

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

TUESDAY, DECEMBER 17, 2013

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

6:00 P.M. SPECIAL CITY COUNCIL MEETING

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

1. Call to Order and Roll Call

Mayor Nelson called the meeting to order at 6:00 p.m. Roll call reflected Council President Cardoza and Council Members Buban-Vonder Haar and Stear present at the meeting. Council Member Hoiland arrived to the meeting at approximately 6:50 p.m.

2. Public Hearing – Sale of City Owned Surplus Property Located on E. King Road and East of S. Meridian Road, Kuna, Idaho; 19.84 acres; Minimum Price of \$265,112.44. (See Exhibit “A” on page 2 of this notice.)(Timestamp 00:00:36)

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 19.84 acres. The property is generally located on E. King Road, east of S. Meridian Road, Kuna, Idaho. Resolution R49-2013 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 \$265,112.44.

Mayor Nelson opened the public hearing at 6:03 p.m. reporting no one signed the list to speak. An invitation was extended to the audience to make public comment.

SUPPORT
None

NEUTRAL
None

OPPOSE

None

There being no testimony offered, Mayor Nelson closed the Public Hearing at 6:04 p.m.

- 3. Public Auction - Sale of City Owned Surplus Property Located on E. King Road and East of S. Meridian Road, Kuna, Idaho; 19.84 acres; Minimum Price of \$265,112.44.**
(See Exhibit "A" on page 2 of this notice.) (Timestamp 00:01:45)

The Kuna City Council will conduct a public auction where the City will offer for sale city owned surplus property located on E. King Road and East of S. Meridian Road, Kuna, Idaho totaling approximately 19.84 acres with a minimum price set at \$265,112.44 to the highest bidder at an amount not less than the minimum price. If no bids are received, the City reserves the right to proceed to sell the property as it deems in the best interest of the City.

Attorney Roats reported the property is referred to as the Oxnam property and is located on East King Road. The property has gone through the LID process and the Quiet Title action. One written offer has been received from Cody and Linda Chytka in the amount of \$80,000 that does not include the EDUs. A Purchase and Sale Agreement has been signed by the Chytka's which the Mayor would need to sign upon Council's approval. No other written or oral bids have been received.

Cody Chytka, 1882 King Road, explained the property was part of the entire Oxnam property which was marketed by Mark Bottles, Real Estate Agent, so they submitted their best and final bid.

- 4. Motion to proceed to sell the property as it deems in the best interest of the City if no bids are received pursuant to Idaho Code §50-1403(1).** *(Timestamp 00:14:12)*

Council Member Stear moved that it would be in the best interest of the City to sell the property discussed for the \$80,000.

Council President Cardoza expressed concerns on the negotiations and advertising of the property. He suggested the property be advertised as surplus since it did not go to public auction so citizens have an opportunity to place a bid.

Attorney Roats explained the proceeds from the sale will go to the bank as part of the LID process and the bank wants to close on it before the end of year. The property has been properly advertised and Mr. Chytka has made a cash offer.

Mr. Cardoza would still like the property advertised again since it did not go to public auction expressing concern on negotiations occurring separately from the auction. He feels it is not in the best interest of the City but in the best interest of the bank.

Mr. Roats explained the LID processes of selling the property per the statutes. If there are no bids then it can be sold in the best interest of the City as surplus property. This pays off the LID assessment by the bank to release the lien and selling the property for its fair market value. Fair market is determined by putting it out to the public allowing them to bid on it. This has been advertised and doesn't think anything would change

between now and another hearing.

The motion was seconded by Council Member Buban-Vonder Haar. A roll call vote reflected the following:

Voting Yes: Council Members Buban-Vonder Haar and Stear

Voting No: Council President Cardoza

Absent: Council Member Hoiland

Motion carried: 2-1

Mayor Nelson read Resolution No. 63-2013 authorizing the sale of the property.

Council Member Stear moved to approve Resolution 63-2013. Seconded by Council Member Buban-Vonder Haar.

Voting Yes: Council Members Buban-Vonder Haar and Stear

Voting No: Council President Cardoza

Absent: Council Member Hoiland

Motion carried: 2-1

Mayor Nelson read Resolution No. 62-2013 authorizing the Mayor to execute the deed.

