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March 24, 2020

Via E-mail and U.S. Mail

Lincoln County Board of Commissioners
Attn: Marlene Sweeter, Auditor
Email: Auditor@lincolncountysd.org
104 N. Main Street Suite 110
Canton, SD 57013-1703

Re: Lincoln County Board of Commissioners' Resolution No. 2002-27

Dear Ms. Sweeter:

Our firm has been retained by David Tuntland to represent him in connection with a challenge to the passage on February 18, 2020 of Resolution No. 2002-27. That Resolution was passed improperly and accordingly should be rescinded.

The *Agenda* item for the February 18, 2020 Board of Commissioner's meeting stated: "Consider a *motion to bond* for a public safety center." On March 17, 2020, my client requested multiple records (Item 1 of his letter) of your office including any "draft resolutions" that were sent to the Commissioners with their Agenda prior to this meeting. You only provided the Agenda.

During the meeting Commissioner Schmidt asked, "And did we draft a resolution.." And after someone in attendance (likely the bond company's counsel) presented one, Chairman Poppen then asked if "Bill (Deputy State's Attorney William Golden) has seen that then." The very existence of this Resolution and the County's legal review of it was unknown to the Commissioners even while the Motion was being made.

Also during the meeting, Commissioner Arends stated,

"So you know today, I'm gonna be hard pressed to approve this today just given the fact that we received the information on Friday. What I'm going to want to see is public meetings so that voters can come to the table and be a part of the process. And that's going to include public meetings. I don't believe in the Nancy Pelosi method of you gotta pass something in order to know what's in it."

It is clear that no Resolution went out with the meeting regarding this Agenda item. Nor was it even incorporated into their Motion. As a result, the commissioners themselves were confused about what they were voting on.

At the February 18, 2020 meeting, an oral *motion* was made stating: “Mr. Chairman, I *Motion* that the Lincoln County Board of Commissioners offer *bonds for \$50,000,000* to build a new public safety facility.” There was some further discussion, including that the movant reiterated that the “*motion is to do a \$50 million dollar on a level debt. Not a wrap.*” There was further discussion that the “Motion [was] for a *\$50 million bond level funding*” under *SDCL 7-25-19 & 20*.

As stated above, the terms of this *Resolution* were not provided to the County Board in writing prior to the vote, nor were they set forth in the notice prior to the February 18, 2020 meeting, or in the Agenda. Further, the meeting transcript reveals that there was confusion among the County Board of Commissioners as to what they were voting on.

The Approved *Resolution 2002-27*, which was published after the meeting read:

“*Resolution relating to lease-purchase of new County Lincoln County Public Safety Center: Authorizing the execution and delivery of a ground lease agreement, a lease-purchase agreement, trust agreement, and approving and authorizing execution of related documents and levy of taxes for the payment thereof.*”

Thus, the Agenda providing notice to the Board Members and the community at large, and the eventual Resolution were vastly different. So different that the Agenda did not provide legal notice under South Dakota law and must be rescinded. The differences include that the Agenda item mentions “bond,” which turned into lease-purchase in the Resolution. The Agenda says the Board of Commissioners will “Consider” a motion, but the Board actually voted on it. The Agenda does not state that it is a \$50 million item. The Motion was specifically under *SDCL 7-25-19 & 20*, which relate to “Sale and lease-back arrangements,” not a bond which was identified in the Agenda. In total the Agenda failed to give the County citizen/taxpayers notice that an important subject was going to be addressed at the meeting, and which could result in those citizen/taxpayers having to pay \$50,000,000.00 without their input at this meeting. It even appears that this failure may have been intentional.

Accordingly, my client, one of the taxpayers in Lincoln County, is demanding that this Resolution be rescinded and proper notice given so that the taxpayers can properly be notified, and participate in the discussion of this important matter.

South Dakota law requires governmental entities to scrupulously comply with statutory notice provisions, under among other provisions, South Dakota’s Open Meetings Laws. Notice requirements for public financed measures must be strictly complied with due to strong due process interests. Proper notice has been held by the South Dakota Supreme Court to fulfill due

process by “affording the affected landowners with the opportunity to formally voice their concerns and present evidence in opposition to opposed measures, and provide an avenue for expression of public opinions.” *Abata v. Pennington County Bd. Of Commissioners*, 931 N.W.2d 714 (S.D. 2019).

South Dakota law also permits governmental entities such as County Boards of Commissioners to rescind resolutions in such cases, and even demands that they be rescinded so that proper, legal notice can occur. Governmental entities “possess the unquestioned power to rescind prior acts ...”. *4 McQuillin Mun. Corp.*, Sec. 13:75 (3rd Ed.).

In *High Plains Resources, LLC v. Fall River County Bd. Of Com’rs*, 873 N.W.2d 51 (S.D. 2015) the County Board of Commissioners passed a resolution, but then had concerns regarding adequate public notice prior to the adoption of the resolution. Due to their concerns about proper notice which the proponents of the resolution created, the Board properly rescinded their resolution. *High Plains*, 873 N.W.2d at 53.

In summary, Mr. Tuntland, and many other landowners, assert that the notice prior to the meeting and at the meeting was insufficient under South Dakota law. The only proper course of action is for the County Board of Commissioners to rescind the Resolution and to give the citizens of Lincoln County proper notice and an opportunity to consider an adequately noticed resolution relating to this very large expenditure for the public safety center. Please advise us within three days as to your proposed course of action. Thank you.

Sincerely,

MOHRMAN, KAARDAL & ERICKSON, P.A.

By: _____
Vincent J. Fahnlander

CC: David Tuntland