

MINUTES OF THE CHESHIRE TOWN COUNCIL AND PUBLIC BUILDING COMMISSION SPECIAL MEETING HELD ON MONDAY, NOVEMBER 25, 2019 AT 7:00 P.M. IN ROOM 115, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410

Present

Town Council - Robert J. Oris, Jr. Chairman; Paul A. Bowman, Vice-Chairman; Patti Flynn-Harris, Sylvia Nichols, Timothy Slocum, Peter Talbot, David Veleber.

Public Building Commission – David Arai, Rich Clavet, Art Crooker, Steve Durkee, James McKenney, Vincent Robitaille

Staff: Sean Kimball, Town Manager; Arnett Talbot, Asst. Town Manager; Al Smith, Town Attorney; George Noewatne, PW Director.

1. ROLL CALL

The Clerk called the roll and a quorum of the Town Council and Public Building Commission was present.

2. PLEDGE OF ALLEGIANCE

The group Pledged Allegiance to the Flag.

3. Award of bid and supplemental appropriation for the Fire Headquarters And Annex boiler replacement capital project.

MOTION by Mr. Bowman; seconded by Ms. Flynn-Harris.

BE IT RESOLVED, that the Town Council approves Resolution #112519-1

RESOLUTION #112519-1

RESOLUTION AMENDING RESOLUTION #090418-1 CEB 6 APPROPRIATING \$150,000 FOR BOILER REPLACEMENTS AT FIRE DEPARTMENT HEADQUARTERS, FIRE DEPARTMENT HEADQUARTERS ANNEX, AND POLICE STATIONS, AND AUTHORIZING THE ISSUANCE OF \$150,000 BONDS OF THE TOWN TO MEET SAID APPROPRIATION AND PENDING THE ISSUANCE THEREOF THE MAKING OF TEMPORARY BORROWINGS FOR SUCH PURPOSE.

BE IT RESOLVED:

Section 1 of the resolution entitled “Resolution Appropriating \$150,000 For Boiler Replacements at Fire Department Headquarters, Fire Department Headquarters Annex, And Police Stations and Authorizing The Issuance of \$150,000 Bonds of the Town to meet Said Appropriation And Pending The Issuance Thereof The Making of Temporary Borrowings For Such Purpose” adopted by the Town Council on September 4, 2018 (the “Resolution”) is hereby amended to increase the appropriation therein by a total of \$30,000, from \$150,000 to \$180,000, thereby making said Section read as follows:

Section 1. The sum or \$180,000 is appropriated for boiler re placements at Fire Department Headquarters, Fire Department Headquarters Annex, and Police Stations, said appropriation to be inclusive of any and all private, State and Federal gifts and grants-in-aid thereof, and for design, planning, engineering, administrative, printing, legal and financial costs related thereto.

The first sentence of Section 2 of the Resolution is hereby amended to increase the bond authorization therein by \$30,000, from \$150,000 to \$180,000, thereby making said sentence to read as follows:

Section 2. To meet said appropriation \$180,000 bonds of the Town or so much thereof as shall be necessary for such purpose, shall be issued, maturing not later than the maximum maturity permitted by the General Statutes of Connecticut, as amended from time to time (the "Connecticut General Statutes").

Discussion

PW Director Noewatne stated that at the last PBC meeting there was a recommendation to replace the boiler at Fire Headquarters. Bids were received about a month ago. The base bid amount had a net project cost of \$133,800. The project only has \$122,000 available funds after getting the design for the Headquarters and Annex Building at the same time. PBC recommended an additional \$25,000 to be allocated to complete the project, and could have a \$15,000 Eversource rebate once installation is complete. The net cost to the Town is about \$10,000.

VOTE The motion passed unanimously by those present.

MOTION by Mr. Bowman; seconded by Ms. Flynn-Harris.

BE IT RESOLVED, that the Town Council approves Resolution #112519-2

RESOLUTION #112519-2

BE IT RESOLVED, that the Town Council, pursuant to the recommendation of the Public Building Commission, awards the bid for the Fire Headquarters boiler replacement capital project to Sav-Mor Cooling for \$133,800.

VOTE The motion passed unanimously by those present.

4. EXECUTIVE SESSION, Litigation

Chairman Oris stated there was a settlement on this litigation for the storage facility project at Cheshire High School. There would be no executive session, and the matter would be discussed in open/public session.

Mr. Oris commented on there being some issues between the PBC and Council relative to the handling of this matter. He contacted the PBC Chairman, requested a meeting, which was declined or unanswered. The Council and PBC are working towards the same goal, insuring projects are delivered in the best interests of the community, and saving taxpayer dollars.