Council Member Stear moved to approve Resolution 62-2013. Seconded by Council Member Buban-Vonder Haar.

Voting Yes: Council Members Buban-Vonder Haar and Stear

Voting No: Council President Cardoza

Absent: Council Member Hoiland

Motion carried: 2-1

Mayor Nelson read Resolution No. 64-2013 authorizing the Mayor to execute the purchase and sell agreement for the 60 EDUs attached to the property.

Council Member Stear moved to approve Resolution 64-2013. Seconded by Council Member Buban-Vonder Haar.

Voting Yes: Council Members Buban-Vonder Haar and Stear

Voting No: Council President Cardoza

Absent: Council Member Hoiland

Motion carried: 2-1

- 5. Public Hearing – Sale of City Owned Surplus Property Located on S. Swan Falls Road, south of E. King Road, Kuna, Idaho; 52.12 acres; Minimum Price of \$671,618.19; and Sale of City Owned Surplus Property Located on S. Swan Falls Road, south of E. King Road, Kuna, Idaho; 107.43 acres; Minimum Price of \$1,387,421.78 (See Exhibit “A” on page 3 of this notice.) (Timestamp 00:36:45)**

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 52.12 acres; and to discuss the sale of a single city-owned parcel of real property to be declared as surplus totaling approximately 107.43 acres. The properties are generally located on S. Swan Falls Road south of E. King Road, Kuna, Idaho. Resolution R51-2013 declares that the properties are surplus, the City of Kuna intends to sell the property at public auction to the highest bidder, and the minimum price is set at

\$671,618.19 for the 52.12 acres and \$1,387,421.78 for the 107.43 acres.

Mayor Nelson opened the public hearing at 6:40 p.m. reporting no one signed the list to speak. An invitation was extended to the audience to make public comment.

SUPPORT

None

NEUTRAL

None

OPPOSE

None

There being no testimony offered, Mayor Nelson closed the Public Hearing at 6:41 p.m.

- 6. Public Auction – Sale of City Owned Surplus Property Located on S. Swan Falls Road, south of E. King Road, Kuna, Idaho; 52.12 acres; Minimum Price of \$671,618.19; and Sale of City Owned Surplus Property Located on S. Swan Falls Road, south of E. King Road, Kuna, Idaho; 107.43 acres; Minimum Price of \$1,387,421.78 (See Exhibit “A” on page 3 of this notice.) (Timestamp 00:37:58)**

The Kuna City Council will conduct a public auction where the City will offer for sale city owned surplus property located on S. Swan Falls Road, south of E. King Road, Kuna, Idaho totaling approximately 52.12 acres with a minimum price set at \$671,618.19 to the highest bidder at an amount not less than the minimum price; and city owned surplus property located on S. Swan Falls Road, south of E. King Road, Kuna, Idaho totaling approximately 107.43 acres with a minimum price set at \$1,387,421.78 to the highest bidder at an amount not less than the minimum price. If no bids are received, the City reserves the right to proceed to sell the property as it deems in the best interest of the City.

Attorney Roats explained the two parcels are LID properties and previously known as Falco Catina located on South Swan Falls Road. Ada County has a tax lien on it of \$115,000 on the property. The sale of the property would release the lien and the EDUs would go back to the bank. The property has been marketed by Mark Bottles.

No bids were made during the Public Auction.

- 7. Motion to proceed to sell the property as it deems in the best interest of the City if no bids are received pursuant to Idaho Code §50-1403(1). (Timestamp 00:39:37)**

A written offer was previously received from Layne and Lori Thornton in the amount of \$600,000 with \$5,000 Earnest Money and a closing date of December 20, 2013.

A written offer was received at the meeting from Tim Eck in the amount of \$610,000 with \$30,000 Earnest Money and a closing date to take place on or before January 31, 2014.

Mr. Roats explained a 6% realtor commission would be required on the Thornton's offer. Mr. Eck is acting as the buyer's agent without realtor fees so there would be a net difference to the bank of \$28,000 between the two offers.

Two contingencies were noted in Mr. Eck's offer reflecting the City would assist in the point of diversion in water rights; and that the recorded preliminary plat is still active.

