

**APPROVED MINUTES  
OF THE CITY  
COUNCIL & EDHA BOARD SPECIAL MEETING  
CITY OF EAST GRAND FORKS  
TUESDAY, DECEMBER 16, 2014 – 5:30 PM**

**CALL TO ORDER:**

*The Special Meeting of the East Grand Forks City Council for December 16, 2014 was called to order by Council President Buckalew at 6:05 P.M.*

**CALL OF ROLL:**

*On a Call of Roll the following members of the East Grand Forks City Council were present: Council President Craig Buckalew, Council Vice President Greg Leigh, Council Members Clarence Vetter, Dale Helms, Henry Tweten, Mark Olstad, and Chad Grassel.*

**CALL TO ORDER:**

*The Special Meeting of the East Grand Forks Economic Development/Housing Authority Board for December 16, 2014 was called to order by Board President Wogaman at 6:05P.M.*

**CALL OF ROLL:**

*On a call of Roll the following members of the East Grand Forks Economic Development/Housing Authority were present: President George Wogaman, Vice-President Justin Hecht, Secretary Nan Larson, Board members Chad Grassel and Mark Olstad.*

**DETERMINATION OF QUORUM BY BOTH CITY COUNCIL AND EDHA BOARD:**

*Council President determined there was a quorum for the City Council and the EDHA President determined there was a quorum for the EDHA Board.*

**1. Status of Outstanding Debt of Boardwalk Enterprises – David Murphy**

Mr. Murphy stated that this issue has been going on since April of 2014, the City had hired Brad Sinclair from Fargo to represent the City and Economic Development Authority (EDA) on this issue, and that the City had received the appraisal which had been asked for at the previous meeting. He then asked Mr. Sinclair to go over the appraisal and the options the City has moving forward.

Mr. Sinclair started by giving a brief overview of his background and how things got to this point. He informed the group that he practices law in both North Dakota and Minnesota, about his background in accounting, and his history of working with banks. He said he was specifically hired to examine this issue, see what was enforceable, and to come up with strategies on how to move forward. He added that what he was discussing today was his opinions and may not be the same opinion of the City or EDA.

Mr. Sinclair explained that the first closed meeting he had asked to have closed based on case law

allowing a meeting to be closed when a lawyer is hired for a specific purpose, to discuss pre-litigation and possible strategies. He added how it would be ludicrous to hold an open meeting so the borrower knows what actions the City and EDA would take and the closed meeting was allowed under the law. He then explained how the Commissioner of Administration had issued an opinion that the City should not have held that meeting as a closed meeting and he added how this opinion was given by a non-lawyer. He added that he still feels that he was correct in asking to have that first meeting to be closed.

Mr. Sinclair informed everyone what had been discussed during that first closed meeting. He explained that he had analyzed the promissory note that was in the file. He said that it was his opinion that the note is enforceable and how there could be set offs. He said that based on the Parker Development Agreement the City had obligations which may have not been addressed and would result in the set offs. He added that the note for \$510,000 was enforceable but some was uncollectable due to the statute of limitations. He stated the first payments should have started in 2003 and with the statute of limitations of six years the payments for years 2003-2008 were uncollectable. He said that he believes there is \$330,000 still valid on the note that could be collected with possible deducts.

Mr. Sinclair explained he was also asked to review the mortgage which in his opinion is still valid and enforceable. He stated how under Minnesota Law there is a different statute of limitations for mortgages so the mortgage is enforceable for the full amount of \$510,000. He added that it is his opinion since the last payment wasn't due until 2019 the City wouldn't have to take action until October of 2034. He added that his opinion is based on the fact that Boardwalk Enterprises LLP still owns the real estate. He explained that if Mr. Stauss had only acquired the assets of Boardwalk Enterprises LLP, purchased the real estate in a different name this meeting would not be taking place because there wouldn't be any collateral to enforce either the note or the mortgage. He stated again that it was his opinion there is an enforceable note and enforceable mortgage. He added that there could also be offsets or reductions which were discussed at the meeting in June.

Mr. Sinclair said that it was at the first meeting he asked to have a meeting set up with the Boardwalk to discuss the indebtedness and ask them to see what would need to be done to resolve this issue. He said the other item that was discussed was how the promissory note states no action could be taken without a 60 day notice. He stated the group agreed to give notice and during that time they would try and reach a settlement. Mr. Sinclair informed everyone that there is a Minnesota Statute that states any time a corporation that owes money to a governmental agency or in this case, the Economic Development Authority, the agency has the right to talk about this publically. He referred to statute 13.591 and how this statute allows for things to be public other than financial information such as tax returns and financial statements. He explained during this 60 day period there was a small group that met with the Boardwalk representatives to try and resolve this matter.

