

MINUTES OF THE BOARD OF CITY COMMISSIONERS  
HELD FEBRUARY 18, 2014

The regular meeting of the Devils Lake City Commission was held Tuesday, February 18, 2014 at 5:30 P.M. with the following members present: President Johnson, Commissioners Tim Heisler, Craig Stromme, Rick Morse and Dale Robbins. None were absent.

Pledge of allegiance was recited.

Commissioner Robbins moved to approve the minutes of the regular City Commission meeting held February 3, 2014. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

**5:30 P.M.** - This was the time set for the bid opening for a skid steer loader for the Public Utilities Department. The following bids were opened and read:

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|--|-----------------|
| 1. Bobcat of Devils Lake, Devils Lake, ND    | Bid \$34,526.00 |
| 2. Butler Machinery Company, Devils Lake, ND | Bid \$45,480.38 |

Commissioner Morse moved to accept the bids as read, and refer them to the Public Utilities Supervisor for further review and recommendation. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

**5:30 P.M.** – This was the time set for a public hearing to review a proposal that the City issue revenue bonds under the Municipal Industrial Development Act (MIDA) of 1955 for a project owned by MDI Limited Partnership #112 Project. The City approved this bond issuance on February 4, 2013; however, the bonds must be executed within a year of the public hearing. The bonds have not been executed yet; therefore, a new hearing is needed. Patty Jabs from MDI Limited Partnership indicated they are waiting for Rural Development to approve the acquisition of the existing 515 loans. Hearing and receiving no comments, President Johnson closed the public meeting.

Commissioner Morse moved to approve the resolution authorizing the sale and issuance of multifamily housing revenue bonds (MDI Limited Partnership #112 Project) not to exceed \$11,500,000 under Chapter 40-57 NDCC and authorizing the execution of documents. The motion was seconded by Commissioner Heisler, and the motion carried unanimously.

Kevin Walford introduced himself as the area representative for Butler Machinery.

**Commissioner Robbins** - The Public Ways Supervisor stated everything was fine.

**Commissioner Morse** – The Public Ways Supervisor requested declaring 4 tires from the Cat blade as surplus and giving them to Ramsey County.

Commissioner Morse moved to declare the four tires from the Cat blade as surplus and to give them to Ramsey County. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

**Commissioner Heisler** – The City Engineer said everything was fine.

**Commissioner Stromme** - The Police Chief requested out-of-state travel for Officer Harkness to attend SRO training in June at Sioux Falls, South Dakota, and for himself to attend the Minnesota Chief's Conference at the end of March. He will only be attending the Chief's Conference if he can get the tuition waived.

Commissioner Stromme moved to approved out-of-state travel for Officer Harkness to attend SRO training in June at Sioux Falls, South Dakota, and for Chief Schroeder to attend the Minnesota Chief's Conference at the end of March. The motion was seconded by Commissioner Heisler, and the motion carried unanimously.

Chief Schroeder indicated the department receives requests from schools and other entities about a canine program. They are researching the program at this time because there are officers willing to take on the responsibilities of a canine. Startup costs could run \$10,000 to \$30,000.

**President Johnson** - The City Auditor stated everything was fine.

The City Administrator received a request from Lake Region Heritage Center to write-off roll off bills in the amount of \$460.72. The bills are from when the new director cleaned out the center.

Commissioner Robbins moved to approve forgiving Lake Region Heritage Center's roll off bills in the amount of \$460.72. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

The City Administrator said that the Public Utilities Supervisor reported that the department has had to unthaw sewers. The frost is six feet deep so the department is appreciative of the Commission allowing the purchase of the hydraulic hammer last year. The hammer saves two to three hours on each water break

The Fire Chief said everything was fine.

The City Attorney stated depositions for the Mertens' acquisitions will start the end of February in Devils Lake, Fargo and Minneapolis. The trial is set for July. He would like to attend the depositions.

Commissioner Heisler moved to approve travel for the City Attorney to attend the depositions for the Mertens case in Fargo and Minneapolis. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

The City Attorney stated the trial for Bednarz is set for September.

President Johnson indicated the City Commission intends to table the airport payment for the Kuntz relocation because the Commission does not have sufficient information to consider in order to authorize payment.

