 pm.

PDZ/pz

Encl. 3

pc: Steve Seglin  
Corey Wasserburger



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**ADMINISTRATION**

Paul Zillig  
3125 Portia Street  
Lincoln, NE 68521

RE: Real Estate License Agreement with the Lower Platt South Natural Resources District

Dear Mr. Zillig:

Please accept this letter as a request from the City of Lincoln to extend the Real Estate License Agreement for 1440 Adams Street and dated April 21, 2020 for 90 days as contemplated in Section 3 of the License Agreement. We greatly appreciate your help and cooperation in allowing us to use the building. Thank you!

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth Elliott", with a long horizontal flourish extending to the right.

Elizabeth Elliott  
Director | City of Lincoln Transportation and Utilities  
O: 402-441-6173



**EXTENSION OF REAL ESTATE LICENSE AGREEMENT**

**THIS EXTENSION OF REAL ESTATE LICENSE AGREEMENT**

(“Extension”) is made effective this \_\_\_\_\_, 2020, by and between **LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT**, a political subdivision of the State of Nebraska, having its office at 3125 Portia Street, Lincoln, Lancaster County, Nebraska, herein referred to as the “Licensor” and **THE CITY OF LINCOLN, NEBRASKA**, a Nebraska Municipality, on behalf of the Lincoln Transportation and Utilities Department, located at 555 10<sup>th</sup> St., Lincoln, Nebraska, 68508, herein referred to as “Licensee.” Licensor and Licensee shall individually be referred to as “Party” and collectively as (“Parties”).

**WITNESSTH:**

**RECITAL**

The Parties desire to extend the Real Estate License Agreement for 90 days as provided in Section 3 of the Agreement dated April 21, 2020.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. That the term of the Real Estate License Agreement shall be extended for an additional 90 days until January 19, 2021.
2. All of the other provisions in the Real Estate License Agreement are hereby reaffirmed.

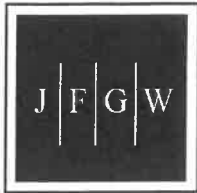
**IN WITNESS WHEREOF**, the Parties have executed this Extension effective as of \_\_\_\_\_, 2020, by their duly authorized representatives.

**LOWER PLATTE SOUTH NATURAL  
RESOURCES DISTRICT,**

BY: \_\_\_\_\_  
Paul D. Zillig, General Manager

**CITY OF LINCOLN, NEBRASKA, on  
behalf of the Department of Utilities and  
Transportation,**

BY: \_\_\_\_\_  
Mayor, Lerion Gaylor Baird



JOHNSON FLODMAN  
GUENZEL & WIDGER

ATTORNEYS AT LAW

Kile W. Johnson  
Steven J. Flodman  
Steven E. Guenzel  
Abbie J. Widger  
Stefanie S. Flodman  
Cameron E. Guenzel  
Corey J. Wasserburger  
Melanie A. Kirk  
Morgan C.H. Kristensen  
Steven G. Seglin

Robert A. Barlow  
(1921-1986)

MEMORANDUM

**TO:** The Directors of the Lower Platte South Natural Resources District  
**FROM:** Steven G. Seglin and Corey J. Wasserburger  
**DATE:** 9/1/20  
**RE:** Practical Guidelines for Agendas and Meetings  
**OUR FILE NO.:** 11184.0001

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BACKGROUND

These guidelines are prepared to help Directors become familiar with the legal requirements for agendas and meetings under the Open Meetings Act.

DISCUSSION

1. **The public must be given reasonable advance publicized notice of a meeting**, which must contain either an agenda of subjects known at the time of the publicized notice of the meeting, or a statement that such agenda may be inspected at the office of the public body and will be kept continually current. (The District does the latter.)
2. **The agenda may not be altered later than 24 hours before the meeting**, except for items of an emergency nature.
3. **Agenda items must be sufficiently descriptive** to give the public reasonable notice of the matters to be considered at the meeting. This includes matters that are to be discussed, considered, acted on, or merely reported on.

4. **The purpose of the agenda requirement is to give the public notice of the matters to be considered at the meeting**, so that the public may be aware of the business of the public body and interested persons will have an opportunity to decide whether to attend and participate in the meeting.

5. The agenda is a list of the items to be considered, discussed, or acted on at the meeting. **Subcommittee minutes are not part of the agenda**, even if the minutes are hyperlinked to an online version of the agenda. Referencing subcommittee minutes in the agenda will not satisfy the requirement that an agenda be “sufficiently descriptive.” The Nebraska Supreme Court has said that the requirement that an agenda be “sufficiently descriptive” cannot be satisfied by an agenda’s reference to separate documents. The public should not have to “hunt up and read the documents which underlie the agenda.”