Mr. Sinclair stated the second meeting took place in August. He said that this meeting was closed based on his opinion and state law allowing negotiations to take place behind closed doors. He added that if the meeting was open no one would be free to discussed items. He said discussion took place, an offer was made at the meeting, and then the Boardwalk representatives left. He explained that the Council and Board members discussed the matter and decided how to proceed. He stated that the Boardwalk Representatives made an offer based on costs incurred which they claim were in excess of the \$510,000 owed to the City. He said discussion followed about if the off sets were valid and enforceable, also the pros and cons of litigation, and the necessity to evaluate the collateral. Mr. Sinclair said that in this case the collateral was the building. He added that there is a first mortgage in place with another borrower valued at \$2,025,000. He then reviewed banks rules and guidelines follow regarding the how they lend

money and since banks usually only lend up to 80% of the value it seemed that there was still collateral in the building. He said the real estate was appraised so the City could determine the value. Mr. Sinclair commented how appraisals take time and how the City had just received the appraisal of the Boardwalk Building.

Mr. Sinclair said the appraisal, completed by a certified appraiser; dated December 3<sup>rd</sup> stated the building was valued at \$1,570,000. He reviewed the numbers of the first mortgage and how the EDA is in second place. He said the indebtedness currently \$1,903,000 how based on the appraisal there is a lack of equity. He said that the City and EDA did not have a chance to review the appraisal or have a discussion on how to move forward with this issue. He explained that in first meeting back in June he presented four options the City and EDA could move forward with. He stated the first option was to try and negotiate a settlement. Mr. Sinclair added that the Boardwalk says they have incurred more costs than what is owed and has suggested that everyone should just walk away. He said the second option was foreclosure but first they would need to determine the equity of the real estate which now has been done. He stated the third option was to do nothing. He stated that if the City and EDA didn't want to move forward with anything they could wait to try and enforce the mortgage by 2034. He said the last option is to try and obtain first position from the bank. He explained how the fourth option would be highly unlikely.

Mr. Sinclair stated that he also looked into other parties such as the lawyer that was involved back in 1999 and if there was legal malpractice. He said the mortgage was not recorded until 2014 and looked into potential liability in this situation. He added that he was informed it was common practice for the last EDA Director to file the mortgages. He said that he does not appear the lawyer did not commit an error. He stated he also looked into the actions of the past EDA Director. He explained that the City or EDA can't sue a past employee for negligence but the law does allow for action if the past employee did act in gross negligence. He suggested looking the insurance policy to see if something could be filed based on the errors and inconsistencies within the file. Mr. Sinclair stated that the EDA had received a letter in 2003 from Mr. Dan Stauss, it referenced the developer's agreement, explained where the City had failed to comply with the agreement, and mentioned the pay back plan. He added there was another letter in 2008 about taxes and both of these letters were sent to Mr. Richter and were not brought forward to have action taken.

Mr. Sinclair continued by saying today was the first time most of the Council members and Board members knew what the appraisal was. He said he reviewed the appraisal, which could be looked at three different ways with three different values, and that was how the appraisal had been determined. Council President Buckalew asked if there were any questions for Mr. Sinclair. Council member Helms asked how the first estimated vaultion was under million dollars with the appraisal at \$1,570,000. Mr. Sinclair stated that evaluation was based on the tax record.

Council Vice-President Leigh asked what the validity of the bills were that were given to the City by the Boardwalk, what the specific amount was, and if these were actual bills the City owes. Mr. Sinclair explained said there was a summary included in the letter of 2003 of expenses incurred for fill, for extra construction work, a delay in construction, and at that time they were claiming the amount incurred was approximately \$54,000. He said the letter in 2008 stated the amount was \$116,000 plus taxes of \$75,000. He added they did not deduct the \$25,000 they were supposed to pay so that would bring it down to \$50,000 owed for taxes. Mr. Sinclair said amounts they are claiming total \$160,000 but no documentation was included supporting these amounts. He said it was at the last closed meeting the Boardwalk representatives stated the City owes them more than what the mortgage is worth but did not include any supporting documentation. Mr. Sinclair said that the EDA has the statute of limitations to

collect on the note so the Boardwalk would also have a statute of limitations to collect on amounts owed.