John Kuntz appeared before the City Commission to discuss his relocation payment from the Airport. Mr. Kuntz stated Terry Fasteen, who is the City's and the Kuntzs' advisor, wrote up a sheet on everything and said that this is owed to the Kuntzs on this house payment.

President Johnson - This is Terry Fasteen's recommendation, but the Commission has not had the time to see that or go through it. We are requesting \$218,000 be paid, and haven't really had time to go through it. There are some other things Mr. Fasteen authorized earlier which have changed now. Commissioner Stromme sits on the Airport Authority Board, and can probably address that better. I know there are a lot of questions, and the other Commissioners have had very little information on all the information on the buyout. We just have a sheet here with about seven line items on it that says we owe \$218,840.67. That is basically all we have seen. We need some breakout and some discussion about what is allowable.

Commissioner Stromme - That is where we are at. We are still in dispute about the cost of the land, and there are some items that Mr. Kuntz submitted that on the reimbursement form that have been carved off whether or not Mr. Kuntz approved of it or not.

Mr. Kuntz - What was carved off was their second location. You completely ignored that and the land. That bunk house we had was what we had in the original, and if any of you guys read the land acquisition relocation pamphlet that the FAA gave us back in 2005, (Have any of you guys read that? Commissioners responded no.) We asked Mr. Traynor in one of the meetings, and he didn't know the laws either. Foughty did not know the laws. You would think that as a Board you guys would read what the FAA buyout and take away from the Airport part of it. You guys have never addressed that at all.

President Johnson - We have not seen that.

Mr. Kuntz - You would think that when you kicked us out in 2012 it says in that proclamation that you can not kick us out without giving us a replacement or a place to live, and you guys did that. You guys kicked us right out. We've had five addresses, and no home yet. You've guys have had two Christmases since we've been kicked out, and you guys had a home for Christmas to go to. We didn't. We are displaced. Mr. Traynor in 2009 and 2010 apologized for all the stuff we went through, and he sent the letter to us that he is done with a lot of this work and he is catching up and he was going to make sure in the next few months that we were taken care of, and he said he was going to write to us and help us. We haven't seen none of that. KLJ said that they were going to do all this stuff for us for the City. We haven't seen or heard a thing. We've asked the Airport Manager, and he says he can't do anything it all depends on what the City Commission does. We are still in limbo.

President Johnson - You have to understand this is the first the City Commission has seen this bill for \$218,000.00, and its very tough for a Commission to make a decision to spend \$218,000.00 on the seven line items when we don't even know what. We don't even have the breakout; we haven't seen the breakout.

Mr. Kuntz - That's funny since its been three months or four months since we got back with KLJ because Tom Traynor asked if we would take KLJ back because we wanted to kick him off. We wanted to get an independent relocater, FAA relocater. They asked if we would take KLJ back, and we said yes; we would work with them. And KLJ has tried to work with us, and they're telling us to do this and to do that and yet where are we at?

President Johnson - Definitely some headway has been made. There is no question about that. I mean you've gotten three hundred and some thousand dollars, I believe, we deposited that.

Mr. Kuntz - We had gotten \$304,000.

President Johnson - So you are not being completely ignored. That has been deposited, and you withdrew it, and you have access to that.

Mr. Kuntz - We were told by Foughty to take that money, so we did.

President Johnson - So it's not like the City completely ignored your well being. We threw \$304,000, or the Airport Authority, in this fund, and you withdrew that.

Mr. Kuntz - That's a start, and we appreciate it.

President Johnson - But also we are responsible because a lot of this is going to be local dollars, and it wouldn't be very prudent for a commission to say yea that number looks fair, and these do add up to \$218,840.67 without going through it to make sure it is what it is, and they are allowable expenses that have been checked out. We wouldn't be doing our jobs. I could never vote for something like that with seeing just five line items. Here's your building one, your building two, fence, livestock, your rent and storage and by the way here is a barn for \$98,000 and it comes to \$218,840.

Mr. Kuntz - And that is what it is going to take to replace.

President Johnson - But that is what we need to see. We need to see if there are expenses allowable under this program. We don't work with this program on a daily basis. The five commissioners rely on other people to do that for us, and make recommendations.

Mr. Kuntz - KLJ told us that we are going to be a test to everybody that's involved in this. It's going to be a new first thing for the whole thing. The City, KLJ as big as they are, never had our situation to work with. We appreciate it, but you know when we had our first meeting in 2007, it was discussed on some of these things, and KLJ as one of the City's persons out there asked "Can we give Kuntzs some money?", and they said no. We would have to borrow it. The KLJ guy from Minot and now he is in Bismarck told us we may have to borrow it until we get paid back.