The Mayor and Council expressed concern on making a decision tonight.

Mr. Roats suggested a date certain be set for a decision on acceptance of the bids and/or time for other bids.

(Note: Council Member Hoiland arrived to the meeting at 6:50 p.m.)

A very lengthy discussion took place on considering a meeting date and the procedures to take place with the bank and the bidding procedures.

Anthony Miller, realtor representing the Thornton's, expressed concern regarding the offer submitted by Mr. Eck noting the bids should have been sealed bids.

Tim Eck, 6152 W. Half Moon Lane, Eagle, Idaho, explained he has been tracking the property for the past year and a half through the LID process. Mark Bottles, marketing agent, sent out a call for offers to establish an amount the property might sell for to give Key Bank an insight of what they might possibly receive. He explained they would commence with the improvements on the property and build homes for the City. The offer was prepared last week when the agenda came out but it was dated today because it was being submitted tonight. Offers could not be submitted until after the auction was unsuccessful.

More discussion took place on a possible date for another meeting and procedures that would take place at that time.

Concerns from the Council were expressed regarding the bid, noticing of the sale and how to determine who should be awarded the bid according to the best interest of the City.

Layne Thornton stated he would be willing to bid tonight and increased his bid to \$610,000 with closing to take place this month. He expressed that the terms need to be the same for everyone.

Tim Eck stated his current offer is approximately 5% higher net yield to the bank for 25 business days. Both offers could be submitted to the bank and let the bank pick which offer they feel is best.

Council President Cardoza moved to table discussion of the public hearing properties until the end of the City Council Meeting tonight. Seconded by Council Member Buban-Vonder Haar, all voting aye. Motion carried 4-0.

Lavar Thornton, expressed concerns regarding the second offer made on the property sale. He reiterated the suggestion made by Layne Thornton to bid on the property tonight as an auction to see who bids the highest.

Attorney Roats explained Mr. Eck inquired about the property sale when it was noticed on the agenda.

The Council took a brief break at 7:55 p.m.

Mayor Nelson called the meeting back to order at 8:04 p.m. to continue the property sale discussion. *(Timestamp 01:52:46)*

A variety of suggestions were made on possible ways to go about bidding for the property so it would be fair to both of the interested parties.

Tim Eck explained the Thornton's \$600,000 offer with the 6% commission would generate \$564,000 net to Key Bank. Mr. Eck's \$610,000 offer with 3% commission would net \$591,700 to Key Bank. The difference between the offers is \$27,700.

Mr. Eck explained their plans for the property is to proceed forward with the use that has already been approved on the property to develop the subdivision to build 440 houses which would increase the tax base by generating revenue to the City.

Layne Thornton explained he and his father owns approximately 1,000 acres to the south of the property. They plan to farm a portion of the property for a few years and then possibly have it developed.

Mr. Thornton is willing to match Mr. Eck's offer and close by the end of the year.

Mr. Eck explained he has done a lot of due diligence on the property since he saw it for sale on the agenda. Developing a small piece of the property is not a viable option. There is a section of it partially complete with sewer, water, pressurized irrigation, etc. A lift station is required along with a main to the south plant, booster station, pressurized irrigation pump station, etc. Development to commence the work would begin after the first of the year.

Mr. Eck stated the finance part needs to be the banks decision or if it's based on use of the property then the Council should decide what is in the best interest of the City.

Council Member Stear stated in his opinion the only thing the City can go on is the money because no one can guarantee when houses would be built and there is not a date certain that a decision could be based on to determine what is in the best interest of the City.

Council Member Buban-Vonder Haar commented it seemed Mr. Eck would be starting the process immediately where development would occur in the near term verses a plan to farm for a while with development taking place in the longer term. Enhancing the City's tax base would be more in the near term.

Council Member Hoiland expressed he would be in favor of Council President Cardoza's suggestion to have sealed offers or to have an auction.

More discussion took place on the offers received and how to weigh out the differences in the offers.

Mr. Roats reported a preliminary plat has been approved for 440 homes which reflect 2.47 homes per acre with approximately 24 acres of open space.