6. **Subcommittee chairs must avoid providing “updates” or “previews” of issues during their subcommittee report that are not specifically included on the agenda.** A brief mention of an issue may lead to substantial discussion on the issue, which may impair the Board’s ability to take action at a later date. If the topic is important enough to mention during the meeting, it should be placed on the agenda as a non-action item.

7. **Directors must avoid raising issues during Board meetings that are not included on the agenda.** If there is a matter that a Director would like to be addressed during a Board meeting, the Director should contact the Chair prior to the finalization of the agenda to have the matter included on the agenda. Directors also should avoid expanding the scope of discussion during the Board meeting beyond the topic listed on the

agenda. If during a Board meeting there is a question about whether the discussion has moved beyond the scope of an agenda item, the Chair will have to decide whether the discussion is fairly within the scope of the agenda. During the Board meetings, the Chair ultimately will be the arbiter of the scope of the discussion under the agenda. There is no single, bright-line rule for what would and what would not fairly fall within the scope of the agenda, and there may be judgment calls about whether certain topics fall within the scope of an existing agenda item.

8. The District's interests require that Board discussion at the meeting must be limited to the items identified on the agenda, otherwise the discussion will violate the Open Meetings Act. **If the Board takes up business in violation of the Open Meeting Act's requirements, the Board's action may be declared void if it is later challenged in court.** This is true even if the Board's vote occurred in conformity with the Open Meeting Act, but the Board's consideration of the topic included discussion at prior meetings where the matter did not appear on the agenda.

9. The individual interests of Directors also require compliance with the Open Meetings Act. **A knowing violation of the Open Meetings Act may result in criminal liability for an individual Director.** If a Director knowingly violates or conspires to violate the Open Meetings Act, the Director may be charged with a misdemeanor criminal offense.

10. **A quorum of the public body must be convened before the provisions of the Open Meetings Act apply.** This is why subcommittees generally do not need to

publish notice of their meetings or their agendas, and why Directors may participate in subcommittee meetings via telephone and videoconference. If a non-quorum meeting of Directors is about to shift to a quorum setting, then steps must be taken to avoid the quorum gathering or the meeting must be ended (unless the Open Meeting Act requirements had already been met).

11. A meeting of a public body can take place at almost any location, but a **gathering of a number of Directors sufficient to constitute a quorum will not automatically constitute a public meeting** if the purpose of the gathering is not to discuss Board business and there is no discussion or policymaking that takes place. So, the requirements of the Open Meetings Act are not triggered if every member of the Board attends a Huskers football game or attends a show at the Lied Center. Every Director could even find him or herself in the same restaurant without there being any problem under the Open Meetings Act, so long as the business of the Board was not being conducted. The Open Meetings Act prohibits closed sessions, informal meetings, chance meetings, and social gatherings conducted for the purpose of circumventing the Open Meetings Act. The intent behind such a meeting is key to whether it violates the Open Meetings Act; however, it should go without saying that the District is better off never having to defend the propriety of such a meeting. If a Director finds him or herself in a setting with a majority or near-majority of Directors, avoid discussing District business.

12. **The Open Meetings Act does not require Directors to remain ignorant of issues or each other's opinions on issues until the time of the public meeting.**



Directors may discuss Board business with each other individually or in small, non-quorum groups, so long as the discussions are not intended to evade the requirements of the Open Meeting Act (i.e. separate, coordinated conversations that involve a quorum of the body).

13. **A Director must not send an email or other electronic communication concerning the business of the District to a majority of Directors.** Such an email would violate the Open Meetings Act. The business of the District is to be conducted in open session at a public meeting with a quorum present. The discussions in such emails are not within the public record, as are the discussions in open sessions under the Open Meeting Act.

14. **Other considerations make clear that Directors should avoid using email or other electronic communication concerning the business of the District when possible.** It is risky to use email to discuss the business of the District, even when the email is directed to a non-majority of Directors, because eventually the email's dissemination may violate the Open Meetings Act if the message is forwarded to enough individuals. The author of an email does not control the email's ultimate recipients. Additionally, there is a practical consideration that the creation of documents, such as emails, also creates the potential for the documents to be requested and produced in future litigation, should the District find itself involved in a lawsuit where such communication is relevant. Don't create more work for the District's employees and attorneys to sort through and produce Director emails in discovery.

15. If it feels like these requirements under the Open Meetings Act are burdensome, you're right! **The point of the Open Meetings Act is not to make it easier for the District to do its business.** The Legislature was trying to make it harder for Directors to do their work under the Open Meetings Act in order to make the District's actions more transparent for the public. The good news is that with a degree of preparation and an appreciation for the requirements of the Open Meetings Act, Directors can maintain a collegial, deliberative exchange of information as part of its regular Board meetings.