

**CITY OF KUNA
SPECIAL CITY COUNCIL MEETING
MINUTES**

THURSDAY, OCTOBER 10, 2013

Kuna City Hall Council Chamber, 763 W. Avalon Street, Kuna, Idaho

5:30 P.M. REGULAR CITY COUNCIL

COUNCIL MEMBERS PRESENT: Mayor W. Greg Nelson
Council President Richard Cardoza
Council Member Briana Buban-Vonder Haar
Council Member Doug Hoiland
Council Member Joe Stear

CITY STAFF PRESENT: Richard Roats, City Attorney
Gordon Law, City Engineer
John Marsh, City Treasurer
Wendy Howell, Planning & Zoning Director
Brenda Bingham, City Clerk

5:30 P.M. Special City Council Meeting

1. Call to Order and Roll Call

Mayor Nelson welcomed everyone and called the meeting to order at 5:30 p.m. Roll call reflected Council President Cardoza and Council Members Buban-Vonder Haar, Hoiland and Stear present at the meeting.

Amend Agenda *(Timestamp 00:00:34)*

(The council must move to amend the agenda per IC 67-2343 Effective July 1, 2009.)

A request has been made to amend the agenda originally posted on October 4, 2013 to include the following item:

1.1 Zombie Acres Event – Approve Use of Paint Ball (Air Gun) Range per Kuna City Code 10-5-1(c) (Ordinance 2011-23)

Staff was notified of the request on October 9, 2013.

Council Member Stear moved to amend the agenda to include 1.1 Zombie Acres Event. Seconded by Council Member Buban-Vonder Haar, all voting aye. Motion carried 4-0.

1.1 Zombie Acres Event – Approve Use of Paint Ball (Air Gun) Range per Kuna City Code 10-5-1(c) (Ordinance 2011-23)

Attorney Roats explained Zombie Acres is a sub-contractor with Linder Farm to operate a paint ball event next to the corn maze. Approximately 100 people per hour will be transported from the parking lot on a hay ride tour through the area using air guns to shoot zombies. Using the air guns in a safe manner was discussed noting the guns can be adjusted so the projectiles are shooting close to the ground. Recommendation was made that approval from the Sheriff's Department be received regarding the adjustments on the air guns. City ordinance allows the use of the air guns inside the city limits if the range is approved by the City Council. The representative with Zombie Acres will meet with City staff tomorrow to put an event plan in place.

Council Member Buban-Vonder Haar moved to approve the use of the paint ball range subject to obtaining a Special Event Permit and implementing the safety factors and that a copy of the insurance policy is received that lists the City as an additional insured. Seconded by Council Member Stear, all voting aye. Motion carried 4-0.

2. Public Hearing – Sale of City Owned Surplus Property Located North of Lake Hazel Road and East of Ten Mile Road, Kuna, Idaho; 107.13 acres; Minimum Price of \$3,213,900.00 (See Exhibit “A” on Page 2 of this Notice) (Timestamp 00:08:35)

The purpose of the Public Hearing is for interested parties and citizens to have an opportunity to be heard to discuss the sale of a single city-owned parcel of real property to be declared as surplus totaling approximately 107.13 acres. The property is generally located north of Lake Hazel and east of Ten Mile Road, Kuna, Idaho. Resolution R27-2013 declares that the property is surplus, the City of Kuna intends to sell the property at public auction to the highest bidder, and the minimum price is set at \$3,213,900.00.

Mayor Nelson opened the Public Hearing at 5:39 p.m. and invited anyone interested to testify on the proposed sale of the property. No one desired to sign up to testify.

Richard Durrant spoke to clarify that the pivot irrigation equipment was not included with the sale of the property.

The Public Hearing was closed at 5:41 p.m.