Council member Olstad asked Mr. Sinclair to review the timeline again. Mr. Sinclair said that he isn't for sure since the file is missing documentation but from public records it appears that Mr. Dan Stauss acquired an interest in 2002 and another Stauss family member acquired the rest of the interest by late 2003 or early 2004. Discussion followed about when construction of the building was complete, when Mr. Stauss took interest, and about details of the development agreement. Council Vice-President Leigh asked if the deducts were allowed what amount could be collected. Mr. Sinclair said enforcing the note there is the potential to collect the \$330,000 minus any offsets. He added he does think they have a valid claim regarding taxes which would include interest and the other items could be hard to contest but they would also have to consider if some of the deducts would not be allowed because of statute of limitations. Mr. Sinclair said they potential could have \$100,000 up to \$150,000 in deducts so the total amount to collect would then be approximately \$180,000. He said they could still sue on the mortgage for the full amount but then there would also be deducts allowed.

Council Vice-President Leigh commented how some people are taking this very personal and he is trying to look at this issue from a business perspective and try to determine what it will cost the City to collect on this loan. He said the EDA just forgave three loans because they are not able to collect on them. He asked how much they are willing to spend to collect \$180,000. Mr. Sinclair pointed out there isn't any equity left in the real estate and it would not make fiscal sense to move forward with the foreclosure. He added that even though currently the law allows for 15 years to enforce a mortgage he wouldn't wait too long because the laws could change. Mr. Sinclair ended by saying costs will all depend on how long they will want to fight so that is why he suggested trying to resolve this issue if possible.

Council member Vetter said he was going to rename the do nothing option the being patient option. He asked if they be patient and wait the payments will still be made on the note. Mr. Sinclair stated that if the mortgage sits there and they decide to sell the mortgage would then be released by either having it paying it off or suing the City to have it released. Council member Vetter said there is still a note and payments due every year. Mr. Sinclair stated that the statute of limitations will affect the payments that have not been made. Council member Vetter stated the City and EDA will be assuming they will not be making the yearly payments. Mr. Sinclair said yes and reminded the Council how Minnesota does recognize the note and mortgage separately. Council member Helms commented what could happen if the City did move forward with foreclosure and stated that they should be patient. Mr. Sinclair stated that if the EDA did move forward with foreclosure they would have to pay off the first mortgage of \$1,903,000 which would not make fiscal sense. He added that they could either accept the offer from the Boardwalk or wait.

Council member Grassel asked without other claims how much is owed for taxes. Mr. Sinclair stated that it was \$47,000 plus interest. Discussion followed about how the Boardwalk group will have a counterclaim for the City and EDA if they move forward with a foreclosure because of their current claims of how they are owed more than what is owed on the mortgage. Council member Grassel asked for an explanation in regards to the past employee being negligent. Mr. Sinclair informed the Council and Board they could sue the past employee if their actions were beyond simple negligence. He explained how there are letters referencing the agreement, how the employee should have brought this up, the letters are a part of the file, and mentioned the continuing issues. Mr. Murphy stated that he had checked and the insurance policy does cover this up to \$100,000 per occurrence. Council Vice-President Leigh commented how the EDA Board was kept in the dark. He added how the Board just had to forgive three loans and asked if that would be part of this negligence. Mr. Sinclair said that was correct.

Council member Helms asked if they could go back to when this was originally given out. He asked why this wasn't filed by the City Administrator or City Attorney and then brought to Mr. Richter. Mr. Sinclair stated the EDA is similar to a bank; they prepared their own documents, and based on that they seemed to be comfortable handling their own closings. Council member Helms stated that he had a letter from Mr. Wayne Oberg and it was addressed to the EDA Board and Director dated February 11, 2003. He read the letter which stated the finance office would no longer process loan payments without all of the proper documentation and signatures. He stated this was something that was done in 2003, it hadn't just started, and asked why this wasn't checked out. Council member Helms explained that he performed his own investigation, talking to both Mr. Parker and Mr. Oberg. He said that Mr. Parker hadn't been contacted by anyone. Council member Helms stated the auditors were questioning loans from 2007. He then asked where the Council and EDA Board when things were happening. He stated the first thing Mr. Parker said was that Lynn Stauss didn't have anything to do with the building. He said their discussion consisted of how this building was developed, how Mr. Parker hired Mr. Dan Stauss to be the supervisor of the construction, his partner was his wife, and how Mr. Dan Stauss got interest in 2002. Council member Helms said that every time he asked questions he didn't get an answer, got a wrong answer, and asked why this wasn't investigated further back so they know what actually went on. He asked again who they should be going after and how they should move forward.

