

MINUTES	Friday, December 6, 2013 at 11:00 a.m.	 CITY OF SIOUX FALLS
BOARD OF ETHICS QUARTERLY MEETING	Commission Room 1st Floor ~ City Hall 224 West Ninth Street Sioux Falls, South Dakota	

BOARD MEMBERS PRESENT: Jeff Gednalske, Carol Knudtson, Ron Sisk, and Bob Swanhorst

BOARD MEMBERS ABSENT: Greg LaFollette

STAFF PRESENT: Dave Pfeifle, Sioux Falls City Attorney and Cari Hanzel, Recording Clerk

GUESTS: None

CALL TO ORDER

A quorum being present, the meeting was called to order by Board Chair Bob Swanhorst at 11:06 a.m.

APPROVAL OF MINUTES

A motion was made by Ron Sisk and seconded by Jeff Gednalske to approve the minutes from the Quarterly Meeting on September 19, 2013. Vote to approve: Four Yeses. Motion Passed.

BUSINESS OR PENDING ISSUES BROUGHT BEFORE THE BOARD

A. Request for Advisory Opinion Received December 4, 2013.

It was announced at the start of the meeting that the Request for Advisory Opinion materials were provided to the Board at the meeting today with copies of the same being made available at the back table for anyone attending the meeting.

Dave Pfeifle provided the Board with an overview of the Request for Advisory Opinion on the proposed agreement with the Community Indoor Tennis Center (CITC) to be considered by the City Council on December 10, 2013.

The Board confirmed that the City has provided assistance to non-profit entities in the community on a somewhat regular basis. The Board further confirmed that City Council members and City employees have served on the boards of directors and as officers of non-profit entities who were/are receiving City assistance.

The Board further discussed the fact that Cindy Huether, the Mayor's wife, is not being compensated for her role as Vice President of the CITC and that there would be no benefits extended to the Mayor or his wife of free or reserved court times, or the like. Under federal law, the CITC is a 501(c)(3) charitable organization that cannot be organized or operated for the benefit of private individuals.

Discussion was had that the most ethical route would be for the Mayor to follow through with his intention to recuse himself from the discussion and vote regarding a resolution authorizing an agreement with the CITC.

At the Mayor's request, the Board also reviewed a similar prior instance where the Mayor recused himself from the consideration, discussion and vote on a Resolution approving the Developer Agreement for Tax Incremental District, No. 11, or Tax Incremental Financing "TIF" No. 11. The Board discussed and agreed that in both instances, the Mayor has done or will do what the law requires. With regard to the TIF No. 11 matter, Cindy Huether and others in the community were approached in August 2011 about becoming an investor in the project after the Planning Commission and City Council had established the TIF No. 11 district and had approved the project plan. She informed the Mayor that she intended to become an investor in the project, so the Mayor then alerted the City Council and recused himself from any further discussion or vote on the one remaining item for approval on TIF No. 11, the Developer Agreement. Cindy Huether became an investor in the project after the Developer Agreement had been approved by the City Council, with the Mayor having recused himself from participating or voting on that item at the Council meeting.

The Board discussed that the Mayor's request for an opinion should be split into two different motions. A motion was made by Sisk and seconded by Knudtson that the Mayor's proposed action to recuse himself from participation in the upcoming discussion or vote on the Resolution to approve the Agreement with the Community Indoor Tennis Center is appropriate based on the ethics ordinances.

Discussion was had that the motion should further serve to educate the public on the propriety of the matter.

Gednalske then made a motion to amend the current motion, seconded by Sisk, to add a sentence at the beginning of the motion to read, "The Board finds that there is no actual conflict of interest, but to avoid the possibility of an appearance of any conflict or impropriety,". Vote to approve the amendment: Four Yeses. Amendment carried.

The Board then voted on the main motion as amended to read as follows: The Board finds that there is no actual conflict of interest, but to avoid the possibility of an appearance of any conflict or impropriety, the Mayor's proposed action to recuse himself from participation in the upcoming discussion or vote on the Resolution to approve the Agreement with the Community Indoor Tennis Center is appropriate based on the ethics ordinances. Vote to approve: Four Yeses. Motion carried.

The Board then discussed additional background information regarding TIF projects in general and specifically TIF No. 11. Canon Number 3 of the City Council Code of Conduct was cited, which provides, in part, "City Council members should not be denied, and should not deny to other city council members or citizens, the opportunity to acquire, retain and pursue private interests, economic or otherwise, except when conflicts with their responsibility to the public cannot be avoided." The Board discussed that Cindy Huether is a private citizen who should be allowed to invest in projects in the community. Her investment in TIF No. 11 was proper.

The Board discussed that the Mayor followed the law and properly recused himself from participating and voting on the TIF No. 11 project once he was informed by his wife that she intended to become an investor in the project.

A motion was made by Sisk and seconded by Knudtson to affirm that the Mayor's action in recusing himself from the discussion and vote on the Resolution approving the Developer Agreement for Tax Incremental District No. 11 was correct and in accordance with the letter and spirit of the law and canons of ethics. Vote to approve: Four Yeses. Motion carried.

The Board noted that the Mayor asked whether this same course of action would be appropriate in future instances. The Board discussed that each instance turns on its own set of facts so the Board declined to render an opinion that could cover all future conduct.

A motion was made by Knudtson and seconded by Sisk to authorize the Board's legal advisor, Dave Pfeifle to draft an Advisory Opinion as discussed and to authorize the Board Chair to sign the opinion as drafted on behalf of the Board. Vote to approve: Four Yeses. Motion carried.

NEXT MEETING

No specific date for the next meeting was scheduled.

ADJOURNMENT

A motion was made by Knudtson and seconded by Sisk to adjourn. Vote to adjourn: Four Yeses. Motion Passed. Meeting adjourned at 11:59 a.m.

Respectfully submitted,

Cari Hanzel
Recording Clerk