3. Public Auction - Sale of City Owned Surplus Property Located North of Lake Hazel Road and East of Ten Mile Road, Kuna, Idaho; 107.13 acres; Minimum Price of \$3,213,900.00 (See Exhibit “A” on Page 2 of this Notice) (Timestamp 00:11:02)

The Kuna City Council will conduct a public auction where the City will offer for sale city owned surplus property located north of Lake Hazel Road and east of Ten Mile Road, Kuna, Idaho totaling approximately 107.13 acres with a minimum price set at \$3,213,900.00 to the highest bidder at an amount not less than the minimum price. All bidders must be pre-registered prior to the auction. Pre-registration shall commence on October 10, 2013 at 11:00 A.M. and close at 3:00 P.M. For pre-registration packets, contact the City Attorney at (208) 387-7719 or send a written request to the City of Kuna, POB 13, Kuna, Idaho 83634.

Minimum qualifications require all bidders must have certified funds for \$500,000.00 earnest

money and be able to close within thirty (30) days.

Attorney Roats reported that Tim Eck was the only person that pre-qualified and made the deposit as required. No other inquiries or deposits were received from anyone else.

Mayor Nelson opened the auction asking if anyone present was interested in bidding the amount requested. Hearing no bids, Mayor Nelson closed the auction noting no bids were made.

Mr. Roats explained Idaho Code 50-1403 (1) stating when the property is offered for sale, the property shall be sold at the public auction to the highest bidder and no bids shall be accepted for less than the minimum declared value previously recorded on the record at the public meeting of the Council, provided, however, if no bids are received, the City Council shall have the authority to sell such property as it deems in the best interest of the City.

The Attorney informed the group that he received a Purchase and Sale Agreement from Tim Eck paying a little bit over the appraised value. A copy of the appraisal report was included with the Council Packet. The appraised value is \$20,000 per acre for the property which is approximately \$2.1 million. The Purchase and Sale Agreement offer made by Mr. Eck is for \$2,155,900.00. There is Earnest Money on deposit and the balance to be paid in cash at the time of closing tomorrow.

Tim Eck, representing DBTV Agricultural Holdings, LLC, 6152 W. Half Moon Lane, Eagle, Idaho, presented a copy of the Purchase and Sale Agreement representing his proposal to the Council. He explained the property appraised at \$19,975.73 per acre. He reported they went through the process as a qualified bidder and made a deposit of \$500,000 in Earnest Money at the title company. The offer is for \$2,155,900.00 which is \$20,124.14 per acre on 107.13 acres.

Mr. Eck explained other things involved with the transaction noting the proceeds from the sell will go to the Sewer Fund. Part of the settlement agreement with Key Bank on the Local Improvement District (LID) is a \$2 million Accounts Payable by the City of Kuna. Mr. Eck reported he has successfully negotiated an Assignment from Key Bank to himself in buying the Accounts Receivable for a significant discount. The purchase price of the Assignment is \$1,342,016.28 for the Accounts Payable to the City of Kuna of \$2 million. There is \$657,983.72 discount available. The critical timing on this is for the transaction to close tomorrow. If the transaction closes, he will own the Accounts Receivable. He then offered the Assignment to the City of Kuna. Out of the proceeds from the sale, the City of Kuna will close on his purchase of Accounts Receivable and the City of Kuna will benefit from the \$657,983.72 discount. The benefit to the Sewer Fund will be \$2,813,883.72.

As a sizeable land owner in the City of Kuna, Mr. Eck expressed their interest in accelerating improvements the City has been working on and offered a contribution by retiring the LID obligation on behalf of the City of Kuna for the Kuna 75 property to help the City move forward with developing a park.

Mr. Eck also referred to the Feasibility Study in the works to look at improvements on the Boys and Girls Club property with the possibility of a swimming pool. On December 31, Mr. Eck is planning to make a contribution of \$135,000.00 to the City of Kuna to be used for the Feasibility Study and for Capital Improvements. If the Feasibility Study determines that the improvements being discussed are not viable, then the funds can be used for park and recreation improvements as the City sees fit.

