

MINUTES OF THE SPECIAL MEETING
OF THE
PUBLIC BUILDING COMMISSION OF McLEAN COUNTY, ILLINOIS

Thursday, July 30, 2015, 3:30 p.m. CDT

The Special Meeting of the Public Building Commission of McLean County, Illinois (the "Commission") was called to order by Chairman Novosad on July 30, 2015 at 3:30 p.m. in Room 404 of the Government Center, 115 East Washington Street, Bloomington, McLean County, Illinois. The Special Meeting was called by Chairman Novosad on July 23, 2015, by written notice to all members of the Commission, pursuant to Section III of the Commission's Bylaws.

Secretary Morel called the roll with the following members answering "present": Messrs. Novosad, Farnsworth, Morel, Zeunik, Funk, Harris, and Zimmerman. Messrs. Good and Schultz were absent.

Also present were Commission Attorney Robert Porter; Commission Treasurer James Mulligan; Ms. Hannah Eisner, Assistant McLean County Administrator; Mr. Jack Moody, McLean County Facilities Manager; Mr. Paul Brown, President, First Midstate, Inc.; and Mr. Kevin Wills, Vice President, First Midstate, Inc.

Edith Brady-Lunny of *The Pantagraph* was present. No other representatives of radio or press were present.

Chairman Novosad presented a Resolution approving an Amended and Restated Lease Agreement to be entered into between the Public Building Commission, as lessor, and McLean County and the City of Bloomington, as lessees.

Chairman Novosad then asked Mr. Porter to provide the Commission with an overview of the Resolution and the Amended and Restated Lease Agreement. Mr. Porter noted that the McLean County Board approved the Amended and Restated Lease Agreement at its July 23, 2015 special meeting and that the Bloomington City Council approved the Amended and Restated Lease Agreement at its July 27, 2015 regular meeting. Mr. Porter noted that the Resolution itself was prepared by Chapman and Cutler, LLP. and principally contained the recitals found within the Amended and Restated Lease Agreement and language found within a standard Commission bond resolution. Mr. Porter noted that the bond resolution language was

necessary as the Amended and Restated Lease is combining three separate rental payments – i.e., the payments resulting from the 2006, 2010, and 2013 bond issues – into a single rental payment and thus unified, re-published bond resolution language is necessary to govern the terms of the new rental payments.

Mr. Porter next noted that the form of the Amended and Restated Lease Agreement is virtually identical to the previous lease agreements that Chapman & Cutler, LLP. have drafted for the Commission and McLean County and the Commission, McLean County, and the City of Bloomington, respectively. Mr. Porter indicated that the Amended and Restated Lease Agreement provides for McLean County transferring legal title of the Fairview Campus Site, the Highway Department Office and Garages, the Animal Control Shelter, and the building located at 200 West Front Street, Bloomington to the Commission.

Mr. Porter nonetheless acknowledged that there were several critical distinctions between the Amended and Restated Lease Agreement and previous leases drafted by Chapman & Cutler, LLP. First, the Amended and Restated Lease Agreement indicates that the Commission is responsible for performing operation and maintenance functions on all of the County facilities. Mr. Porter stated that the parties to the Amended and Restated Lease Agreement would subsequently execute a Contract for Operation and Maintenance whereby the legal responsibility for performing operation and maintenance functions would revert to the County and the County and the City with respect to the Government Center and Abraham Lincoln Memorial Parking Deck. Mr. Porter relayed that the County would continue performing day-to-day operation and maintenance functions until such time as a Contract can be memorialized. He further noted that the Amended and Restated Lease Agreement vests operation and maintenance functions in the Commission by design in order to strengthen the position that all funds received by the Commission are being used to pay expenses associated with existing capital projects and to provide necessary services for said projects.

Second, the Amended and Restated Lease Agreement contains an indemnification clause that is far more comprehensive than the indemnification language featured in prior leases. Mr. Porter indicated that the indemnification language in the Amended and Restated Lease Agreement expressly applies to the Commission's officers, officials, agents, and employees and also requires the County and the County and the City, with respect to the Government Center and Abraham Lincoln Memorial Parking Deck, to indemnify the Commission regardless of whether the County and/or the City are named parties to a lawsuit filed against the Commission.

Third, unlike prior leases, the Amended and Restated Lease Agreement does not specifically identify the party responsible for carrying insurance on the facilities. Mr. Porter noted that the County currently carries general liability insurance, excess liability insurance, and property insurance on all of the facilities and that the Commission has been added as an

additional insured on the foregoing policies. Mr. Porter stated that he recently received certificates of insurance from County Risk Manager Jennifer Ho evidencing the abovementioned fact. Mr. Porter also indicated that he has had talks with the County Administrator's Office about ensuring that the operation and maintenance funds will allow for the Commission to acquire its own insurance on the facilities.