Council member Grassel asked how the EDA board is suppose to ask about something they didn't know anything about. He said that Council member Helms was wrong is assuming the Board did nothing. He stated that he is just as frustrated as everyone else, this was thrown at them and they didn't know what to do. Council member Helms stated that he was referring to Board back from 2003. He asked why the Director was allowed to continue doing things the way he was doing them. Council President Buckalew stated was on the Board, this loan was never brought up, and they never received the information regarding any issues. He asked how they could ask about something that they knew nothing about. He then said most importantly they know what the situation is now, they have to deal with it, and make sure this never happens again. He thanked Council member Helms for going the extra mile which shows his dedication to the City and it is appreciated. He added that it doesn't change any of the facts or the predicament they are in now. Council President Buckalew commented they will have to determine how they would like to move forward.

Mr. Larry Stauss commented that he didn't believe it was the EDA Board's fault but asked whose fault it was. He asked why it got this far down the road and commented that if this goes to court it will be with the title insurance company. He then asked who caused this problem and told the Council to look in the mirror. He stated how both sides have claimed they knew nothing about the loan and asked who the people are supposed to believe.

Ms. Misty Goulet stated she was the head chef at the Boardwalk. She commented how much this as affected the business, how each article in the paper affects business, and how waiting will not help. She said that they are here for East Grand Forks and how people wanting to use the banquet hall are worried they won't be there. She stated how she can't keep people employed because of lack of business. She said she wanted to make the point they can't sit and wait, they need a decision made because they are getting nowhere with how things are going. Council President Buckalew commented how that is a valid point. Mr. Larry Stauss said to ask the newly elected council members what happened since they were there when things were going on.

Ms. Sue Thompson stated that voters and citizens of the community are all responsible in part for some of

this for not taking a proactive role. She said she does not understand how when the entire development agreement was faxed from Dan Stauss to Jim Richter referring to conditions of the agreement, including his own notes, and then say he knew nothing about the loan when the payment information was included in same agreement. She added her frustration is with the lack of accountability and responsibility for the particular individuals who are supposed to pay back this loan claiming the City and Council are to blame. She said now that this is disclosed and asked what will be done. She pointed out in the agreement it states that there is a \$30,000 payment that is to be made yearly. She said she would like answers from the individual who faxed this to Mr. Richter.

Mr. Mike Abel stated that he grew up in East Grand Forks, he left to work in construction, and recently moved back. He said that he had many discussions about this issue and added that the City won't be getting any money back. He said that every citizen would like to know who to blame and they would like answers. He added that what it came down to is someone didn't do their job and no one is being held accountable. Mr. Abel said that East Grand Forks is getting laughed at because of this issue. He ended by saying someone needs to be held accountable.

Council Vice-President Leigh asked if action was going to take place. Council President Buckalew stated they didn't have to take action. Council Vice-President Leigh stated he wanted to figure out how much it will cost to go after the money and instead of doing that they should try to go after the insurance money. He said he is not in favor of doing nothing because this is only hurting business.

**A MOTION WAS MADE BY COUNCIL MEMBER LEIGH TO DROP THE PURSUIT OF THE \$510,000 MORTGAGE AND PROMISSORY NOTE AND MOVE FORWARD WITH GOING AFTER MALFISIS IN THE OFFICE PER ISSUE THROUGH INSURANCE.**

**MOTION DIES FOR LACK OF SECOND.**

**ADJOURN:**

**A MOTION WAS MADE BY COUNCIL MEMBER LEIGH, SECONDED BY COUNCIL MEMBER TWETEN, TO ADJOURN THE DECEMBER 16, 2014 JOINT MEETING OF THE EAST GRAND FORKS, MINNESOTA CITY COUNCIL AT 7:27 P.M.**

*Voting Aye: Grassel, Vetter, Helms, Buckalew, Tweten, Olstad, and Leigh.*

*Voting Nay: None.*

**A MOTION WAS MADE BY BOARD MEMBER GRASSEL, SECONDED BY BOARD MEMBER OLSTAD, TO ADJOURN THE DECEMBER 16, 2014 JOINT MEETING OF THE EAST GRAND FORKS, MINNESOTA CITY COUNCIL AT 7:27 P.M.**

*Voting Aye: Wogaman, Hecht, Larson, Grassel, and Olstad.*

*Voting Nay: None.*

---

David Murphy, City Administrator/Clerk-Treasurer