

RECESSED SELINGROVE BOROUGH COUNCIL MEETING

MONDAY, AUGUST 19, 2013 - 7:00 P.M.

COUNCIL MEMBERS PRESENT: Pres. Brian Farrell, V. Pres. Pete Carroll, C/P Dottie Anderson, C/P Tim Charles, C/P Shane Hendricks, C/P Rich Mease, and C/P Erik Viker

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Solicitor Bob Cravitz; Borough Manager Paul Williams; Borough Treasurer Sheri Badman; Recording Secretary Chele' Weaver; Rudy Gelnett Library Pam Ross and Rick Savidge

OTHERS ABSENT: Mayor Sean Christine

CALL MEETING TO ORDER:

Pres. Farrell called the meeting to order at 7:00 P.M. Mgr. Williams called the roll, followed by a moment of silence and the Pledge of Allegiance.

**PERSONS TO BE HEARD - In Recessed Session, this is at the Discretion of Council - No Reports (Name and Address to be given prior to comments and comments limited to 5 minutes, without prior notice)
(Visitors may indicate that they wish to comment on a specific Agenda item when brought up for discussion)**

Recess to Executive Session at 7:03 P.M.

Meeting Reconvened at 7:40 P.M. - No action taken.

UNFINISHED BUSINESS FROM PRIOR MEETINGS:

Palmer Construction - Settlement Agreement - Copy Provided - Sol. Cravitz stated this is on the condition of getting final clearance from the Library Board because they are an integral part of this. C/P Viker asked if this needs a motion or just a consensus. Sol. Cravitz stated Council could form a consensus.

C/P Hendricks stated he still has a problem with this settlement - there is no requirement in this for Palmer to make the Borough's local subs hold and also liquidated damages - the Borough is giving up on these. Two (2) years ago the Borough went after G&R Charles for liquidated damages - Mr. Charles did not fight it - maybe for \$6,000.00. This project has run over by 30-35% time wise. If the Borough starts going after its locals for liquidated damages in the future because they aren't getting their projects done - he has a problem with this.

Mgr. Williams asked Sol. Cravitz to comment and give C/P Hendricks some comfort on the closeout documents where it states "Release of Liens". There was another document that the Borough was hoping to get but Palmer refused and said since they are providing the Borough with the Surety of Final Payment and the Release of Liens this should cover it. Sol. Cravitz stated the surety is not going to let Palmer just walk away. The surety is looking over the Borough's shoulder like a big brother. They do not want to have anybody coming back on them for the Borough not being on their payment block. So the Borough is saying we want to make sure that none of Palmers subs are going to come back on us. Palmer will then give the Borough a Certificate of No Liens - which means that none of Palmers subs can turn around and try to come after the Borough.

Sol. Cravitz stated that practical wise what Palmer is saying to the Borough is that they compromised with the Borough - so why doesn't the Borough compromise with us. This is the typical big fish, little fish syndrome.

Mgr. Williams stated there was a document that the Borough asked for - it is in the minutes of the last job conference that the Borough had - provided to everyone as "the list" from EI Associates for closeout documents - and that was the Contractor's Affidavit of Payments of Debts and Claims. This is what Palmer does not want to give the Borough and Attorney Williams stated that if Palmer gives you the other two (2) this one (1) should not be required. Sol. Cravitz stated that the other two (2) should cover it. Palmer will get some money but they will not get 100 cents on the dollar.

C/P Viker asked what amount of liquidated damages the Borough is giving up - dollar value? Treas. Badman stated close to \$180,000.00. C/P Viker stated that amount would be burnt up in court in a matter of two (2) months. This is his response to C/P Hendricks - it stinks and it is not right or good but this is where the Borough stands. Sol. Cravitz stated that Mr. Finio told him that under the construction contracts the Borough will be eaten alive by the depositions, the expert witnesses, the Borough will have to get timelines, have architects come in, etc. This would be \$100,000.00 - \$200,000.00 down the road. Rick Savidge stated and we still may not win.

Mgr. Williams stated he wanted to acknowledge C/P Hendricks - these were the first two (2) comments that C/P Hendricks told him way back when the Borough was discussing the idea of this proposal and Mr. Hendricks stuck with it. He feels that the Borough has done their due diligence to try to address the payment of the sub-contractors - not to say the Borough is throwing in the towel for liquidated damages but he feels that in certain respects the Borough is because it is better decision making.

