

2 The Lindon City Council held a Special Meeting on **Thursday, December 18, 2008**,
beginning at 7:00 p.m. in the Lindon City Center, City Council Chambers, 100 North
State Street, Lindon, Utah.

4 Conducting: James A. Dain, Mayor
6 Pledge of Allegiance: Bruce Carpenter
Invocation: James Dain

8 **PRESENT**

ABSENT

10 James A. Dain, Mayor
12 Eric Anthony, Councilmember
H. Toby Bath, Councilmember
14 Lindsey Bayless, Councilmember
Bruce Carpenter, Councilmember
16 Jerald I. Hatch, Councilmember
Ott H. Dameron, City Administrator
18 Cody Cullimore, Chief of Police
Debra Cullimore, City Recorder

20 The meeting was called to order at 7:15 p.m.

22 **MINUTES** –

24 No minutes were reviewed at this meeting.

26 **OPEN SESSION** –

28 Mayor Dain called for comments from any resident present who wished to
30 address an issue not listed as an agenda item. There was no public comment.

32 **MAYOR'S COMMENTS/REPORT** –

34 Mayor Dain gave no report at this meeting.

36 **CONSENT AGENDA** –

38 No items.

40 **CURRENT BUSINESS** –

- 42 1. **Public Hearing** – *Final Industrial Development Bond Resolution – West Ridge*
44 *Investments, LLC (Interstate Gratings Project)*. The City Council will hear public
comment and consider for adoption, a resolution providing for the financing by
Lindon City, Utah (The “Issuer”), of the acquisition and construction of certain
46 facilities and equipment to be located in Lindon City, Utah, that West Ridge

2 Investments, LLC (The “Borrower”) may be provided with facilities to promote
the general health and welfare within the State of Utah, authorizing and providing
4 for the issuance by the “Issuer” of its Industrial Development Revenue Bonds
(Interstate Gratings Project) Series 2008, not to exceed \$3,500,000, which will be
6 payable solely from the revenues arising from the pledge of a loan agreement
between the “Issuer,” the “Borrower” and Wells Fargo Bank, N.A. (The
“Lender”), and related documents; ratifying the publication of a notice of bonds to
8 be issued and a notice of public hearing; ratifying the running of a contest period;
and related matters.

10

12 Mike Clark was present as the representative for this application. Mayor Dain
asked each of the Council members to state for the record whether they had any conflict
14 of interest related to this matter, or any involvement with the applicant or the Interstate
Gratings Project. Each of the Council members answered individually that they had no
involvement with Mr. Clark or Interstate Gratings, and that there was no conflict of
16 interest.

18 Mr. Dameron explained that Mr. Clark submitted a complete application for this
Industrial Development Bond in late June of 2008. The City Council approved the
Inducement Resolution for the bond on July 15, 2008, which allowed Mr. Clark to
20 proceed with pursuing funding for the bond. At the time the Inducement Resolution was
approved, GE Capital was the prospective lender. Since that time, GE Capital has
22 withdrawn from the transaction, and the bond will be purchased by Wells Fargo. Mr.
Dameron noted that the City’s financial advisor, Jason Burningham, has reviewed all of
24 the bond documents, which were prepared by bond counsel Ballard Spahr. Mr.
Burningham made recommendations for several language changes which provide further
26 financial protection for the City. Mr. Dameron noted that Tooele City is currently
involved in litigation resulting from a similar bonding process.

28 At this time, Mayor Dain called for a motion to open the Public Hearing portion
of the meeting.

30

32 COUNCILMEMBER BATH MOVED TO OPEN THE PUBLIC HEARING TO
CONSIDER THE FINAL BOND RESOLUTION FOR THE INTERSTATE GRATINGS
PROJECT. COUNCILMEMBER BAYLESS SECONDED THE MOTION. ALL
34 PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

36 Mayor Dain asked Mr. Burningham to clarify what financial risk this transaction
would represent for the City. Mr. Burningham stated that this bond represents very little
38 if any financial risk to the City. He explained that in the Tooele situation, several
companies approached the City requesting Industrial Development Bonds. The City had
40 not yet established a clear application process at the time the applications were accepted.
Tooele has now created an appropriate application process which should help the City
42 avoid similar problems in the future.

