

City Council Agenda Memo

From: Mike Struck, Community Development Director

Council Meeting: April 28, 2020

Subject: Cropland Lease

Person(s) Responsible: Mike Struck, Community Development Director

Summary:

This resolution will approve the crop lease in the Wiese and Freeland Additions to Daniel P. Bauer.

Background:

The City awarded the crop land bid to Daniel P. Bauer, Bauer Farms, on April 8, 2020 to lease 10 acres of crop land in the Freeland Addition and 30 acres of crop land in the Wiese Addition at \$170.00 per acre. The lease will be a one-year lease for 2020. The lease provides for extra income for the City as well as provides for weed control until such time as the land is sold for industrial purposes. A public hearing is required per SDCL 9-12-5.2 to lease to a private person:

9-12-5.2. Powers - Lease to private person - Resolution - Notice - Hearing - Authorization.

If the governing body decides to lease any municipally owned property to any private person for a term exceeding one hundred twenty days and for an amount exceeding five hundred dollars annual value it shall adopt a resolution of intent to enter into such lease and fix a time and place for public hearing on the adoption of the resolution. Notice of the hearing shall be published in the official newspaper once, at least ten days prior to the hearing. Following the hearing the governing body may proceed to authorize the lease upon the terms and conditions it determines.

The Notice of Public Hearing was advertised as required. This resolution will allow the City to enter into a lease agreement with Daniel P. Bauer for a one-year lease for 40 acres in the Wiese and Freeland Additions.

Discussion:

The City leases industrial land on a yearly basis to generate additional revenue off the land until such time as private development is interested. In addition, the leasing of the industrial land reduces the City's maintenance responsibilities for such issues as weed control.

The bidder contacted the City on April 20th and requested to rescind his bid due to the current economic conditions associated with the Coronavirus. The Notice to Bidders contained the following language:

“Bids may not be withdrawn within thirty (30) days after the actual opening thereof. The City of Brookings reserves the right to waive irregularities and to reject any and all bids.”

Mr. Bauer was the only bidder on the cropland lease bid. The City has an interest in leasing the cropland as the property has been previously tilled for crop production. If the property is not leased, the City will incur additional maintenance costs associated with week control. Staff discussed the issue with legal counsel and conversed with Mr. Bauer and he would agree to a lease rate of \$120 per acre, which is \$50 less per acre than the original bid.

Legal Consideration:

City Attorney Steve Britzman provided the following opinion on the issue:

The City, having received a request to rescind the only bid submitted, is faced with the possibility of having a bidder not sign the lease agreement. Attempting to locate another bidder at this point will be difficult since the parcels are quite small—10 acres of crop land in the Freeland Addition and 30 acres of crop land in the Wiese Addition. The City is therefore effectively left without a responsive bidder/tenant, and is therefore authorized to limit this lease to the 2020 growing season and negotiate with the low bidder for a crop lease which will allow the city to have a 2020 tenant. While there will be a reduction of income pursuing a negotiated lease at this point, the benefits of modifying the lease outweighs the time and expense which would be incurred to enforce the original bid. While we have not determined whether the withering farm economy provides a legal justification for a bidder to rescind, taking this action is permitted under the law (since the lease was submitted to public bidding) and is the best solution in this circumstance.

Financial Consideration:

The City will receive \$4,800.00 in revenue for 2020 at \$120 per acre.

Options:

The City Council has the following options:

1. Approve the resolution as presented.
2. Approve the resolution with modifications.
3. Reject the resolution.
4. Do nothing.

Recommendation:

Staff recommends approving the resolution of intent to lease to a private individual.

Action Requested:

Approval of resolution of intent to lease to a private individual.

Supporting Documentation:

1. Resolution
2. Notice
3. Freeland Addition Map
4. Wiese Addition Map