Attorney Smith said there have been differing views on the relative authority of the Council and PBC. This came into stark relief in discussions about Rosa, particularly when the Council, within its rights, decided to pursue litigation damages against Mr. Rosa. This was a Council decision to make. He knows there was some disagreement about that among PBC members, and everyone is entitled to their opinion. Mr. Smith pointed out that when the Town is negotiating a settlement with another party, it undermines the ability to negotiate a fair resolution, in the interests of the Town, when people are pulling in different directions...when statements are being made that are not consistent with the decision the Council has made. It puts the Town and its attorneys, who are trying to negotiate on behalf of the Town, in a difficult position. Going forward, Mr. Smith said there must be clarity on the relative authority of the two bodies.

Mr. Oris stated the Council has respect for every volunteer in the community, especially the members of the PBC. He noted the Council's actions were unanimous, there was no dissent as to how the Council wanted to manage this situation. There was no reflection on how Council thinks of PBC members, as the importance of the PBC work is understood. There was a difference of opinion. Council made a decision which it considered to be in the best interests of the taxpayers. Mr. Oris said the role of the PBC is to implement decisions of the Council relative to these projects. The Council respects the opinions of the PBC members for the expertise they bring to the table. There was disagreement in this case. From his perspective, Mr. Oris said nothing was personal, and heard PBC members were upset about the litigation. He reached out to the PBC Chairman to schedule a meeting, with no response...and Mr. Noewatne also reached out for a meeting, and a meeting was declined. In that regard, Mr. Oris said we cannot function this way, everyone must work together for the best interests of the community. This was all a bit of an anomaly, nothing personal, and Council did what it considered best for the Town.

Mr. Slocum commented on this being an example of a smaller building project taking place, and larger projects are coming forward with Council and PBC working together. The role Council plays is deep and important, and collaborative at the same time. It is Council's obligation to do what is proposed through the Town Attorney.

From a PBC perspective, Mr. Durkee said Rosa is a contractor the Commission likes to work with. The project negotiations were done fairly, and there were some project delays which were weather related. PBC felt it should have been asked about the Council's decision before it was done; a PBC vote would get the Council's attention; and PBC was in agreement with its decision. Mr. Durkee hopes Rosa comes back, because he is a good contractor, and does good work.

It was stated by Mr. Bowman that, in reality, Rosa signed a contract, but did not fulfill the obligations of the contract. There is more to the story; it is not that simple. Mr. Rosa signed a contract, agreed to the terms and conditions. The Council represents the citizens of Cheshire, and has an obligation to make sure the contract is followed. While the Commission may not like it, the Council members are the town's chief elected officials. The contract is in the name of the Town of Cheshire, and Council had to make a unanimous vote as well, and the decision sits on Council shoulders, not PBC. Just because PBC thinks Rosa Contractor is the best, Mr. Bowman said it does not mean there is agreement to give him all the work...it does not work that way.

Mr. Durkee stated he is unsure if PBC had the right to extend Rosa's time, as this is a legal thing for the Council and Town Attorney.

According to Mr. Bowman, the contractor agreed to a drop-dead date, signed the contract, and Rosa "played" the Town.

Ms. Flynn-Harris commented on the Council decision not being taken lightly...it was not a quick decision. Council met in executive session more than once with the Town Attorney. She understands the PBC members' feelings about not getting their opinion or comments coming forward, but Chairman Oris did reach out to the PBC Chairman to start having conversations. The most important thing is the Council did not take its decision lightly, followed the advice of the Town Attorney, and was upset the PBC did not follow the Town Attorney's advice...the legal representation for the Town.

Chairman Oris said the message to PBC was not to talk about the matter publicly.

PBC members stated they did not receive that message.

Attorney Smith stated he sent the message through Mr. Noewatne.

According to Mr. Noewatne there was no PBC executive session, and it was at the time the invoices were going to be approved, with more discussion. He advised everyone what the Town Attorney said.

Mr. McKenney talked about the Council looking out for the financial interests of the Town in its decision, and asked what the costs (the agreed settlement) were for the Town.

It was stated by Mr. Bowman that the Council's position was undermined based on the public discussion about how good the contractor is, not understanding the lawsuit...this undermined everything. The settlement costs can be provided.

Attorney Smith explained there were no incremental legal costs to the Town, as the legal work came under the retainer agreement.