44 Mr. Burningham stated that language has been added to the Resolution which
clarifies that the City relies on the representations of the borrower regarding expenditure
of bond proceeds, and that the City has no way to verify how or when funds are spent. In
46 the Tooele situation, the borrower who is currently suing the City has made the claim that

2 the City did not make it clear that the bond proceeds had to be used for a specific
purpose. This bond resolution specifies what proceeds will be used for, as well as time
frames for expenditure.

4 Mr. Burningham went on to explain that payments made by the borrower will go
directly to Wells Fargo, and will not flow through the City. He noted that Industrial
6 Development Bond transactions are done quite frequently in a number of communities.
He explained that the purpose of Industrial Development Bonds is to stimulate economic
8 development in communities, and create new employment opportunities. Mr.
Burningham stated that it appears that the applicant has met the conditions necessary to
10 qualify for this bonding process.

12 Mayor Dain asked if there would be any negative impact to the City's bond rating
if this bond is issued and fails. Mr. Burningham stated that in this case, the borrower is a
sophisticated purchaser, and that the bond is being purchased for their own use and will
14 not be resold. Mr. Burningham stated that in his opinion, there is little or no credit risk or
exposure to the City.

16 Mayor Dain inquired as to the difference in the interest rate for a tax exempt bond
as opposed to a non tax exempt bond. Mr. Burningham, as well as Dave Ockerlund of
18 Wells Fargo Bank, indicated that without this bonding process, the borrower could expect
to pay an interest rate of approximately 7% as opposed to this bond with a 4.4% interest
20 rate. The interest savings provides additional capital which can then be used to expand
the business and create additional jobs and economic growth.

22 Councilmember Anthony asked what the motivation of Wells Fargo Bank might
be in purchasing this bond at the lower interest rate. Mr. Ockerlund indicated that as the
24 purchaser, Wells Fargo feels comfortable with their projected return on this bond.
Jeannie Walker of Wells Fargo indicated that a future banking relationship with the
26 company was a consideration in the decision to purchase the bond.

28 Mayor Dain invited City Attorney, Brian Haws, to address the Council. Mr.
Haws stated that the Industrial Facilities and Development Act requires that the City
Council consider whether the business plan is well conceived and has a likelihood of
30 success, and that there is a likelihood that the bond proceeds will encourage economic
development within the City. He noted that the City Council has broad discretion in
32 approving the bond if they find a reasonable probability of success associated with the
business.

34 Councilmember Carpenter noted that issues of fairness has been raised by a
competitor, alleging that if the same opportunity is not offered to competitors the bond
36 may create an unfair advantage. He asked Mr. Haws if this bonding process could be
considered an incentive much the same as other incentives which are used by other
38 communities which may not meet the requirements of the law. Mr. Haws stated that the
State legislature has determined that cities have a right to attract businesses to the
40 community. He noted that the application opportunity must be applied equally to
businesses throughout the community, but that the City has no obligation to consider
42 competitors outside the City.

44 Mayor Dain invited Blaine Carlton of Ballard Spahr, bond counsel for this
transaction to address the Council. Mr. Carlton explained that this bonding process
allows the borrower to receive bonds with a tax exempt status. He stated that the sole
46 source of repayment is clearly specified as the borrower, Interstate Gratings in this

particular case, and that there is no financial obligation or exposure on the part of the City.

Mayor Dain called for public comment. Craig Kleinman of Dorsey and Whitney introduced himself to the Council. Mr. Kleinman stated that he represents AMICO, a competitor of Interstate Gratings with a local facility in Orem. Councilmember Carpenter noted that Mr. Kleinman submitted a variety of documents for review by the Council, including a court case brought by AMICO against Mr. Clark. Mr. Kleinman verified that court action is pending. He stated that AMICO is in the same business as the applicant, with a bar grating manufacturing facility located in Orem. He explained that AMICO purchased Klemp in 1999. He stated that the company pays \$1.5 million a year in wages in the area, and that the company has invested a substantial amount of money in the business recently. Mr. Kleinman asserted that this application does not fit within the established purpose of the Industrial Development Code to stimulate economic growth. According to Mr. Kleinman, approval of this bond would produce an opposite reaction due to the limited market for the product which will not support both businesses. Mr. Kleinman felt that workers may be taken away from the established business in Orem and relocated to the facility in Lindon, but that actual new jobs created would be very limited. Mr. Kleinman stated that either AMICO will stay in business and Interstate Gratings will fail, or the opposite will occur. He asserted that ultimately one facility will succeed and one will fail. He noted that a decline in this market is forecast due to the current economic downturn.

