**City of LeRoy MN – Council Meeting Minutes, October 30, 2020**

A special joint meeting of the LeRoy City Council and LeRoy Economic Development Authority was called to order by Mayor Brian Thiel on Friday, October 30, 2020, at 4:00 PM at the LeRoy Community Center with the following members present: Mayor Brian Thiel, Council Members Ashley Huntley, Jan Whisler, Harold Shipman, and City Clerk Patty White. Council Member Daisie Fox was absent. EDA President Sara Gerk called the EDA to order with the following members present: Sara Gerk, Josh Diemer, Jody Morrow, and Axel Gumbel. It was noted that Mayor Thiel and Council Member Whisler are council representatives on the LeRoy EDA.
Also attending: Deputy Cody McCormick, Shelley King (legal counsel for the City-by telephone), Tim Miller, Gene Miller, Chris Hahn, Lynn Miller, Ron Osland, Randy McCloud, Teena Woltmann, Rebecca Charles (CEDA), Dan Evans, Gerald Payne, Lynette Oehlke, Audrey McCarthy, and Kari Mensink.

Thiel read the due call for this special joint meeting, “The purpose of this joint special meeting is to review unpaid payroll taxes at Wildwood Grove and assessments by the Internal Revenue Service and to take action as necessary,” and opened the meeting at 4:00 PM. All present stood and recited the Pledge of Allegiance.

Lynn Miller of LWJM Professional Tax Services, the bookkeeper for Wildwood Grove (WWG) reported the following information:

* A letter was received at WWG from the Internal Revenue Service noting deficiencies in the payment of 941 taxes and the 2019 940 Form. These reports were not part of the information Ms. Miller received from the previous bookkeeper for WWG. She recreated these reports with the information she had. It was noted that Ms. Miller has been named as the EDA’s representative to discuss these issues with the IRS.
* Ms. Miller reported documents for 2019 and for the first two quarters of 2020 were not filed. Ms. Miller handed out a spreadsheet showing IRS withholding and Minnesota Revenue withholding. The sources of these numbers are from reports from QuickBooks. She noted she did receive the 941s from the previous bookkeeper after she had reconstructed these forms. The late payment penalties listed on this sheet in the amount of $64,293.02 are estimates from the IRS; these penalties were figured by the IRS agent. The interest charged on these late payments is in the amount of $10,743.09. The unpaid withholding tax is in the amount of $134,319.00. The grand total that is owed to the IRS is $209,355.11. This amount includes the tax, the penalties, and the interest. The payroll processing for WWG was done by Craig Jacobson in 2018, 2019, and through the July 23, 2020, payroll. LWJM Professional Tax Services took over the payroll processing prior to the August 6, 2020, payroll.
* Ms. Miller noted the federal tax deposits need to be made by the Wednesday following a Friday payroll date to not incur penalties.
* Ms. Miller reported that all taxes have been submitted to Minnesota Revenue; some of these were submitted late. Penalties and interest were charged on these late filings. Ms. Miller did try to get the penalties and interest abated, but Minnesota Revenue denied that. A total of $10,363.63 in penalties and interest was paid to the State of Minnesota.
* Thiel questioned Ms. Miller when she became aware of these taxes not being paid. White reported she had received a telephone call from Minnesota Revenue letting the EDA know that payroll taxes had not been submitted. Ms. Miller received transcripts from the IRS in August that the federal tax deposits had not been made. Ms. Miller reported her involvement with the WWG bookkeeping began in late July, 2020.
* Ms. Miller noted she did receive some documents from the previous bookkeeper in Excel format on July 24, 2020; these documents were direct exports from QuickBooks. Ms. Miller reported she did receive an accountant’s copy of the QuickBooks backup until after she had already set up a new system.
* Thiel noted that a joint meeting of the LeRoy City Council and LeRoy EDA was held on July 20, 2020; at the end of that meeting the president of the EDA, Craig Jacobson, submitted his written resignation from the EDA effective July 23, 2020.
* Whisler questioned if the W-2’s that employees received showed that withholdings were taken out. Ms. Miller reported that the W-2’s showed the correct withholdings. She also reported that employees are not penalized for the employer not submitting withhold taxes.
* Ms. Miller recommended the best course of action to be taken is to pay the tax and interest immediately before requesting any abatement of the penalties.
* Ms. Miller drew attention to the conflict of interest that was noted in the 2019 audit report with the president of the EDA also being the bookkeeper at WWG.
* Thiel questioned to Shelley King, legal counsel for the City of LeRoy (by telephone), if the appropriate action for the city is to pay the tax and interest at this time. Ms. King concurred that is the best course of action.
* Gerald Payne posed the question if all these funds were withheld from payroll, where are these funds now. Thiel reported, and Gerk concurred, that these issues were never brought to the EDA’s attention.
* Ms. Miller noted that we are all human; errors can and do happen. She reported she carries errors and omissions insurance to cover when mistakes are made. Thiel noted that with the failure of the filing and paying of these taxes, what is the city’s recourse now? Ms. King noted the city has been exposed to a significant amount of additional cost. Her advice to the city council was to contact the Mower County Sheriff’s Department, and lay out the facts to them. Huntley questioned if it would be appropriate to contact Mr. Jacobson to see if he carries errors and omissions insurance. Ms. King noted she does not think it is appropriate to contact Mr. Jacobson about any of this. Shipman questioned if a restraining order should be put in place to keep Mr. Jacobson out of City Hall.