Uncertainty on when homes would be built was expressed.

Tim Eck stated that between himself and his business partner they own about 2,400 EDUs and they want to use them up because the money is dormant right now.

Suggestions were made in regards to letting the bank decide which offer is the best.

Attorney Roats pointed out the bank would probably be more interested in the highest dollar value and the Council needs to decide what is in the best interest of the City in regards to development and the tax base since the City owns the property.

Council Member Buban-Vonder Haar reiterated development is a shorter term investment with Mr. Eck's plan. It would immediately enhance the tax base would benefit the community.

More discussion took place in regards to the bids received. Attorney Roats clarified the bids were available to anyone who inquired about them. The bids were not sealed bids and they were not published in the newspaper. There is not a limit on how many bids are received by each party, they can raise their bid to whatever amount they feel the property is worth.

It was noted the Thornton's have matched Mr. Eck's bid on the dollar amount but there are other variables that the Council can consider to determine which offer might be the best offer.

Layne Thornton broke the tie by offering \$620,000.

Mr. Eck reminded the group there is a 3% commission difference in the net result.

Council Member Stear pointed out he is not in the real estate business so in his opinion the higher offer wins.

Council Member Buban-Vonder Haar stated she is advocating what is best for the City which for her is developing the property sooner rather than later, increasing the tax base and increasing the residency.

More discussion took place regarding when development of the property might occur.

Council President Cardoza suggested each party submit an offer in a sealed envelope and another meeting be scheduled to open the envelopes.

Council Member Buban-Vonder felt they would be in the same situation as now if additional bids were received.

More discussion followed regarding the offers and what would be in the best interest of the City.

Mr. Roats stated there is currently a bid of \$620,000 by the Thornton's and \$610,000 by Tim Eck but due to the 3% and 6% commission, Mr. Eck's offer may be a little bit more as it stands.

(Timestamp 02:43:14)

Council Member Buban-Vonder Haar moved to accept Tim Eck's offer for parcel number S1336233700 and S1336244200.

The motion died for lack of a second.

Council President Cardoza again suggested offers be submitted with equal conditions in a sealed envelope for consideration at another special meeting.

More discussion followed regarding the terms and conditions for a decision to be based on. It was noted the bidding process is still open. The importance of considering what is in the best interest of the City was reiterated.

Mayor Nelson encouraged the Council to make a motion in regards to consideration at another meeting or to accept one of the offers already made.

(Timestamp 02:55:14)

Council Member Buban-Vonder Haar moved again to accept Tim Eck's offer for parcel number S1336233700 and S1336244200.

The motion died for lack of a second.

Discussion took place regarding the development status of recently purchased property by DBTV.

(Timestamp 03:03:20)

Council President Cardoza moved to have sealed bids submitted to Richard Roats by both parties at 3 p.m. tomorrow with a decision to be made by the Council at a special meeting.

Council Member Buban-Vonder Haar expressed concern on being faced with the same terms and conditions that currently exist tonight.

Council President Cardoza felt the best way to make a decision is to receive sealed bids.

Council Member Stear stated he would be doing research with uninterested parties to learn more about the issue.

Council Member Buban-Vonder Haar reminded the Council the money is not coming to the City so the difference between the amounts of the bids shouldn't matter it is what is in the best interest of the City that needs to be determined.

The Mayor stated a motion has been made to accept sealed bids from both parties by 3 p.m. tomorrow to be opened by the Attorney and the Council will make a decision on Thursday at 6:00 p.m.

Council Member Buban-Vonder Haar requested information be obtained from the bank to determine which offer would be financially superior.

Seconded by Council Member Stear with the following vote:

Voting Aye: Council Members Cardoza, Hoiland and Stear

Voting No: Council Member Buban-Vonder Haar

Motion carried 3-1.

8. Adjournment

Council Member Stear moved to adjourn the meeting at 9:25 p.m.

W. Greg Nelson, Mayor

ATTEST:

Brenda S. Bingham, City Clerk

Minutes prepared by Brenda Bingham

Date Approved: CCM 1/7/14

An audio recording of this meeting is available at City Hall upon request or it can be accessed at the City of Kuna website www.cityofkuna.com.