Councilmember Carpenter inquired as to what proportion of AMICO's business is in Utah County. Mr. Kleinman and representatives of AMICO (Klemp) indicated that very little of the business is generated in Utah County, and that 10-15% of their business is generated within the State of Utah. Councilmember Carpenter observed that the company provides product to a national and international market, and that the specific location of this facility in a neighboring community should have relatively little impact on the competition it creates. He noted that the same arguments regarding competition could be made if the facility were locating in Florida or Colorado, with the same impact to the market. Councilmember Anthony observed that if the facility were located in another state, the businesses would not compete for employees, but competition for the end user would be the same. Councilmember Carpenter noted that Mr. Kleinman's argument is that sales would drive one business or the other to fail, but that sales are not primarily generated in the local community.

Mr. Kleinman stated that some regional sales may be affected by this specific location. He stated that the City using its good name to provide tax exempt bonding for the Interstate Gratings is creating an unfair advantage. He stated that AMICO does not have access to the same tax exempt bonding, and that this advantage would be a detriment to AMICO. He encouraged the Council to vote against the bond.

Councilmember Anthony asked Mr. Kleinman if it was his understanding that this bonding process is legal. Mr. Kleinman confirmed that approving the Final Bond Resolution would be a legal action. Councilmember Bayless asked Mr. Kleinman if AMICO had approached Orem City to apply for an Industrial Development Bond. Mr. Kleinman stated that his client has not approached Orem City at this time.

Joel Maxwell, Vice President of Human Resources, Mike Griffin, Plant Manager, and Dean Baraneck, Director of Inside Sales for AMICO introduced themselves to the

2 Council. Mr. Maxwell stated that he has worked for AMICO for 28 years. He asserted
4 that representations made by Mr. Clark regarding job and revenue creation are overstated
6 based on the market for the product, and there is not enough potential business in the
8 Western United States and Canada to support both businesses. He felt that Interstate
Gratings would take business and employees away from Klemp, and that while there may
be some benefit to Lindon, the result would be detrimental to the surrounding area. He
asserted that the tax exempt bonding process creates an unfair advantage for Interstate
Gratings.

10 Mr. Beranek approached the Council. He stated that he is a Lindon resident. He
12 noted that Mr. Clark had estimated annual sales of \$50 million within ten years. Mr.
14 Beranek stated that the highest sales year for Klemp to date is approximately \$38 million,
16 and that with additional competition that figure would likely be reduced as sales volumes
18 are shared among competitors. Councilmember Anthony asked Mr. Beranek to estimate
20 total annual sales figures in the western United States and Canada. Mr. Beranek
estimated a total annual market of \$80 to \$100 million. Councilmember Anthony asked
Mr. Beranek to estimate the market share held by the top three competitors in the western
United States. Mr. Beranek estimated that the top three companies hold approximately
60% of the market share. He clarified that those numbers are only estimates. Mayor
Dain observed that sales revenues in this industry have increased over a period of years,
and will likely continue to increase as the industry experiences growth.

22 Councilmember Carpenter asked Mr. Baranek if there are any foreign suppliers
24 of the product. Mr. Baranek stated that some product is exported from China.
26 Councilmember Carpenter asked how China is able to compete given the cost of
28 shipping. Mr. Baranek observed that labor costs are lower in China. Councilmember
Carpenter noted that the steel industry experienced similar challenges several years ago.
He noted that modernization of the Japanese steel industry and the failure of steel mills in
the United States to modernize lead to eventual collapse of the steel industry in the
United States.

30 Councilmember Carpenter noted that the Council has been presented with a large
32 volume of information and data that they do not have the expertise to interpret. He
34 observed that it appears AMICO has an expectation that the Council will assimilate the
36 information presented and make a decision that is based on international issues rather
than local issues. Mr. Baranek stated that as a Lindon tax payer, he would prefer to see
tax dollars go to a better use. Councilmember Anthony clarified that the funding for this
bond is not tax payer supported, but is a private loan agreement between the applicant
and Wells Fargo. He explained that the only advantage to this bonding procedure is that
the bonds are issued tax free.

38 Mr. Griffin reiterated the concerns expressed by Mr. Baranek and Mr. Maxwell
40 that expansion of Interstate Gratings could harm the job market in this industry, taking
42 employees from one facility and relocating them to another without creating additional
44 jobs. He also asserted that the market in the western United States and Canada currently
produces approximately \$30 to \$38 million in annual sales, and that the \$50 million
figure estimated by Mr. Clark is unrealistic. Mr. Griffin stated that Mr. Clark has also
indicated that the industry is currently at capacity. He stated that Klemp has invested a
million dollars in the last year to expand their facility and create additional capacity. He

2 asserted that the two points which should be considered are available market revenue and
capacity of the facilities in relation to market demand.