This joint meeting moved to closed session at 4:33 PM for attorney/client privilege.

This joint meeting moved to open session at 4:41 PM.

* Ms. Miller noted the primary concern at this time is to move forward in the most proficient manner. She noted another option could be to try an installment agreement with the IRS; this option would require much further research from the IRS.
* Whisler read a prepared statement. Thiel ruled this statement out of order and to not be made a part of the official record.
* Thiel noted that first and foremost is to pay these past due taxes and interest. Huntley noted she was very shocked that the city auditors did not find this information during their audit work.
* Ms. Miller noted she is an enrolled agent; she can discuss issues with the State of Minnesota and the IRS. She cannot do audits since she is not a CPA. She also cannot attest to what the current city auditor did in their research for the audit.
* Thiel noted the lack of seeing a balance sheet for WWG was also an issue. The balance sheet should have shown the lack of these payments being made. Ms. Miller noted the profit/loss statement shows the employee part of these withholdings; the balance sheet shows the assets and liabilities. The balance sheet should have shown the employer withholding.
* Gumbel questioned if the council and EDA have offered Mr. Jacobson the chances for him to share his side of this. Gerk noted she has had many encounters with the previous bookkeeper requesting information; he always seemed to provide excuses. Thiel and Ms. Miller went to his office to get the backup information from QuickBooks; they were not informed of any issues at that time. Gumbel questioned if Mr. Jacobson could claim that someone else was supposed to file these reports. Ms. Miller noted it was his responsibility as the bookkeeper of WWG to file these reports.

This joint meeting moved to closed session at 4:57 PM for attorney/client privilege.

This joint meeting moved to open session at 5:07 PM.

* For the LeRoy EDA, a motion was made by Morrow to fulfill the LeRoy EDA’s legal obligation and report this to the Mower County Sheriff. Second by Diemer. On a roll call of votes, all EDA members voted aye. The motion carried 6-0.
* For the LeRoy City Council, a motion was made by Shipman to fulfill the city’s legal obligation and report this to the Mower County Sheriff. Second by Huntley. On a roll call of votes, all LeRoy City Council members voted aye. The motion carried 4-0.

Being no further business to come before the LeRoy EDA, the meeting was adjourned on a motion by Diemer, second by Morrow at 5:10 PM.

Being no further business to come before the LeRoy City Council, the meeting was adjourned on a motion by Huntley, second by Whisler at 5:10 PM.

For the LeRoy City Council:

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 Brian Thiel, Mayor

Attest:

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 Patty A. White, City Clerk-Treasurer

For the LeRoy Economic Development Authority:

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 Sara Gerk, President

Attest:

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 Patty A. White, City Clerk-Treasurer