

My name is Arvid Winkler. I reside at 12232 40th St SE, Valley City, ND 58072-9575 in Cuba Township of Barnes which is in District 24 under the current legislative districting plan.

I am educated at NDSU as a civil engineer. I am registered as a retired Professional Engineer in the State of Colorado.

I was the assessor for Cuba Township for 33 cycles beginning in 1977.

I extend my thanks for the organization of these four hearings on the same day regarding HB 1483, HB 1484, HB 1485, and HB 1303.

These bills have their origins with the recent design and construction of a new jail in Barnes County following a Griggs County Courthouse, and a Barnes County North School.

While in the employ of the Federal government, I spent some time working with their auditors during the construction of the Interstate Highway System.

I am in favor of these bills because they provide means to provide some clarifying legislation in NDCC, through the amendment process, which I feel is needed at this time.

Timeline of Events Barnes County Jail

Mar 2018 States Attorney Martinek to Commissioner Froelich

Vote not needed but then subject to protest petition within 60 days

Nov 2019 Contract for design etc

Jan 2020 Commissioner Froelich discusses ^{GT local Cenex} lack of need for vote but subject to protest

Feb 2020 Public meetings at Valley City Eagles

Revenue comments

Seems like construction superintendent already selected?

Feb 18 2020 Scott Wagner visits commission regarding financing

Mar 3 2020 Mike Manstrom visits commission regarding financing ^{undated five options list from somewhere}

Jun 30 2020 Bids opened

Jul 7 2020 Bid numbers analyzed in morning meeting

10 mills over 20 years not enough money

Call bondsman and adjourn about 11 am to reconvene at 3 pm

Jul 7 2020 Reconvene meeting at 3 pm

Suddenly the bond numbers work out

Move forward motion made by Chairman Carlblom

Construction contractors can mobilize

Jul 7 2020 Post meeting with review of large loose-leaf notebook

BC Auditor Beth Didier responds that financing is by lease revenue bonds

Bonds in Chapt 21 NDCC reveal need for initial resolution but where is it?

Revenue bonds in Chapt 40 also seem to need resolution

Jul 21 2020 Resolution passed on condition States Attorney approves

What becomes the resolution date regarding protest petition timeline?

Resolution quotes Chapt 11 NDCC

Requirements of Chapt 21 NDCC not met

Jul 29 2020 Steffes sale

Brock and Chad to visit lawyer regarding protest petition

Aug 4 2020 Updated resolution passed *2020-4*

Commissioner Schwehr does not know if update meets Chapt 21 requirements *21-03-09*
Scott by phone *begin preliminary proceedings (with construction in progress)*

Small difference in this resolution

Exact amount at later date?

Building authority corporation not part of this funding

Lease

Borrow over 30 year period

Ground release to site (which was done when?)

Lease purchase agreement

Annual rental equals princ + interest

Payment over 30 year period

Locked in at later date then amortization schedule

First 10 years can prepay

Approve update motion made by Chairman Carlblom

Protest petition is being circulated

Aug 4 2020 2:00 pm Bids opened in commission room with no commissioners present

No auditor of county staff present

No one seems to know where everyone is

Where were the commissioners and the auditor?

Sep 1 2020 BC Economic Development moves to transfer land to Barnes County

Sep 1 2020 Jim Stewart and Tonya Duffy make presentations with no NDCC citations
for jail already under construction

"The option you have chosen does not provide for a protest petition"

When was this option chosen? *question has been asked more than once*

Possibly between 11 am and 3 pm on Jul 7 2020

Who took the phone call from the bondsman? When and where?

incorporated herein by reference. The term "Contractor" as used in A201-2017, as amended, shall mean the Construction Manager.