The original contract had the number of \$243,000 (the 2nd time). Mr. Oris authorized the PBC to execute that agreement. Quickly thereafter there were two (2) change orders that ate into a large portion of the \$40,000 contingency. Mr. Oris cited the following dates – contract drafted June 29th; 1st change order \$25,000 on August 17th; 2nd change order \$38,000 on September 13th. For the 2nd change order, it was suggested this was the result of changes made by the Planning and Zoning Commission. When the contract was re-bid for the 2nd time, the two finalists were picked; the project was a design/build with a plug number for site work; there was another look at the site for a better number based on what was seen at the site. There was a look; one number stayed the same; one number went up, one dropped...and Rosa got the job.

The Council was told by Mr. McKenney that one person refused to modify his number, and the other person modified his number to take into account the grade etc. As a result, what was the low bidder by a minimal amount, got switched.

Mr. Oris said the Council was concerned about the immediate change orders by the contractor for additional fill and other things. There was a change of bid when the contractor was asked to look at the site; they changed their number accordingly based on that; and right thereafter there was a big change order. Then, a subsequent change order came in, and we were pushing against the top tier of our number, or above it. Without negotiations, the number would have been above what the Town had, and this peaked Council's interest. Before the project even started we were beyond the budget and into the contingency. Mr. Oris pointed out this concern is within the Council's purview, before a project starts, and bumping up against the project's cap, inclusive of contingency. If anyone thinks otherwise, they are mistaken.

This is what provoked the Council's interest and Mr. Oris said this is why Council negotiated an agreement with the contractor for a fixed fee number. He noted that, in addition, Rosa was going to charge winter conditions not included...and Council's involvement did save the taxpayer's money. In the final signed contract, the winter conditions were waived, and Mr. Oris doubts this would not have been done without Council involvement. At that point, a very specific contract was entered into...some change orders were given...a new contract was signed with time constraints without

further change orders authorized or something requested. The Town Council was specific for delivery of the project on the date stated.

It is not unfair for the Town to say we will keep going forward, but hold Rosa to the contract as the Town is held to change orders. Mr. Oris said Rosa was held to his contract, did not deliver, and was quick with change orders at taxpayer's expense.

At the request of Mr. McKenney, the change orders were noted by Mr. Oris. One was fill and foundation, and the other was the result of the PZC site plan changes.

Mr. McKenney stated the PZC put requirements which added cost to the project.

The Council had the right to intervene and Mr. Oris said Council had to protect taxpayer dollars, and hold the contractor to what should have been delivered. He noted it is clear that some PBC members do not like this.

According to Mr. McKenney, the delays were caused by another contractor and the handicapped requirements from the BOE paving.

Stating he was happy about this project being done for the students, Mr. Oris was at the site often. He said the contractor walked off the job for a few months during the winter and did nothing for a few months. The fact is the contractor had opportunity to get the building done, but probably went to another job. Had PBC paid attention to the job, they would have seen this, as Mr. Oris did.

Mr. Clavet stated the contractor was off the job for many months. From his perspective, as a PBC member, PBC knowing the contract language, liquidated damage costs was a surprise when the billing came forward. There was notification at 85% of the job that liquidated damages were associated with the contract. Mr. Clavet noted the PBC does not get a copy of the final contract, and takes no authority away from the Town Council.

A question was raised by Mr. Bowman about PBC having a copy of the project contract, as this is important. He asked if there is a reason PBC does not have a copy of the contracts.

Knowing there are liquidated damages on a job changes the PBC's perspective, and Mr. Clavet said this affects management of the job to completion date.

This is an excellent point, and Mr. Oris stated Town Manager Kimball negotiated the contract at the request of the Council, to insure the Town did not go over the number. If PBC members did not have a copy of the contract that is a problem, and Mr. Oris said it must be addressed.

Town Manager Kimball talked about the October 9th letter from Rosa with the additions to the contract, outlining the winter conditions.

Council members discussed the issue of PBC members not receiving a contract copy, making it difficult to manage a project. It was agreed the contract copy should be given to PBC to insure delivery of a contract within the terms of the contract. There was a discussion about working on the better process/procedure and communication issues between PBC and Council. Mr. Oris said this would help facilitate what PBC does and protects taxpayers. The whole situation must be looked at, which is a conversation Council and PBC must have...how to protect the taxpayer, help PBC do its job, something Council is comfortable with, and mandating the right support for the PBC.

Based on his experience, Mr. Bowman commented on there being too many different types of projects. Each project should have criteria so everyone is on the same page knowing all the contract details. He noted he has never seen a standard AIA document, and there are too many variations to them. Much work needs to be done. With a new Town Council, Mr. Bowman hopes for some effective changes coming forward which makes sense for everyone who are stakeholders and taxpayers.

There are many projects coming forward, approved at referendum, and Mr. Bowman cited the school modernization study being undertaken at this time.