President Johnson - I think the key thing here John is that we need to be fair to you and Nancy, and also we have to be fair to the taxpayers, and we have to know what we are doing. We have to be able to if somebody asks us a question about an issue, and believe me we do get asked, we've looked at it, and it is an allowable expense. It is a fair payment, and then we can justify it, but the way it is put in front of us now, we can't. We can't do that and say we've done a good job looking into it. So again our intentions are to be fair to you and Nancy, and to be just as fair as we can to the City's taxpayers. That is what we are sworn to do. Be fair to everybody; not make anybody fat; not hurt anybody financially when they shouldn't be.

Mr. Kuntz - I'll tell you, you're not going to make us fat. This thing has been going on now for over seven years, and the land thing that you guys are arguing about, the house, the second house, was never an item before, but the land price we could have had it for what the first payment was if you guys would agree, and KLJ said you guys agreed to that price. Now who is you guys, I have no idea. It sounds like anyhow, but just think of the cost; the cost would have been half of what it is going to cost now because everything has gone up so much. We're astounded every time we go out there to purchase anything. Our buildings from 2008 have gone up about half as much again as they were back then, and the more you let it out...

President Johnson - Our intention is not to drag this on. We are going to be going through this, and come back. Commissioner Stromme is on the Airport Authority and Gary Martinson is familiar with relocation, he is on vacation now until next week, with relocations and buyouts and those types of things. So we know exactly what we are voting on when it comes time to issue you a check. That is being fair to the taxpayers, and it will be fair to you.

Mr. Kuntz – Yea, I was just told that I would have a check for the house. The house is coming. We got that built. Our house is coming, and we need \$217,000.

President Johnson – We are not talking months here. I would like to believe we can get it resolved here by the next meeting or the meeting after for sure. We will do it with diligence to make sure everyone is treated fairly.

Mr. Kuntz – I was 64 years old when this started. I'm 70 now, and I don't know how much more time I got. There is a lot of stress. I thank you for listening to me. I want to get this resolved worse than you guys.

President Johnson – We will continue and get this put together.

Mr. Kuntz – Could I get something in writing from you guys to say what you guys are doing? I need something. I have never gotten anything in writing on any of this stuff.

Consensus was that the meeting minutes would be sufficient, written documentation.

The intent would be to have Gary Martinson, Mike Grafsgaard, Terry Johnston, Tom Traynor, Commissioner Stromme, and President Johnson meet and go through the documents and come back with a recommendation.

Commissioner Robbins asked if this was for all structural stuff, and if they were one of the parties going to court.

The City Attorney responded they are going to court over the land. There are two cases – one for the City and one for the Airport. The relocation may become part of the land case if it remains unresolved.

Discussion followed on it being a complex issue. There are two different programs. One is for relocation, and one is the buyout. That complicates it because the programs have different rules.

Commissioner Stromme stated Terry Fasteen from KLJ represents the Airport Authority, thus the City and the Kuntzs. He is in charge of making decisions whether or not expenses are allowed or not. They had submitted total bills of about \$790,000 which isn't done yet. Of that \$790,000, initially, Mr. Fasteen had carved away or disallowed \$282,000. John Kuntz doesn't believe that is right. The \$282,000 that Mr. Fasteen carved away or disallowed, is contentious. Mr. Kuntz believes that should not have occurred. In addition to that there will be more additional expenses so it is not done yet as they incur expenses building a house, putting up the second house, and buying land. That total will be ongoing. Then we have the case of the lawsuits. Do you advance money knowing you are going to be sued and haven't come to an agreement on the issues as they are presented? Do you still advance money, and if you do does it require them to sign off saying yes we agree we are given this \$218,000 and our dispute over the land is no more? That almost should be a condition of us for granting more funds. It's a complicated deal, and we definitely want to know where we stand with all the issues before we start paying these kinds of funds. This \$218,000 is just the start of even more, additional funds needed.

President Johnson indicated it is complicated even more because the landowner who sold land to the Kuntzs is involved in a lawsuit against the City. What was paid for that land, \$282,000, was appraised at \$159,000.

