

# MINUTES

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**McCall City Council  
Special Meeting  
February 25, 2008**

## Agenda

Call to Order and Roll Call  
Executive Session  
Regular Business  
Adjournment

## **CALL TO ORDER AND ROLL CALL**

Mayor Kulesza called the special meeting of the McCall City Council to order at 4:03 p.m. Council Member Bailey, Council Member Briem, Council Member Kraemer and Mayor Kulesza and Council Member Scott answered roll call. A quorum was present.

## **EXECUTIVE SESSION**

Council Member Bailey moved to go into Executive Session for litigation pursuant to Idaho Code §67-2345(1)f to consider and advise its legal representatives in pending litigation or where there is a general public awareness of probable litigation. The motion was seconded by Council Member Scott. In a roll call vote, all members voted aye, and the motion carried.

The Council discussed litigation pursuant to Idaho Code §67-2345(1)f.

**The meeting returned to regular session at 6:08 p.m.**

City Staff members present were Lindley Kirkpatrick, City Manager; Walt Eisenstein, Deputy City Manager/Community Development & Infrastructure; Fred Quiel, Deputy City Manager/Administrative Services; and Brenna Chaloupka, Administrative Assistant, City Manager. City Attorneys present were Kim Trout and David Krueck.

## **REGULAR BUSINESS**

### Wausau Judgment Update

Mayor Kulesza stated this meeting was called to provide an update on the Wausau judgments as a follow up to the town-hall style meeting held Thursday, February 21, 2008. Mayor Kulesza stated Lindley Kirkpatrick would provide a short presentation.

Lindley Kirkpatrick, City Manager, stated the information from Thursday's meeting was on the website for anyone to review. Mr. Kirkpatrick summarized that there are judgments against the City and that there is a disagreement over the City's ability to collect the funds in order to satisfy the judgments under State law.

Mr. Kirkpatrick stated that since the May 2007 town hall meeting, City Council and staff have sought and received second opinions and independent reviews regarding the City's ability to satisfy the judgments from municipal attorneys, from bond counsel and bankruptcy counsel, as well as others. Mr. Kirkpatrick stated City Council and staff have explored all the methods available to the City in order to satisfy the judgments, including the City's ability to sell coupon bonds, general obligation bond or revenue bonds, and the possibility to exceed the 3% cap on the property tax levy. Mr. Kirkpatrick stated the City has also considered a tax and revenue anticipation note, selling City owned property, and using surplus funds to pay the judgment.

Mr. Kirkpatrick stated the City conducted a comprehensive review of all the available options and the result was the adoption of Resolution 07-9 on May 24, 2007, which outlines two parallel paths in response to the orders from the Federal court. Mr. Kirkpatrick stated one path followed the courts order as closely as possible and sought to pay the judgments as ordered, and the other path sought an appeal from the US 9<sup>th</sup> Circuit Court of Appeals of the limits on the City's ability to collect funds under State law.

Mr. Kirkpatrick stated the City has followed both paths and to date has paid nearly one million dollars towards the judgment, including over \$300,000 in surplus funds and over \$660,000 from the proceeds from a Tax Anticipation Note. In addition, the City has filed a petition for judicial confirmation, seeking authority to borrow funds to satisfy the balance of the judgment, and that hearing is set for February 27, 2008. Mr. Kirkpatrick stated an appeal has been filed with 9<sup>th</sup> Circuit Court but that a hearing date has not been set yet.

Mr. Kirkpatrick stated he wanted to address a couple of questions that were raised at the last meeting, including how much the City has paid attorneys in the last 9 months. Mr. Kirkpatrick stated the City has paid \$440,654.01 in attorney fees in the last 9 months. Regarding the total amount spent on legal fees for the entire case, Mr. Kirkpatrick stated the City has spent \$777,698.89 during the first "stage", from the time the suits were filed through the end of trial (December 2001 through May 2004). During the second "stage", from the time the original judgments were entered (May 2004 through January 2008) the City has spent \$871,510.31. Mr. Kirkpatrick stated the City has spent \$1,649,209.20 in legal fees since December 2001.