4 Councilmember Carpenter asked Mr. Griffin if Klemp would remain financially
viable if Interstate Gratings captured all of the future growth market. Mr. Griffin stated
that Klemp would like to serve the growth market using their expanded capacity.

6 Councilmember Carpenter asked if it would be acceptable to Klemp if Interstate took
business only from other competitors and did not impact Klemp's revenues. Mr. Griffin
8 stated that capturing business from competitors is a function of a free market.

Councilmember Carpenter agreed with the point made by Mr. Griffin.

10 Mike Clark approached the Council. He expressed appreciation to the Council for
taking the time to review the information necessary to make an informed decision. Mr.
12 Clark stated that he worked at Klemp for 27 years and played an instrumental role in
building the facility Mr. Griffin talked about. Mr. Clark observed that the main argument
14 presented by Klemp personnel and their legal counsel is that the bond creates an unfair
advantage. He explained that in the 1980's, his father worked at Klemp and received a
16 similar Industrial Development Bond through Orem City which paid for a major
expansion of that facility. He observed that if their argument holds true, Klemp would
18 have had a similar unfair advantages over competitors at that time.

20 Mr. Clark responded to allegations that the proposed expansion of his business
would negatively impact the workforce for the industry. He stated that he worked side by
side with Klemp employees for many years, and considers them friends. He clarified that
22 since starting his business, 12 positions with good wages and good benefits have been
created at Interstate Gratings, with no positions being lost at Klemp. Mr. Clark stated
24 that when he left Klemp to start his own company, five managers made the move with
him. He observed that all of the managers who came with him had been in their positions
26 for a significant amount of time, and that the move created opportunities for other
employees who were capable of filling those management positions to move ahead in the
28 company.

30 Mr. Clark noted that he is involved with the national association related to this
industry. He stated that the market size is much larger than Klemp representatives have
indicated. He estimated that market in the western United States to be approximately
32 \$200 million, with another \$50 million available in Canada. He asserted that the market
is in need of another manufacturer to meet the demand. Mr. Clark responded to
34 statements made by Mr. Griffin that Klemp has additional capacity by noting that during
the past year employees were required to work 12 hours shifts to meet the demand. He
36 noted that there may be temporary financial benefits to this business structure, but that
working long hours could create an unsafe work environment due to fatigue.

38 Councilmember Anthony asked Mr. Clark to outline the reasons why an
additional manufacturer would be beneficial in the market. Mr. Clark stated that
40 competition keeps prices in check, and allows manufacturers to provide better service
with less lead time. Mr. Clark commented that the first year he ran Klemp, the company
42 produced approximately \$10 million in product. The company reports approximately \$38
million in sales last year. Mr. Clark noted that even though the economy is in a downturn
44 at this time, the economy will recover and sales will continue to increase due to inflation
and expansion of the market.

2 Councilmember Anthony observed that the issue of financial viability was
probably a significant consideration for Wells Fargo in determining whether this bond
4 would be a sound business decision. He noted that Wells Fargo is considered the expert
in the State of Utah on economics.

6 Robert Jeffs, legal counsel for Mr. Clark, introduced himself to the Council. Mr.
Jeffs asserted that the arguments presented by AMICO regarding this bond giving Mr.
8 Clark an improper competitive advantage are somewhat misguided. He explained that
those arguments should be made to the State Legislature who established this bonding
10 process to allow cities to encourage industrial development to locate in the community.
He noted that the intent of Industrial Development Bonds is to provide tax revenue and
12 jobs within the community, and that the argument that the bond may create a
disadvantage to a competitor in another city is not a consideration of the Council in
14 approving the bond. Mr. Jeffs noted that unless a particular business represented a new
industry, there could always be an argument that an expansion would give a borrower a
16 competitive advantage. He noted that AMICO acknowledges that the majority of sales in
this industry are outside of Utah. He stated that this scenario, where sales are located
18 primarily outside of Utah, and jobs and tax revenues are generated and maintained within
the City, is exactly the kind of effort the City should be engaged in.