Mr. Crooker said if the Council has something in the spotlight, the PBC should be aware of it...know what is going on.

It was pointed out by Mr. Oris that there was PBC representation at Council meetings when PBC Chairman Nash attended these meetings.

As liaison to the PBC, Mr. Bowman said Councilors are volunteers, same as PBC members. He does the best he can; if he falls short of that he is who he is; and PBC liaison is not his only Council job. The last two years had a host of things going on, such as new Town Manager, Charter Revision...and he offered the PBC liaison to his colleagues on the Council. Mr. Bowman recognizes the work that needs to be done, and PBC members/volunteers can also only do so much.

Mr. Crooker said his point is to get the word out, spotlight projects, look closer at the contracts, etc.

In that regard, Mr. Oris reiterated the fact that the PBC Chairman was at Council meetings. The only reason the spotlight was on the storage project was because before the project started, the Town was at the cap of the project cost. Contingency was 80% - 90% gone, and this is the only reason for the spotlight on this project. A project should not be started with "0" contingency left. As for PBC members knowing

what is going on, Mr. Oris restated the fact that the PBC Chairman was present at the Council meetings, but did not pass along the information coming out of these meetings.

The Council acts as a "Council" and Mr. Oris said the PBC representative present at the meeting should pass information onto members as to what happened...and staff should do the same. If Council can do a better job with staff to insure PBC has all the documentation and information, this will be done. Mr. Oris stated Council knows what PBC does, as volunteers, and is doing the same thing. What was done by Council was protection of taxpayer dollars and out of concern.

Mr. Crooker has no issues with what Council did as they are the elected officials and control the purse strings. But, he was unaware of the background of the whole issue, and could not have made a good decision on the issues...no fault of the Council...it just did not happen right.

It was stated by Ms. Nichols that it all boils down to communication, and that is the process Council is trying to facilitate at this meeting...get the conversation started so everyone can work with the right truths.

As for the contract, it was agreed by Council and PBC members that there must be an understanding of the fine points...not reading of the entire legal document. This enables PBC to better manage a project.

Mr. Slocum had a procedural question regarding PBC breaking projects up into groups/subcommittees. He asked about a group specializing on this particular project, which is a big job. Mr. Slocum suggested the subcommittee should be the smartest group about the project, including contract language etc. If it is up to the PBC Chairman to insure this happens, and staff to insure the chairman has everything at his disposal, this is where the process appears to be lacking. By design, he noted PBC breaks projects up into smaller pieces, and Mr. Slocum supports this procedure.

Mr. McKenney spoke to Councilor Bowman about his liaison with PBC, and said there are no issues in this regard. The issues being discussed are related to just the storage building project.

Regarding the subject project, Mr. Oris asked PBC members if they had another opinion as to why Council had eyes on this project.

Mr. McKenney stated his only concern that the Council was...or were aware...of the position that the BOE put forth to PBC and that delays were caused by a paving contractor. He said they had nothing to do with the building itself, and the paving being ADA compliant held up the project.

Stating his understanding that the liquidated damages were not calculated on the paving, Mr. Oris said they were based on other items.

According to Mr. McKenney there has been discussion that PBC should be in charge of contracts. This has been talked about, has come forward on different occasions. The PBC position is that contracts are legal documents.

Mr. Oris has the utmost respect for PBC members, served on the committee many years ago, and said their work is an important Town function. The last thing the Town can have is some type of rift going on, or everyone not rowing in the same direction. Everyone is here for the same reason to insure delivery of projects for the benefit of the community, in as good and inexpensive way that can be done. This protects taxpayer dollars. There is no other motivation for anyone. Mr. Oris commented on bad communication on the subject project, and if there was inappropriate communication, he apologized for this fact. Going forward PBC and Council must collaborate to make the process as good as it can be. There need to be some fixes, some help to the PBC in managing very difficult projects.

Mr. Oris commented on upcoming complicated and expensive projects, the need for a Clerk of the Works, Owners Rep. to make sure someone is pulling all the pieces together...what the contract says from day one and drive the project forward. That person would take their lead from Council and PBC, and this should be the focus for the future. Mr. Oris believes Rosa got more than he wanted to give him. There were muddied waters with PBC statements made, and without this, the Council may have taken a different approach with Rosa. That could not be done because PBC and Council were at odds...and this is a bad place to be. Going forward, Mr. Oris does not want the Town in that position again.

Mr. Oris offered up everyone being positive, collaborative, and PBC members choosing to continue in their roles of service to the community.

5. ADJOURNMENT

MOTION by Mr. Bowman; seconded by Mr. Slocum

MOVED to adjourn the special meeting at 7:46 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk

