

**WILLMAR CITY COUNCIL PROCEEDINGS**  
**COUNCIL CHAMBERS**  
**WILLMAR MUNICIPAL UTILITIES BUILDING**  
**WILLMAR, MINNESOTA**

November 17, 2014  
7:00 p.m.

The regular meeting of the Willmar City Council was called to order by the Honorable Mayor Frank Yanish. Members present on a roll call were Mayor Frank Yanish, Council Members Denis Anderson, Ron Christianson, Steve Ahmann, Audrey Nelsen, Tim Johnson, Rick Fagerlie and Jim Dokken. Council Member Bruce DeBlicek was excused from the meeting; Present 8, Absent 1.

Others present were City Administrator Charlene Stevens, City Clerk Kevin Halliday, Police Chief Jim Felt, Public Works Director Sean Christensen, Planning and Development Director Bruce Peterson, Finance Director Steve Okins, Community Education and Recreation Director Steve Brisendine and City Attorney Robert Scott.

Additions to the agenda were requested by Council Member Anderson under Old Business and by Council Member Ahmann under New Business.

Council Member Anderson offered a motion adopting the Consent Agenda which included the following: City Council Minutes of November 3, Board of Canvass Minutes of November 7, Willmar Municipal Utilities Minutes of November 10, Planning Commission Minutes of November 12, and Accounts Payable Report through November 13, 2014. Council Member Ahmann seconded the motion. Council Member Christianson requested the Willmar Municipal Utilities minutes be pulled from the Consent Agenda for discussion. The motion carried to accept the remainder of the items in the Consent Agenda.

Council Member Christianson wished to discuss the purchase of land from Jennie-O Turkey Store (JOTS) for a substation near Priam that was approved in the Willmar Municipal Utilities Board minutes and noted as Resolution No. 44. Council Member Christianson noted that JOTS wants the City to purchase the entire 47.82 acres at market price which is beyond the 12 acres needed for the project. The Council discussed the recent land sale to JOTS in conjunction with the realignment of Willmar Avenue SW and questioned the possibility of a land swap.

Council Member Ahmann questioned the sale of land and whether the City can sell it for less than the purchase price. City Attorney Robert Scott clarified there is no statute that requires cities not sell land for less than the market value, although if they do so there needs to be adequate findings of public purpose for such a sale. Council Member Christianson questioned the City Attorney for the appropriate process to allow the Council to receive more information on the proposed land purchase before the Council concurs. City Attorney Scott stated the options of either vetoing the resolution the Willmar Municipal Utilities Board passed to authorize the sale which requires a vote of five members of the Council or alternatively if the Council would like more time to consider there is the option of extending the period to review their action for 30 days or until the next council meeting by majority vote. Council Member Christianson made a motion to extend the time to review Resolution No. 44 for the land purchase from JOTS for a substation near Priam for up to 30 days and have more information brought back to the Council. Council Member Johnson seconded the motion, which carried.

City Attorney Robert Scott advised the Council that the action to extend the matter needs to be by resolution and recommended that the motion be amended to a resolution.

Resolution No. 1 was introduced by Council Member Christianson, seconded by Council Member Johnson, reviewed by Mayor Yanish, and approved on a roll call vote of Ayes 6, Noes 1, with Council Member Anderson voting against the resolution.

RESOLUTION NO. 1

WHEREAS, the Willmar Municipal Utilities Commission has approved an agreement to buy 47.82 acres of property near Priam from Jennie-O Turkey Store for a substation project, and

WHEREAS, the proposed substation project only requires a 12-acre parcel; and

WHEREAS, the land purchase is pending final approval of the Commission's minutes by the City Council which is desirous of more time to consider the purchase;

NOW THEREFORE BE IT RESOLVED that the land purchase authorized in Resolution No. 44 of the Willmar Municipal Utilities Board minutes of November 10, 2014 for the substation be extended for a review period of 30 days by the Council.

Dated this 17th day of November, 2014.

\_\_\_\_\_  
/s/ Frank Yanish  
MAYOR

\_\_\_\_\_  
/s/ Kevin Halliday  
Attest: CITY CLERK

Council Member Christianson made a motion to approve the remainder of the Willmar Municipal Utilities Board minutes of November 10, 2014. Council Member Anderson seconded the motion, which carried.

At 7:25 p.m. Mayor Yanish opened a public hearing on a currency exchange license for Quick Funds Inc. to operate a currency exchange business at 222 SW 3<sup>rd</sup> Street. This is a reoccurring application since 2005. Minnesota Statutes Chapter 53A.04 requires the governing body to give published notice and hold a public hearing. There being no one present to speak for or against the license renewal, Mayor Yanish closed the hearing at 7:25 p.m.

Council Member Anderson offered a motion to approve the currency exchange license for Quick Funds, Inc. Council Member Fagerlie seconded the motion, which carried.

At 7:26 p.m. Mayor Yanish opened a public hearing on a currency exchange license for Bennett Ventures, Inc. to operate a currency exchange business at 312 SW 24<sup>th</sup> Avenue, Suite 2. Their first application was received in the year 2000. There being no one present to speak for or against the license renewal, Mayor Yanish closed the hearing at 7:26 p.m.

Council Member Anderson offered a motion to approve the currency exchange license for Quick Funds, Inc. Council Member Ahmann seconded the motion, which carried.

Bob Skor, 617 SW 14<sup>th</sup> Street, was acknowledged by Mayor Yanish to speak at the Open Forum. Mr. Skor spoke regarding the NAV aid drainage/land correction, the Jennie-O Turkey Store land purchase for a substation, and the industrial park infrastructure improvements.

The Public Works/Safety Committee Report for November 13, 2014 was presented to the Mayor and Council by Council Member Christianson. There were seven items for consideration.

Item No. 1 David Little complimented the Public Works staff for the great job they did cleaning the streets after Monday's snow storm. Council Member Nelsen stated the Public Works staff was also in the "West Central Tribune-Hats Off" column for the outstanding job they did trimming trees.

Item No. 2 Chair Christianson noted the jail census for November 13, 2014, was 119. The calls for service for the previous two weeks totaled 728. The majority of the calls are for traffic stops, followed by public assists. The Fire update handout was provided for information. The Council received this for information only.

Item No. 3 Public Works Director Christensen brought forth, for approval, Change Order No. 1 for final quantities in the amount of \$8,781.26 and to authorize final payment to Duininck, Inc. in the amount of \$23,102.87 for Project No. 1304 Robbins Island Pathway. The project is within budget and a 20% match. The Committee was recommending the Council approve the change order and authorize final payment to Duininck, Inc. for Project No. 1304.

Resolution No. 2 was introduced by Council Member Christianson, seconded by Council Member Nelsen, reviewed by Mayor Yanish, and approved on a roll call vote of Ayes 7, Noes 0.

RESOLUTION NO. 2

**ACCEPTING PROJECT AND AUTHORIZING FINAL PAYMENT**

IMPROVEMENT: Project No. 1304 – Robbins Island Path

CONTRACTOR:	Duininck Inc.
DATE OF CONTRACT:	July 15, 2013
BEGIN WORK:	July 18, 2013
COMPLETE WORK:	November 20, 2013
APPROVE, ENGINEERING DEPT:	August 20, 2014

**BE IT RESOLVED** by the City Council of the City of Willmar, Minnesota, that:

1. The said City of Willmar Project No. 1304, including approval of Change Order No. 1, be herewith approved and accepted by the City of Willmar.

2. The following summary and final payment be approved:

ORIGINAL CONTRACT AMOUNT:	\$251,896.00
Change Order No. 1	\$8,781.26
FINAL NET CONTRACT AMOUNT, PROPOSED:	\$260,677.26
ACTUAL FINAL CONTRACT AMOUNT AS CONSTRUCTED:	\$260,677.26
Less Previous Payments	\$237,574.39
<b>FINAL PAYMENT DUE CONTRACTOR:</b>	<b>\$23,102.00</b>

Dated this 17th day of November, 2014.

/s/ Frank Yanish  
MAYOR

/s/ Kevin Halliday  
Attest: CITY CLERK

Item No.4 Public Works Director Christensen brought forth, for approval, Change Order No. 2 for final quantities in the amount of \$56,473.18, amend the budget and authorize final payment to Duininck, Inc. in the amount of \$143,493.65 for Project No. 1301-A Kandiyohi Avenue reconstruction. Adding payment of the Change Order brings the final project amount to \$1,388,522.98, which is covered by the CIP. The Committee questioned if the adjustments were due to a design error from Bollig Engineering or from the installation by Duininck, Inc., and who holds responsibility to pay for the Change Order.

It was the consensus of the Committee to continue discussion at the Council Meeting pending further information provided by Public Works Director Christensen.

Public Works Director Christensen addressed the concerns of the Committee to the full Council. Mr. Christensen clarified that Change Order No. 2 was not due to an error of the consulting engineer or the contractor, but rather the overrun of final quantities as constructed. In light of this information, Resolution No. 3 was introduced by Council Member Christianson, seconded by Council Member Nelsen, reviewed by Mayor Yanish, and approved on a roll call vote of Ayes 7, Noes 0.

RESOLUTION NO. 3

**ACCEPTING PROJECT AND AUTHORIZING FINAL PAYMENT**

IMPROVEMENT: Project No. 1301-A – Kandiyohi Ave Reconstruction

CONTRACTOR:	Duininck Inc.
DATE OF CONTRACT:	May 6, 2013
BEGIN WORK:	May 9, 2013
COMPLETE WORK:	June 2, 2014
APPROVE, ENGINEERING DEPT:	October 10, 2014

**BE IT RESOLVED** by the City Council of the City of Willmar, Minnesota, that:

1. The said City of Willmar Project No. 1301-A, including approval of Change Order No. 2 and amending the project budget, be herewith approved and accepted by the City of Willmar.
2. The following summary and final payment be approved:

ORIGINAL CONTRACT AMOUNT:	\$1,241,718.95
Change Order No. 1	\$10,875.60
Change Order No. 2	\$56,473.18
FINAL NET CONTRACT AMOUNT, PROPOSED:	\$1,388,522.98
ACTUAL FINAL CONTRACT AMOUNT AS CONSTRUCTED:	\$1,388,522.98
Less Previous Payments	\$1,245,029.33
<b>FINAL PAYMENT DUE CONTRACTOR:</b>	<b>\$143,493.65</b>

Dated this 17th day of November, 2014.

/s/ Frank Yanish  
MAYOR

/s/ Kevin Halliday  
Attest: CITY CLERK

Item No. 5 Public Works Director Christensen brought forth, for approval, final payment to Geislinger & Sons, Inc. in the amount of \$185,650.97 for Project No. 1110 Western Interceptor. The final payment is within the project budget. The Committee was recommending the Council approve and authorize final payment to Geislinger & Sons, Inc. for Project No. 1110.

Resolution No. 4 was introduced by Council Member Christianson, seconded by Council Member Anderson, reviewed by Mayor Yanish, and approved on a roll call vote of Ayes 7, Noes 0.

RESOLUTION NO. 4

**ACCEPTING PROJECT AND AUTHORIZING FINAL PAYMENT**

IMPROVEMENT:           Project No. 1110

CONTRACTOR:	Geislinger & Sons, Inc.
DATE OF CONTRACT:	October 15, 2012
BEGIN WORK:	November 12, 2012
COMPLETE WORK:	September 16, 2014
APPROVE, ENGINEERING DEPT:	October 2, 2014

**BE IT RESOLVED** by the City Council of the City of Willmar, Minnesota, that:

1.       The said City of Willmar Project No. 1110 be herewith approved and accepted by the City of Willmar.
2.       The following summary and final payment be approved:

ORIGINAL CONTRACT AMOUNT:	\$3,575,354.25
Change Order for Project No. 1110	\$238,251.25
FINAL NET CONTRACT AMOUNT, PROPOSED:	\$3,813,605.50
ACTUAL FINAL CONTRACT AMOUNT AS CONSTRUCTED:	\$3,590,113.25
Less Previous Payments	\$3,404,462.28
<b>FINAL PAYMENT DUE CONTRACTOR:</b>	<b>\$185,650.97</b>

Dated this 17th day of November, 2014.

/s/ Frank Yanish  
MAYOR

/s/ Kevin Halliday  
Attest: CITY CLERK

Item No. 6       Under Old Business Council Member Christianson questioned if there was any report detailing what the cause of the Jennie-O situation last month causing employees to fall ill and require medical care. Council Member Dokken noted some type of After Incident Reporting document should be created to explain the services used by the City for the response to the situation as well as what the cause was.

At the Council meeting Council Member Christianson commented he had heard from Fire Chief Hendrickson and there was no cause that they could find for the incident. City Administrator Stevens recapped the report that was given to the City Council by the Fire Chief shortly after the event occurred and will verify this is the final report and there was no determinable cause.

Item No. 7       Under New Business the Committee discussed the proposed Lakeland Drive extension in the Waterview Business Park brought forth to the Public Works/Safety Committee on April 29<sup>th</sup>, 2014. Public Works Director Christensen gave the history of Duinick, Inc. presenting the preliminary design at the April meeting and stated Duinick gave notice they would like the project to be included in the improvement projects for 2015. Staff is recommending street alignment changes from the preliminary plans. Residents of the area will have ample opportunity to voice any concerns through the Public Works/Safety Committee Meetings as well as the Improvement Hearing. This was received for information only.

Chair Christianson brought forth a question from a citizen regarding why the Police Department does not bid Police vehicle accessories such as lights and sirens locally. It was discussed the possibility of it already being included in the State Contract. Police Chief Felt addressed the Council and clarified that the vehicle accessories are included in the State Contract and often times recycled. This was for information only.

Public Works Director Christensen asked the Committee their opinions of the new LED lights along Willmar Avenue. The Committee found it to be bright and the light not spreading out as much. The Preliminary Engineering Report will be presented at the Finance Committee Meeting on Tuesday, November 18<sup>th</sup>. An update was given on the progress of the Auditorium. The subcontractor providing the air handling system decided to not supply the units to the City, resulting in the Auditorium possibly not opening until the end of the first quarter of 2015. The Committee questioned if there is any obligation to fulfill the bid by the company as the project has already been started, and if a message can be carried to the community explaining the delay. This was received by the Council for information only.

The Public Works/Safety Committee Report for November 13, 2014, was approved as presented and ordered placed on file in the City Clerk's Office upon motion by Council Member Christianson, seconded by Council Member Ahmann, and carried.

Planning and Development Services Director Bruce Peterson presented a proposal to authorize staff to pursue acquisition of property that contains several easements which were originally granted by the City when it acquired property for the original airport through mediated settlement. The City was later informed it could not have permanent easements on property that was partially funded by the grant with the FAA. Attempts to negotiate with the property owner have not been successful. The City will lose \$150,000 annually in funding from the FAA unless the easements are eliminated. Staff has investigated various alternatives to find something acceptable to both the FAA and the property owner with no success. Staff is recommending the Council authorize the City to use eminent domain to acquire the easements.

Resolution No. 5 as introduced by Council Member Anderson, seconded by Council Member Nelsen, reviewed by Mayor Yanish, and approved on a roll call vote of Ayes 6, Noes 1, with Council Member Christianson voting against the resolution.

#### RESOLUTION NO. 5

#### A RESOLUTION BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WILLMAR, MINNESOTA AUTHORIZING THE CITY'S ACQUISITION OF INTERESTS IN REAL PROPERTY FOR AIRPORT PURPOSES

WHEREAS, the City of Willmar (the "City"), a Home Rule Charter City, owns and operates the Willmar Municipal Airport (the "Airport") in the City, which was constructed beginning in 2005 and opened to the public on September 5, 2006; and

WHEREAS, beginning in 2002, the City acquired through eminent domain and otherwise certain lands needed for the construction of the runways, terminal, hangars and other aviation facilities at the Airport, and to maintain runway protection zones at either ends of the Airport's runways; and

WHEREAS, included in the lands the City acquired in fee for the establishment of the runway protection zones at the Airport were lands now identified as Parcels 10-A and 24-A in the Willmar Municipal Airport Right-of-Way Plat No. 1-1 on file in the Kandiyohi County Recorder's office, which lands the City acquired through eminent domain proceedings in Kandiyohi County District Court (Court File No. C4-02-1058) from property owners the Andrew Kvam Trust and Philip J. Kvam, respectively (collectively, the "Owners"); and

WHEREAS, as part of the final settlements of the eminent domain proceedings against the Owners, the City granted a permanent easement for ingress and egress across each of Parcels 10-A and 24-A to each

Owner, respectively, as shown on the attached Appendices A and B (the “subject property interests”), which included the right to construct limited improvements to such accesses within the easement areas; and

WHEREAS, pursuant to Minnesota Statutes, Sections 360.0161 and 360.039, the City’s acquisition of lands to facilitate the construction of the Airport were funded largely through a Federal Aviation Administration (“FAA”) Airport Improvement Program (“AIP”) grant, which grant program requires grant recipients such as the City to agree to certain obligations or assurances (the “Grant Assurances”) as a condition for receiving the federal funding; and

WHEREAS, the FAA considers the City’s conveyance of the subject property interests to the Owners to have violated the FAA’s Policy and Procedures Memo (PPM) 5300.1B dated February 5, 1999, which requires the runway protection zones at a new airport to be controlled by the airport operator with fee title, and prohibits the construction of new roadways therein, as well as Grant Assurance 5, Rights and Powers, to which the City agreed, and which provided as follows:

a. It (the City) shall not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. It (the City) will not sell, lease, encumber or otherwise transfer or dispose of any part of its title or other interests in the (property acquired for the construction of the Airport) . . . for the duration of the terms, conditions, and assurances in the grant agreement without the approval of the Secretary; and

WHEREAS, the FAA has withheld and will continue to withhold \$150,000 in annual AIP funds from the City until such time as the City “recaptures its rights and powers” with respect to the subject property interests granted to the Owners over Parcels 10-A and 24-A; and

WHEREAS, timely reacquisition of the subject property interests by the City is necessary to secure the AIP funds withheld from the City by the FAA, which in turn is important for the City’s future operation of the Airport; and

WHEREAS, the City Council adopted Resolution No. 4 on November 4, 2013 authorizing the City to commission appraisals of the subject property interests, negotiate for the direct purchase thereof and make preparations for the acquisition thereof by eminent domain; and

WHEREAS, pursuant to Resolution No. 4, November 4, 2013, the Willmar City Council has been presented with appraisals of each of the subject property interests dated April 16, 2014, conducted by Thomas G. Ruhland, MAI, a certified general real property appraiser licensed by the State of Minnesota, which estimated the damages of the taking of the subject property interests; and

WHEREAS, pursuant to Resolution No. 4, November 4, 2013, City staff has met with representatives of the Owners and presented copies of the Ruhland appraisals to the Owners, but to date has been unsuccessful in negotiating for the direct purchase of the subject property interests by the City; and

WHEREAS, Minnesota Statutes, Section 360.032, Subdivision 1, authorizes municipalities to acquire real property for the purpose of establishing, constructing and enlarging airports and for other airport purposes, either within or without the territorial limits of such municipality and within or without this state; and

WHEREAS, Minnesota Statutes, Section 360.032, Subdivision 2, grants municipalities the full authority to exercise the power of eminent domain in the event that such a municipality is unable to acquire the subject property interests by any transaction to which the owners of the subject property agree; and

WHEREAS, Minnesota Statutes, Section 360.033 declares that the acquisition of any lands by a municipality for the purpose of establishing, constructing, enlarging and operating airports is to be considered as acquired and used for public, governmental, and municipal functions, exercised for a public purpose, and as a matter of public necessity, and Minnesota Statutes, Section 117.025, Subdivisions 10 and 11, affirm that a municipality operating an airport is a “public service corporation,” and that the creation or functioning of a public service corporation is a “public use” or “public purpose” for purposes of Minnesota Statutes, Section 117.012, Subdivision 2; and

WHEREAS, the City made written final offers to the respective owners of record of the subject property interests to purchase the subject property interests for the amounts indicated in the Ruhland appraisals on October 20, 2014; and

WHEREAS, the City’s negotiations with the Owners having not, to date, resulted in the necessary acquisition of the subject property interests, it is now necessary for the City to acquire the subject property interests through the condemnation authority granted the City in the Minnesota Statutes; and

WHEREAS, in order to receive AIP funds from the FAA for calendar year 2015, the City must reacquire the subject property interests before commissioners to be appointed in a condemnation action pursuant to Minnesota Statutes, Chapter 117 can reasonably be expected to make a determination as to the award of just compensation for the acquisition of the subject property interests.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Willmar, Minnesota, as follows:

1. The appraisals of the easements dated April 16, 2014, conducted by Thomas G. Ruhland, MAI, a certified general real property appraiser licensed by the State of Minnesota, which estimated the damages of the taking of the subject property interests, are hereby accepted and approved.
2. In accordance with Minnesota Statutes, Chapters 117 and 360, as well as 49 C.F.R. sections 24.101 et seq., the City Council of the City of Willmar, Kandiyohi County, Minnesota, hereby authorizes the law firm of Flaherty & Hood, P.A. to initiate eminent domain proceedings on the City’s behalf, including but not limited to, proceedings pursuant to Minnesota Statutes, Section 117.042, necessary to timely acquire the subject property interests needed for the release of the FAA AIP funds to the City to fund the Airport operations, and to take such other actions and initiate such other proceedings as may be advisable in furtherance of the City’s authority under law.
3. It is hereby found and determined that the taking of the subject property interests through eminent domain proceedings is reasonably necessary or convenient, in furtherance of a proper public use and public purpose in accordance with Minnesota Statutes, Section 117.012, Subdivision 2, that public use and public purpose being the securing of FAA AIP funds needed to fund the operation of the Willmar Municipal Airport.
4. It is hereby found and determined that the reacquisition of the subject property interests must be completed by the City before commissioners to be appointed in a condemnation action pursuant to Minnesota Statutes, Chapter 117 can reasonably be expected to make a determination as to the award of just compensation for the acquisition of the subject property interests and that timely acquisition of the subject property interests is important for the City to receive AIP funds from the FAA for calendar year 2015.
5. City staff, its agents and legal counsel shall continue to have the authority to negotiate for the purchase of the subject property interests at any time prior to the final resolution of any eminent domain proceeding initiated on the City’s behalf under the authority of this Resolution, subject to final approval of this City Council of any agreement for the purchase of such property rights or interests.

Dated this 17th day of November, 2014.