§ 1.4 Project

Description

* The overall scope of this Project is Preconstruction and Construction Management services for a new 40-bed jail, Dispatch Center and possibly Sheriff's Office and Valley City Police Department. The new facility is expected to be located in the Greenline Deere Second Addition. The project includes demolition, precast concrete, concrete, masonry, structural steel, mechanical systems, electrical systems, detention equipment, interior fit-up, utilities and site work. The following construction budgets are included within this Agreement to be a referenced goal for the preconstruction phase and are not intended to represent the eventual GMP that will be part of this Agreement. Construction Manager understands the target project cost is desired by the Owner to be between \$10 - \$15 Million. It is understood that the project design began near August 2019 with construction commencing approximately May 2020. Completion is expected approximately August 2021.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. See Exhibit A, which is incorporated into this Agreement by reference for clarifications regarding the Construction Manager's services.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. See Exhibit A, incorporated into this Agreement by reference, for clarifications regarding the Construction Manager's services.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Owner's acceptance. The Construction Manager shall inform the Owner of the Architect's portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues. The Construction Manager shall not be responsible for the failure of the Architect to adhere to the Design Phase Milestone Schedule or Master Schedule or any acts or omissions of the Architect.

Scott Wegner ?

COUNTY FINANCING OPTIONS - CORRECTION CENTER

1. General Obligation Bonds

NDCC §21-03-06(1)(a)

Levy No. 1231

- requires 60% public vote
- unlimited excess mill levy
- 20 year maturity
- bond amount limited only by 5% of assessed valuation debt limit
- \$808,338,308 assessed valuation x 5% = \$40,416,915 debt limit (2018 figures)

2. Limited General Obligation Bonds

NDCC §21-03-07(6), §57-15-06.6

Levy No. 1208

- 10 mill capital projects levy (20 mills with vote)
- no vote, but subject to protest by owners of taxable property (5% of assessed valuation threshold to block the bond issue) *
- bond amount limited to amount that 10 mills can support
- 20 year maturity

3. Limited Tax Bonds

NDCC Chapter 57-47

Levy No. 1201

- borrow against general fund mills for primary governmental functions
- term is limited to 5 years
- County used this method for \$500,000 Bridge Bonds (Nov. 1, 2018)

bonded in debt cases

4. Sales Tax Bonds

NDCC Chapter 11-09.1

- need home rule charter / voter approval
- bond amount limited to level of sales tax collections
- no maturity limit

lease, purchase (29) correction center, wall

5. Lease Purchase

NDCC §11-11-14(20)

- acquire real & personal property by lease-purchase agreement
- ground lease and lease purchase agreement with Trustee (bank)
- bank sells certificates of participation in the lease purchase agreement
- annual rental payments budgeted by County Commission
- sources for payment – 10 mill capital projects levy & 60 mill general fund
- does not count against debt limit; bond amount limited by available mills
- 30 year maturity is an option (no set limit on maturity)

subsection must be published in the official newspaper of the park district, and any owner of taxable property within the park district may, within sixty days after publication, file with the clerk of the park district a protest against the adoption of the resolution. Protests must be in writing and must describe the property that is the subject of the protest. If the governing body finds the protests have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the park district, as last finally equalized, all further proceedings under the initial resolution are barred.

21-03-08. Maximum interest rate, maturity, and denominations.

No bonds issued under the provisions of this chapter may bear interest at a rate or rates and be sold privately at a price resulting in an average net interest cost higher than twelve percent per annum. There is no interest rate ceiling on those issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. No bonds issued under this chapter may run for a longer period than twenty years from their date. The bonds may not bear a date earlier than the date of the election authorizing their issuance, if such election is required, nor earlier than the date of the adoption of the resolution of the governing body determining to issue bonds for which no election is required.

21-03-09. Initial resolution - Form.

Proceedings for the issuance of bonds under the authority of this chapter must be instituted by the adoption of an initial resolution therefor. Such initial resolution must state:

1. The maximum amount of bonds proposed to be issued.
2. The purpose for which they are proposed to be issued.
3. The assessed valuation of all taxable property in the municipality as defined in section 21-03-01.
4. The total amount of bonded indebtedness of the municipality. *3 COUNTY*
5. The amount of outstanding bonds of the municipality issued for a similar purpose.
6. Any other statement of fact deemed advisable by the governing body or voters proposing the same.