Fourth, unlike prior leases, the Amended and Restated Lease Agreement does not distinguish between bond levies and operation and maintenance levies. Rather, Mr. Porter noted that the County and the City will tender a single rental payment to the Commission and the Commission will thereafter be tasked with applying some of the funds towards payment on outstanding bond interest and principal and other funds towards the payment of operation and maintenance expenses. This arrangement is by design to bolster the position that all moneys received by the Commission are being applied towards servicing existing capital projects and would thus be exempted from the restrictions associated with a property tax cap.

Chairman Novosad then asked whether there were any questions regarding the Amended and Restated Lease Agreement.

Both Messrs. Funk and Farnsworth inquired as to the ability of the Commission to exercise discretion over the approval of a sub-lease between the County and a sub-lessor. Mr. Funk specifically expressed concern over maintaining the tax-free nature of any revenue bond issue and inquired as to Chestnut Health Systems, Inc.'s 501(c)(3) status.

Mr. Porter noted that Chestnut Health Systems, Inc. is a 501(c)(3). Mr. Porter further noted that the Amended and Restated Lease Agreement empowers the Commission to "approve" a sublease and only prohibits the Commission from "unreasonably" withholding said approval. Mr. Porter indicated that it was his opinion that there would be nothing unreasonable about the Commission withholding approval of a sub-lease that would end the tax-free nature of the outstanding revenue bonds.

Mr. Zeunik inquired as to whether Chestnut Health Systems, Inc. contracted for services with private physician groups and whether that might jeopardize the tax-free nature of a revenue bond issue.

Ms. Eisner indicated that Chestnut Health Systems, Inc. recently completed a 501(c)(3) questionnaire prepared by Chapman & Cutler, LLP. and had furnished the same to Chapman & Cutler, LLP. Ms. Eisner indicated that it was her belief that Chestnut Health Systems, Inc. contracted with private physician groups for services and would have an on-site pharmacy. However, she was not of the opinion that Chapman & Cutler, LLP. believed these practices to be problematic from a tax standpoint. Ms. Eisner inquired as to whether either Mr. Brown or Mr.

Wills had anything additional to add in response to Mr. Zeunik's question.

Mr. Brown noted that a bond issue could retain its tax-free status provided that private activity does not account for more than ten-percent of the total cost.

Mr. Zimmerman inquired into whether the Commission would henceforth be required to approve the County's sublease with the McLean County Historical Society and further inquired as to whether the sublease should be titled "sublease" as opposed to "lease."

Ms. Eisner indicated that the Commission would have to approve any future sublease between the County and the McLean County Historical Society. Ms. Eisner further indicated that any future sublease would be titled "sublease."

Chairman Novosad then asked whether there were any additional questions. Hearing none, Chairman Novosad asked for a Motion to adopt the Resolution approving an Amended and Restated Lease Agreement to be entered into between the Public Building Commission, as lessor, and McLean County and the City of Bloomington, as lessees. It was moved by Mr. Zimmerman and seconded by Mr. Harris that the Resolution be approved. Upon a roll call vote, all Commissioners voted in favor of the Motion.

Chairman Novosad next presented a Resolution authorizing the issuance of not to exceed \$100,000,000.00 Public Building Revenue Bonds for the purpose of acquiring, constructing, improving, altering, equipping, repairing, maintaining, operating and securing buildings, offices and parking facilities, providing for the sale of such bonds to First Midstate, Inc. and approving an amendment to the Amended and Restated Lease Agreement by and between the Public Building Commission and McLean County in connection with the sale of such bonds.

Chairman Novosad then asked Mr. Porter to provide the Commission with an overview of the Resolution. Mr. Porter indicated that the Resolution was in two parts. First, the Resolution authorizes the Chairman to execute a Bond Resolution within the parameters set forth on the County's notice of public hearings for the Lease, *BINA*, and *TEFRA* hearings, i.e. a revenue bond issue not to exceed \$100,000,000.00 and annual lease payments not to exceed \$14,000,000.00. Mr. Porter further noted that the Resolution indicated that the length of the bond must be less than forty years and at an interest rate of less than nine percent. Although the County has yet to determine the amount of the revenue bond issue, Mr. Porter indicated that the dollar amount and interest rate would be far less than the foregoing parameters. Mr. Porter also noted that the length of the issue would be for twenty years.