Mr. Eck reminded the group that timing is critical for the City to close with Key Bank tomorrow through his Assignment in order for the City to benefit from the discount he negotiated with Key Bank. The following figures were stated for clarification of the offer:

- Purchase and Sale Agreement - \$2,155,900.00
- Discount on the Key Bank Accounts Payable - \$657,983.72
- Kuna 75 LID Obligation - \$262,642.00
- Feasibility Study Donation - \$135,000.00
- Total \$3,211,525.72

A lengthy discussion followed with Mr. Eck explaining more detail on the procedures to take place at closing with the title company.

Concern was noted by members of Council on the short time frame allowed for a decision to be made and that they have not had time to review the documents presented to them at the meeting.

Mr. Eck apologized for the short time frame explaining this has been an on-going process with Key Bank and himself and other LID projects that they have retired with them. He explained the agreements in front of them have been reviewed by Attorney Roats.

Mayor Nelson reported that staff has reviewed the documents and found them in order.

John Marsh reported he has reviewed the documents extensively and stated it is a very clean and nice offer from his perspective and made recommendation for approval of it.

Gordon Law reported he has reviewed the numbers and the complicated aspect of it to make sure the Sewer Fund is kept whole and believes the offer will accomplish this purpose.

More discussion followed regarding the offer and various comments from the Council noting more concerns on the short time frame for a decision to be made.

In summary, Mayor Nelson reported this has been advertised properly and no bids were received nor were any bids received during the auction and the offer is a more than a fair offer and there is nothing amiss with it.

Council Member Buban-Vonder Haar moved to make a finding that this sell is in the best interest of the City and therefore, we would allow the Mayor to execute the Assignment documents that were presented and that the other terms as described

including the donations would occur. Seconded by Council Member Stear with the following roll call vote:

Voting Yes: Council Members Hoiland, Buban-Vonder Haar and Stear

Voting No: Council President Cardoza

Absent: None

Motion carried 3-1.

4. Resolution No. R40-2013 – LID AR Consent to Assignment (Timestamp 00:57:25)

A RESOLUTION OF THE CITY OF KUNA, IDAHO AUTHORIZING THE MAYOR TO EXECUTE THE CONSENT TO ASSIGNMENT OF ACCOUNT RECEIVABLE BY AND BETWEEN KEY BANK AND DBTV AGRICULTURAL HOLDINGS, LLC.

Council Member Stear moved to adopt Resolution No. R40-2013 authorizing the Mayor to execute the consent to Assignment of Account Receivable between Key Bank and DBTV Agricultural Holdings. Seconded by Council Member Buban-Vonder Haar.

Voting Aye: Council Members Hoiland, Buban-Vonder Haar and Stear

Voting No: Council President Cardoza

Motion carried 3-1.

Attorney Roats will prepare Resolution R42-2013 which is a resolution for the Mayor to sign the Assignment of DBTV to the City.

Council Member Buban-Vonder Haar moved to approve a forthcoming resolution No. R42-2013 that would allow the Mayor to sign an Assignment from DBTV to the City for the subject property. Seconded by Council Member Stear.

Voting Aye: Council Members Hoiland, Buban-Vonder Haar and Stear

Voting No: Council President Cardoza

Motion carried 3-1.

Attorney Roats will prepare Resolution R43-2013 for the purpose of appointing a city designee to sign the closing documents at the title company tomorrow.

Council Member Stear moved to authorize Resolution R43-2013 authorizing the City Attorney, Richard Roats to sign at the title company tomorrow. Seconded by Council Member Buban-Vonder Haar.

Voting Aye: Council Members Hoiland, Buban-Vonder Haar and Stear

Voting No: Council President Cardoza

Motion carried 3-1.

5. Adjournment

Council Member Stear moved to adjourn the meeting at 6:32 p.m.

W. Greg Nelson, Mayor

ATTEST:

Brenda S. Bingham, City Clerk

*Minutes prepared by Brenda Bingham
Date Approved: CCM 11/06/13*