20 Mayor Dain called for additional public comment. Hearing none, he called for a
motion to close the public hearing.

22 COUNCILMEMBER BAYLESS MOVED TO CLOSE THE PUBLIC
HEARING TO CONSIDER THE FINAL BOND RESOLUTION FOR THE
24 INTERSTATE GRATINGS PROJECT. COUNCILMEMBER HATCH SECONDED
THE MOTION. ALL PRESENT VOTED IN FAVOR. THE MOTION CARRIED.
26

28 Councilmember Anthony asked Mr. Haws if this bonding process is a
fundamentally legal process. Councilmember Anthony noted that the concepts of “fair”
or “unfair” are subjective, and that a challenge in court would be based on the legality of
30 the transaction rather than the fairness of the transaction. Mr. Haws stated the State
statute is clear that the City has the authority to pass the bond. He reiterated that the
32 Council is obligated to find that the plan is likely to succeed, and that the bond proceeds
will facilitate economic development within the community. Mr. Haws stated that he has
34 no concerns regarding the legality of this transaction.

36 Mr. Carlton requested to make an additional comment. He stated that
approximately 30 years ago, he acted as bond counsel for an Industrial Development
Bond for Klemp which paid for an expansion of that company. He explained that this
38 financing mechanism is authorized by state and federal laws, and that the intent is to
encourage small manufacturing facilities, promote competition, generate new jobs, and
40 act as an economic stimulus. He observed that the lower interest rate in this type of
bonding process enhances the ability of the company to be competitive. Mr. Carlton
42 noted that the Utah Private Activity Bond Review Board is required to review and
authorize all Industrial Development Bond applications. After reviewing this application,
44 the Board found that this project meets the intent of the statute. Mr. Carlton noted that in
this type of transaction, competitors could argue the issue of fairness. However, any

2 industrial business has the same opportunity to apply for a bond and receive the same
benefit. .

4 Mayor Dain called for further comments or discussion. Hearing none, he called
for a motion.

6 COUNCILMEMBER CARPENTER MOVED TO APPROVE THE FINAL
INDUSTRIAL DEVELOPMENT BOND RESOLUTION – WEST RIDGE
8 INVESTMENTS, LLC (INTERSTATE GRATINGS PROJECT) WITH THE
FOLLOWING FINDINGS:

- 10 1. THAT THIS ACTION IS TAKEN PURSUANT TO FEDERAL AND STATE
LAWS WHICH ENCOURAGE SUCH ACTIVITIES.
- 12 2. THAT THE CITY HAS A REASONABLE APPLICATION AND APPROVAL
PROCEDURE IN PLACE, AND THOSE PROCEDURES HAVE BEEN
14 FOLLOWED.
- 16 3. THAT THE PROJECT APPEARS TO HAVE A HIGH PROBABILITY OF
SUCCESS.
- 18 4. THAT THIS BONDING PROCESS IS DESIGNED TO FACILITATE
DEVELOPMENT IN LINDON CITY.
- 20 5. THAT THE APPLICATION HAS BEEN REVIEWED AND APPROVED BY
THE UTAH PRIVATE ACTIVITY BOND REVIEW BOARD.
- 22 6. WHILE THE ISSUES OF UNFAIR COMPETITIVE ADVANTAGE HAVE
BEEN WEIGHED AND CONSIDERED, THOSE ISSUES ARE
24 SUFFICIENTLY COMPLEX THAT THE COUNCIL DOES NOT HAVE THE
EXPERTISE TO INTERPRET THE INFORMATION ACCURATELY.

26 COUNCILMEMBER ANTHONY SECONDED THE MOTION. THE VOTE WAS
RECORDED AS FOLLOWS:

28 COUNCILMEMBER ANTHONY	AYE
COUNCILMEMBER BATH	AYE
COUNCILMEMBER BAYLESS	AYE
30 COUNCILMEMBER CARPENTER	AYE
COUNCILMEMBER HATCH	AYE

32 THE MOTION CARRIED UNANIMOUSLY.

34 **COUNCIL REPORTS** –

36 Council reports were not given at this meeting.

38 **ADMINISTRATOR’S REPORT** –

40 Mr. Dameron gave no report at this meeting.

42 **ADJOURN** –

44 COUNCILMEMBER ANTHONY MOVED TO ADJOURN THE MEETING AT
8:32 P.M. COUNCILMEMBER HATCH SECONDED THE MOTION. ALL
46 PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

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Approved – January 6, 2009

Debra Cullimore, City Recorder

James A. Dain, Mayor