Mayor Kulesza stated if anyone has further questions, please come forward now.

Jean Odmark asked who would steer the City through a municipal bankruptcy. Kim Trout, City Attorney, replied that the City would propose a plan and that a bankruptcy judge would decide how the bankruptcy is structured and what steps would be approved to get the City out of the bankruptcy and proceed along a plan that would resolve the financial problem. Mr. Trout explained further that it would be a process in which the City proposes a plan, which the creditors would weigh in on, and then the judge would finalize the plan.

Ronda Sandmeyer stated she hopes that the new City Council and Mayor have learned to hold town meetings before the problem exists, and not after. Ms. Sandmeyer asked why the City does not sell some of its assets, such as the golf course and the low income homes, and asked if the City had considered selling any of these assets.

Mr. Kirkpatrick replied that the Council did consider the sale of surplus property; but that there is a state law that states the City cannot be forced to sell its assets. Ms. Sandmeyer stated that the City may not be forced to sell, but suggested that the City give the citizens a choice in whether or not to sell those assets.

Ron Blewitt, lead attorney for the Employees Insurance of Wausau, stated he took the depositions of City Council members last week and stated they are good people, but he feels they are making poor decisions. Mr. Blewitt stated Wausau filed the contempt motion because they felt they had information and evidence that the City was delaying and disrupting the judicial confirmation proceedings that would pay the judgment. Mr. Blewitt stated the City has made one settlement offer and that Wausau is still willing to sit down and negotiate with the City. Mr. Blewitt stated Wausau must be convinced that there is a genuine effort on behalf of the City to pay and satisfy the judgment.

Ballard Smith stated it is Council's job to get the most leverage to settle this judgment at the least cost to the City, and that is the only thing they should be worried about. Mr. Smith asked that if the City decides to file bankruptcy, is there a cost estimate for what the legal fees would amount to in order to get through the reorganization process, and what percentage of the judgment the City would have to pay under that reorganization, and does the interest on the judgment stop accruing as of the filing of the bankruptcy?

Mr. Kirkpatrick stated the total amount spent in legal fees would depend on the complexity of the issues, the number of creditors, and how the process proceeds. Mr. Kirkpatrick stated there would be a range of costs for each of the elements, adding that it is not inexpensive. Regarding the percentage of the judgment the City would have to pay, Mr. Kirkpatrick stated it would depend on the City's ability to collect funds under state law. Mr. Kirkpatrick stated interest does continue to accrue on the judgments. Mr. Kirkpatrick stated the interest rates vary from 1.83% to 3.38%.

Dean Martens stated that the City website indicates the legal fees could range from \$200,000 to \$750,000.

Ronda Sandmeyer asked if the City has asked local attorneys to accept this case pro bono. Mayor Kulesza stated no attorneys have been asked to take the case pro bono, adding that this is a very specialized area, and requires specialized attorneys.

John Sabala stated this situation has gone on too long and that the community deserves an effort on behalf of the City to get this resolved. Mr. Sabala asked if the City has delivered a letter to Judge Winmill to let him know the City intends to move forward and pay this judgment.

Mr. Kirkpatrick stated the federal court has been informed of the City's intent to pay the judgment, in the form of Resolution 07-9, which was passed in May 2007 and which clearly outlines the City's plan for paying the judgment, as well as by the affidavits presented in response to the petition for judicial confirmation that lays out the City's intent to pay the judgment.

Council Member Bailey suggested that the question of previous settlement offers be addressed. Kim Trout explained that when the original 9<sup>th</sup> Circuit appeal was filed, the City requested mediation on three separate occasions, with a retired federal judge acting as the mediator, but that those mediations did not occur because St. Claire choose not to participate. Mr. Trout stated that there were negotiation discussions with Mr. Blewett early on in the case, but that neither party could agree on a price.

Ronda Sandmeyer asked if the City has looked into a malpractice lawsuit against the former attorneys who provided the poor legal advice that has lead to the current situation. Mr. Trout stated that Allan Ellis, an attorney from Boise, has filed a malpractice against the attorneys who originally tried the case, and that that case is currently pending an appeal to the Idaho Supreme Court on the issue of a statute of limitations.