Second, the Resolution authorizes the Chairman to execute an Amendment to the Amended and Restated Lease. Mr. Porter stated that this Amendment would be to update the

County's schedule of rental payments to reflect a revenue bond issue.

Chairman Novosad then asked Messrs. Brown and Wills whether they could speak to the revenue bond issue process. Mr. Wills indicated that, as an initial matter, the County was still working on developing the dollar amount of the bond issue. However, he believed that bonds would be issued within the next month or two. Towards that end, Mr. Wills noted that Chapman & Cutler, LLP. was in the process of preparing a preliminary official statement and that said document should be ready by Monday. Once the final Official Statement has been prepared, Mr. Wills noted that it would go to Moody's Investors Services for a rating and then revenue bonds would be sold. Mr. Wills indicated that a closing would occur once the Chairman signs off on a bond notification and funds would subsequently be distributed to the Commission.

Chairman Novosad then asked whether any Commissioner had additional questions on the subject of the second Resolution. Mr. Zeunik inquired of Mr. Porter as to how annual operation and maintenance funds would be determined.

Mr. Porter noted that the County intended to keep a \$14,000,000.00 levy on the books once the Amendment to the Amended and Restated Lease Agreement is executed. Thereafter, each year, this levy would be abated down to an amount necessary to pay interest and principal on outstanding bonds and to pay operation and maintenance costs. Thus, operation and maintenance costs would be determined on an annual basis and would be determined by facility. Mr. Porter noted that he believed that the McLean County Nursing Home would continue to be funded by an enterprise fund and the Highway Department Office and Garages would continue to be funded by a special fund.

Mr. Moody indicated that it was his understanding that the McLean County Nursing Home would continue to be funded by an enterprise fund and that the Highway Department Office and Garages would continue to be funded by a special fund.

Chairman Novosad then asked whether there were any additional questions. Hearing none, Chairman Novosad asked for a Motion to adopt the Resolution authorizing the issuance of not to exceed \$100,000,000.00 Public Building Revenue Bonds for the purpose of acquiring, constructing, improving, altering, equipping, repairing, maintaining, operating and securing buildings, offices and parking facilities, providing for the sale of such bonds to First Midstate, Inc. and approving an amendment to the Amended and Restated Lease Agreement by and between the Public Building Commission and McLean County in connection with the sale of such bonds. It was moved by Mr. Funk and seconded by Mr. Farnsworth that the Resolution be approved. Upon a roll call vote, all Commissioners voted in favor of the Motion.

Chairman Novosad next presented a Resolution approving a Contract for Operation and

Maintenance to be entered into between the Public Building Commission, McLean County, and the City of Bloomington and asked Mr. Porter to give an overview of the Contract for Operation and Maintenance to the Commission.

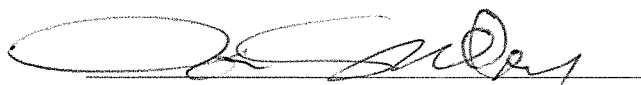
Mr. Porter noted that the Commission, County, and City were having ongoing conversations about the need to contract for operation and maintenance. Mr. Porter noted that the Contract for Operation and Maintenance that he drafted had been reviewed by Chapman & Cutler, LLP, and would serve as the model for an agreement entered into between the Commission, McLean County, and the City of Bloomington. However, the Contract could not yet be acted on as the final amount of operation and maintenance payments would hinge in part on the dollar amount of an eventual revenue bond issue. Mr. Porter noted that the Commission could either act on the Contract at its October meeting or vote to authorize the Chairman to execute a Contract for Operation and Maintenance within a certain dollar parameter.

Ms. Eisner noted that the existing operation and maintenance arrangements on all of the facilities would continue apace until such time as a Contract for Operation and Maintenance is executed by the parties. Ms. Eisner noted that operation and maintenance figures would be determined annually through an abatement process.

Chairman Novosad asked for a Motion authorizing the Chairman to execute a Contract for Operation and Maintenance provided that a single year's operation and maintenance payment did not exceed \$14,000,000.00. Mr. Zeunik moved and Mr. Funk seconded that the Motion be adopted. Upon a roll call vote, all of the Commissioners voted in favor of the Motion.

Chairman Novosad lastly asked for a Motion to adjourn. Mr. Harris moved, seconded by Mr. Farnsworth that the Commission adjourn. Chairman Novosad called for the vote on the Motion and the Motion carried unanimously by voice vote. The special meeting of the Commission was adjourned at 4:25 p.m.

APPROVED:



10-6-2015



JOHN L. MOREL,
Secretary, Public Building Commission
of McLean County, Illinois