21-03-10. Initial resolution - How adopted.

The initial resolution may be:

1. Adopted by a majority vote of the governing body at any regular meeting thereof or at any special meeting of which notice has been given as required by law, without any previous action thereon or request therefor by the qualified electors or property owners.
2. Proposed by filing a copy thereof in the office of the auditor or secretary of the municipality, together with a petition signed by qualified electors of the municipality aggregating in number one-fourth of the number of qualified electors of the municipality, as shown by the pollbook for the last preceding annual or general election held therein, or if such pollbook was not kept, then as shown by a census of the qualified electors of such municipality verified by the affidavit of one of such petitioners. Such petition must ask that an election on the question of issuing such bonds be called. Upon the filing of such proposed initial resolution and petition, the governing body shall call such election in the manner specified by section 21-03-11.

21-03-10.1. School districts - Use of bond funds.

1. The initial resolution or petition providing for the issuance of bonds, whether adopted by a majority vote of the school board of a school district or proposed by the qualified electors of the school district as provided for in section 21-03-10, may, within the discretion of those proposing such initial resolution or petition, provide for a specific school plan for which the proceeds of the bond issue must be exclusively used except as otherwise provided in section 21-03-42. Such plan must designate the general area to be served by expenditure of bond proceeds for school purposes. The area intended

8-4 ?
7-21

**RESOLUTION #2020-3 RELATING TO
LEASE-PURCHASE FINANCING OF COUNTY JAIL**

BE IT RESOLVED by the Board of County Commissioners of Barnes County, North Dakota (the "County"), as follows:

SECTION 1. AUTHORIZATION.

1.1. Authorization. The County is authorized by Section 11-11-14 of the North Dakota Century Code, to enter into a lease-purchase agreement for the purpose of financing the acquisition, construction, and equipping of a new County jail (the "Project"). It is hereby found, determined and declared to be necessary and desirable and in the best interest of the County to begin preliminary proceedings to finance the Project by entering into a lease-purchase agreement and to create certificates of participation (the "Certificates") therein.

(20)

colliers ?

1

1.2. Financing and Sale. The County hereby engages Dougherty & Company LLC as the underwriter with respect to the financing of the Project. The County hereby engages Arntson Stewart Wegner PC as bond counsel for the financing.

1.3. Financing Documents. The County authorizes Dougherty & Company LLC and Arntson Stewart Wegner PC to complete the proceedings necessary for the sale and issuance of the Certificates. The County Auditor is authorized and directed to review and approve on behalf of the County an official statement to be distributed to potential purchasers of the Certificates. Provided, the lease-purchase agreement and related documents, and the issuance of the Certificates, including terms of sale, are subject to approval by the Board of County Commissioners at a subsequent meeting.

3

SECTION 2. REIMBURSEMENT.

2.1. Recitals.

(a) The Internal Revenue Service has issued Section 1.150-2 of the Income Tax Regulations (the "Reimbursement Regulations") dealing with the issuance of bonds all or a portion of the proceeds of which are to be used to reimburse the County for expenditures made prior to the date of issuance of such bonds.

(b) The Reimbursement Regulations generally require that the County make a declaration of its official intent to reimburse itself for such prior expenditures out of the proceeds of a subsequently issued series of bonds within 60 days after payment of the expenditures, that the bonds be issued and the reimbursement allocation be made from the proceeds of such bonds within the reimbursement period (as defined in the Reimbursement Regulations), and that the expenditures reimbursed be capital expenditures or costs of issuance of the bonds.