Phil Feinberg stated he would like to see the City and Mr. Blewett sit down and work on negotiations.

Mr. Blewitt stated he would be pleased to sit down with Mr. Trout and the City Council and hold discussions and would be willing to bring in a mediator.

Michael Kraemer stated City Council members are citizens and members of the community as well, and that they are interested in resolving this issue as well. Mr. Kraemer stated that is why they are going to court Wednesday to get judicial confirmation, and why Resolution 07-9 was passed. Mr. Kraemer stated this process takes time and they are moving one step closer to paying this judgment.

Shorty Clark stated there are several conditions that must be met in order to file for Chapter 9 bankruptcy, one being that the City must be insolvent and that the State must give the City permission to file for Chapter 9. Mr. Clark asked if those situations are in place. Mr. Kirkpatrick defined insolvent as 'not being able to pay your bills when they come due,' adding the City is clearly in that situation. Mr. Kirkpatrick stated one of the authorities cities have is that they are statutorily authorized to file for Chapter 9 bankruptcy.

Mr. Clark asked when the City could expect a ruling on Wednesday's judicial confirmation hearing. Mayor Kulesza stated Judge Neville could rule from the bench or take it under advisement and consider it as long as he feels is necessary.

Mayor Kulesza suggested moving into executive session in order to consider some of the options presented by Mr. Blewitt.

At 7:11 p.m. Council Member Scott moved to go into Executive Session for litigation pursuant to Idaho Code §67-2345(1)f to consider and advise its legal representatives in pending litigation or where there is a general public awareness of probable litigation. The motion was seconded by Council Member Kraemer. In a roll call vote, Council Member Scott, Council Member Kraemer, Mayor Kulesza, and Council Member Bailey voted aye and the motion carried. Council Member Briem deferred.

The Council discussed litigation pursuant to Idaho Code §67-2345(1)f.

**The meeting returned to regular session at 7:33 p.m.**

Mayor Kulesza reiterated that everyone wants to move beyond the J-Ditch issue. Mayor Kulesza added that Council is moving forward on the path first embarked on by the previous City Council. Mayor Kulesza stated that the City has been placed in untenable position by Wausau given the uncertainty and potentially grievous consequences of the scheduled March 6, 2008 hearing.

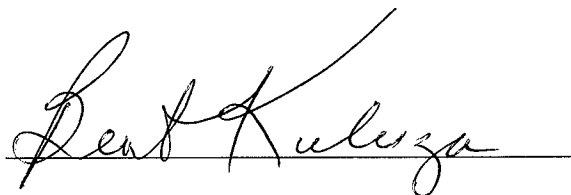
Mayor Kulesza stated the City has three options. The first option would be to proceed with the judicial confirmation process, and if it is successful, the City would sell the revenue bonds and pay the judgment. Mayor Kulesza stated that this option would not vacate the March 6, 2008 contempt order. Mayor Kulesza stated the second option would be to file for Chapter 9 bankruptcy, which would best protect the City's options and interests.

Mayor Kulesza stated there is a third option which would be to pass a resolution to file Chapter 9 as a precautionary measure and then contact Wausau and St. Claire and offer to withhold filing Chapter 9 if they would agree to dismiss the contempt motion with prejudice, and let the judicial confirmation process proceed and run its course to conclusion. There was general concurrence among the Council members with the third option.

**Council Member Kraemer moved to approve Resolution 08-4. Council Member Bailey seconded the motion and in a roll call vote, all members voted aye and the motion passed.**

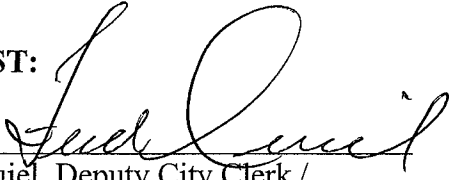
## **ADJOURNMENT**

Without further business, the meeting was adjourned at 7:43 p.m.



Bert Kulesza, Mayor

**ATTEST:**

A handwritten signature in cursive script, appearing to read "Fred Quiel", written over a horizontal line.

Fred Quiel, Deputy City Clerk /  
Administrative Services