Commissioner Stromme stated that is a contentious issue. That is part of the amount Mr. Fasteen disallowed, and the Kuntzs are not in agreement with that.

President Johnson stated there are a lot of issues with it, and it wouldn't have been right to go ahead with the payment tonight.

Commissioner Stromme indicated the numbers are basic and may not be right. There was a \$70,000 correction announced at the last Airport meeting. It is important to know that the City did a favorable appraisal and gave them \$304,000. There was another \$66,000 given to them on another issue for a total of \$370,000. So do you start with \$370,000 or \$304,000? That needs to be clarified.

President Johnson stated when you throw in the FAA grant what is allowable or not needs to be determined.

Commissioner Stromme stated we are paying this money hoping FAA reimburses us, but that is not a sure deal. We don't want to do anything that throws us into a precarious position where money doesn't come back to us. Thus the taxpayers of Devils Lake are stuck with the bill because it wasn't handled right.

President Johnson said the month or two it will take to analyze it is just good business.

Commissioner Morse said we need to know that this money going takes care of these lawsuits. If we are making payments like this, we need to know that.

Commissioner Stromme moved to table the payment of \$218,840.67 to John and Nancy Kuntz for relocation expenses due to the Airport runway expansion. The motion was seconded by Commissioner Morse. The consensus of the Commission was to form an ad hoc committee to review the procedures and costs for this program. The motion carried unanimously.

The City Attorney reviewed the findings of fact, conclusion and order for the revocation of liquor license #21 to Farnum Klindt and Jessica Klindt dba Champions Downtown Bar. The license owners have fifteen days to appeal the revocation. If they do not appeal, the license reverts back to the City.

Commissioner Robbins moved to approve the findings of fact, conclusion and order to revoke liquor license #21 issued by the City of Devils Lake to Farnum Klindt and Jessica Klindt for the reason the real estate taxes on the property where this bar is located are past due. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

Commissioner Morse moved to approve the consent agenda which included the following:

1. Permit to sell alcoholic beverages at a special event submitted by Thirstys Bar for the Mercy Hospital Signature Event be held March 15, 2014 at the Memorial Building;
2. Permit to serve alcoholic beverages at a special event submitted by Thirstys Bar for a private wedding dance to be held March 22, 2014 at the Memorial Building;
3. Reappointment of Renard Bergstrom, Barbara McCormick and Trent Tarvestad to the Renaissance Zone Authority for three-year terms expiring June 30, 2016 and the appointment of Rachel Lindstrom to the Renaissance Zone Authority to fill the unexpired term of Chris Schilken which expires June 30, 2016; and
4. Transient merchant permit submitted by Greg J Parenteau dba Parenteau Oof-da Tacos for food concession to be held May 28, 29, 30, 31 and June 1 and September 10, 11, 12, and 13 at Leever's Supermarket, 807 Hwy 20 South.

The motion was seconded by Commissioner Stromme, and the motion carried unanimously.

The City Administrator indicated Nancy Lundon, Library Board Member, met with him to discuss the salary of the library director. A survey was completed and showed that the Devils Lake library director is underpaid for a community of this size. Since the value of a mill is more than what the Library had budgeted for, there will be a surplus in property tax compared to his budget.

Commissioner Stromme moved to approve the 2014 Budget Amendment No. 01-14 – Library as recommended by the City Administrator. The motion was seconded by Commissioner Heisler, and the motion carried unanimously.

Commissioner Robbins moved to approve the contract agreement with the North Dakota Department of Health for chemical and radiological analyses for the period of January 1, 2014 through December 31, 2014. The motion was seconded by Commissioner Stromme, and the motion carried unanimously.

Commissioner Heisler moved to approve payment of the list of bills with the exception of the check to John and Nancy Kuntz. The motion was seconded by Commissioner Stromme. On roll call all Commissioners voted aye, and the motion carried.

President Johnson stated a special meeting will be held on February 24, 2014 at 1:30 pm to present life savings awards to Mark McEvers & Rich Olson.

President Johnson acknowledged the following reports:

1. City Auditor monthly reports;
2. Municipal Court monthly report; and
3. Police Department monthly report.

There being no further business to come before the Commission, President Johnson adjourned the meeting at 6:15 P.M.

**LINDA LYBECK**

**RICHARD S. JOHNSON**

**CITY AUDITOR**

**PRESIDENT**