IRS

(c) The County desires to comply with requirements of the Reimbursement Regulations with respect to the Project and the proceeds of the Certificates. IRS

2.2. Official Intent Declaration.

(a) The County proposes to undertake the Project and to make original expenditures with respect thereto prior to the issuance of the Certificates (reimbursement bonds within the meaning of the Reimbursement Regulations), and reasonably expects to issue the Certificates (reimbursement bonds) for the Project, in one or more series, in a maximum principal amount of \$16,560,000. X
15 \$35,000 on 9-29-20

(b) Other than (i) de minimis amounts permitted to be reimbursed pursuant to Section 1.150-2(f)(1) of the Reimbursement Regulations or (ii) expenditures constituting preliminary expenditures as defined in Section 1.150-2(f)(2) of the Reimbursement Regulations, the County will not seek reimbursement for any original expenditures with respect to the Project paid more than 60 days prior to the date of adoption of this resolution. All original expenditures for which reimbursement is sought will be capital expenditures or costs of issuance of the Certificates. IRS
X

2.3. Budgetary Matters. As of the date hereof, there are no County funds reserved, pledged, allocated on a long term basis or otherwise set aside (or reasonably expected to be reserved, pledged, allocated on a long term basis or otherwise set aside) to provide permanent financing for the original expenditures related to the Project, other than pursuant to the issuance of the Certificates (reimbursement bonds). Consequently, it is not expected that the issuance of the Certificates (reimbursement bonds) will result in the creation of any replacement proceeds. IRS
X

2.4. Reimbursement Allocations. The County shall be responsible for making the "reimbursement allocations" described in the Reimbursement Regulations, being generally the transfer of the appropriate amount of proceeds of the Certificates (reimbursement bonds) to reimburse the source of temporary financing used by the County to make payment of the original expenditures relating to the Project. Each reimbursement allocation shall be made within 30 days of the date of issuance of the Certificates (reimbursement bonds), shall be evidenced by an entry on the official books and records of the County maintained for the Certificates (reimbursement bonds) and shall specifically identify the original expenditures being reimbursed. IRS
X
(4)
(6)

(Remainder of page intentionally left blank.)

Subject: Jail Bond Resolution
From: "Arvid Winkler" <awinkler@bektel.com>
Date: 7/30/2020 9:42 PM
To: <bcarlblom@barnescounty.us>

Commissioner Carlblom,
I am troubled by the contents, or lack thereof, of the resolution considered at the Jul 21 meeting.

Who drafted the resolution?

The maximum amount of \$16,560,000 does not match the \$15,890,637 amount of the Jul 7 move forward motion.

"begin preliminary proceedings" means what?

The resolution cites Section 11-11-14, but does that really mean Chapter 11 of NDCC?

What about Chapter 21-03? Especially NDCC 21-03-09?

It would seem to me that the following areas would be pertinent:

- 21-03-02(4)
- 21-03-03
- 21-03-07(1)
- 21-03-07(6)
- 21-03-09
- 21-03-14
- 21-03-19
- 21-03-47
- 40-35-04

which chapter?

It appears that you are trying to proceed without an election.
Apparently some form of revenue bonds is the way to get around that.

Stacie tells me that assessed valuation numbers for the current assessment year will not be available until after the state equalization meeting. *last finally equalized*
That tells me that we will need to use the 2019 numbers in any current publication.

Please look at the percentage of the valuation that is ag land.
Is ag land really producing close to sixty percent of the jail inmates?

It appears to me that going beyond 20 years gets into uncharted territory which may be a good trigger for protest petitions. *30 years*

While in the employ of the federal government, I worked for a time with these federal auditors. The starting point was always the law and the specifications.
If it is in the NDCC, perhaps you should do it.

Have you received a Debt Service Schedule (Bond Finance Summary)?

On two different occasions Beth has gone to a loose leaf notebook to get information for me.

I have not e-mailed this group previously so I do not have the names in the e-mail address book.

If you choose, I would suggest forwarding this to Beth and the other commissioners.

I will get around to it eventually, but I currently do not want to risk having one incorrect address mess up the whole transmission.

I am a resident of District 2.

Thank you,

Arvid Winkler
12232 40th St SE
Valley City, ND 58072-9575
(701) 840-2251 cell

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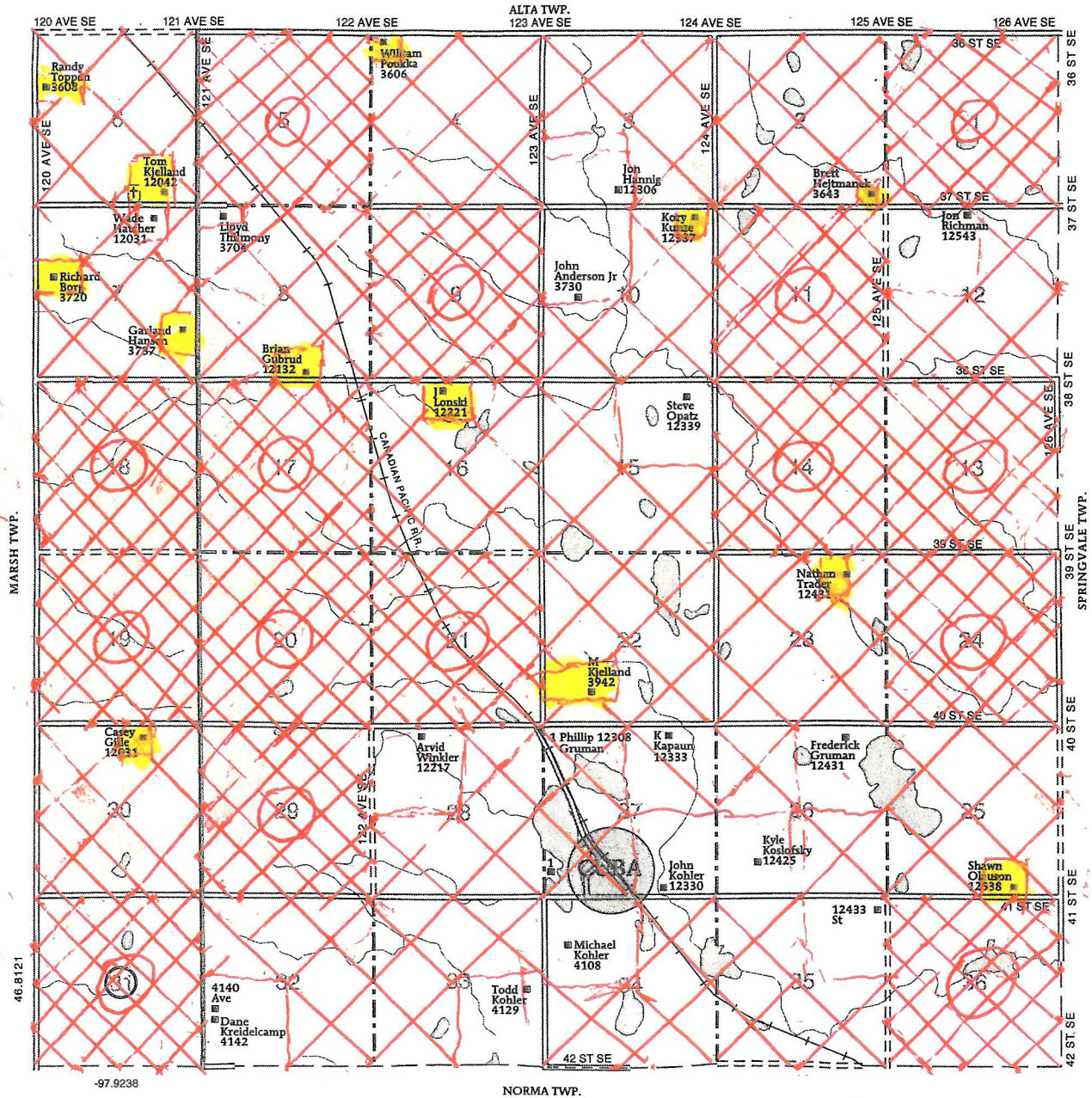
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