Mgr. Williams asked Sol. Cravitz if Council had reached an outcome - so there is a consensus and this is what can be passed along? Sol. Cravitz answered yes.

Weis Markets - Project Update - Copy Provided - Mgr. Williams stated that on Friday, August 2, 2013 he had a meeting with Alex Ororbia and DZO Powers and preceding that time Weis Markets was working with Sol. Cravitz not only for Selinsgrove Borough but also on behalf of Penn Township Municipal Authority. In addition to this there is other documentation that is still in draft form pending somewhere between their Counsel Jack O'Hara and the Law Office of Robert Cravitz - this deals with the Storm Water Facility Maintenance Agreement, the developers agreement and security. There is a pending easement agreement - if the Borough is going to grant easement for Weis Markets driveway location off of Route 522. It is Mgr. Williams understanding that Weis Markets still is not complete with satisfying Penn DOT with respect to their HOP and their traffic signal permit. For whatever reason, Weis Markets chose not to attend the Penn Township Municipal Authority meeting that was Thursday, August 1, 2013. Looking ahead to the month of September the Borough would have preferred that Penn Township approve the receipt of the sewer before the Borough would grant complete approval. In September however, the Borough's meeting comes first and the authority meets later that week. Even then things may be out of sync. Weis Markets is not here tonight and Mgr. Williams understands that their counsel may have had some planned days off. Alex Ororbia has been unresponsive.

Sol. Cravitz stated that after the Penn Township Meeting he got Weis Markets documentation. There are no major changes just some things that have to go back to Penn Township and ask are they okay with this. As far as the Borough goes it is just some verbage that has to be changed and nothing that has to be voted on by Council. They must satisfy Penn Township first unless Penn Township says the agreement between the Borough - which is contingent upon the Weis/Penn Township agreement - this is part of the main document - this commits Weis Markets to do a whole lot of things with the pretreatment and all the rest of it. Where is Weis Markets? The bids for the fire suppression system are supposed to be opened this month and then construction to start on September 5, 2013. All of a sudden things have come to a stop.

C/P Viker stated maybe there is something internal going on. The economy has changed since they first started planning this project.

Sol. Cravitz did state that talking with Mr. O'Hara after the Penn Township Meeting, he said that Weis Markets is going to put in the 4th crosswalk, but they don't want to commit to it now because if they change that plan and put it in it could take another 60-90 days to review it.

Mgr. Williams stated that he has a sample letter dated July 26, 2013 acknowledging that the Borough has granted approval of the land development agreement. The way it is written he would not recommend that Council sign it exactly.

If in the event that the Borough does grant an easement for the driveway a sample acknowledgement letter has been drawn up with the understanding that there could be an impact to the remaining parcel that the Borough owns on Route 522. Here again Weis Markets is asking for an acknowledgement but yet the Borough doesn't have the easement agreement worked out yet so how can the Borough acknowledge this?

Sol. Cravitz stated that the problem with the other access is that when Snyder County sold the parcel to Selinsgrove they retained an easement over that same corner to get from their parking lot to 522. If Weis Markets is cutting this off they will also have to contact the County and say "hey, do you realize that if this goes through you may lose use your easement going out to 522. The County could say that as part of this whole deal it's your right of way we'll help you with your land development parking lot for the Borough because you are going to be putting in a USTA area. Weis Markets has not come back with actual plans and drawings let alone the actual plans and drawings for the Borough's easement. The Borough is stuck until this happens.

C/P Charles asked what if Weis Markets gives us all their paperwork on Friday afternoon and wants Council to take action at the Council Meeting that Monday night - Council never gets enough time to look at everything. The Borough needs to convey to them that if Council doesn't get all the information in a reasonable amount of time we can't make a decision. C/P Viker stated we can look to Sol. Cravitz and Mgr. Williams and they can make a recommendation to Council. At that point some of us will vote yes and some will vote no. It most likely will not pass because the majority will need more time to look it over before voting yes.

NEW BUSINESS:

COUNCIL MEMBERS – C/P Anderson stated that she, C/P Hendricks and C/P Charles met at the airport today and learned about their future plans and why they would like the Borough to consider upping our annual contribution. C/P Anderson and C/P Hendricks suggested to the airport to prepare a power point and come to the next Council meeting.

Street Closing Permit for North Union Alley, Church Block Picnic, Sunday, September 8, 2013 -
C/P Viker made a motion to approve. Motion seconded by C/P Hendricks.

AYES: SEVEN (7)

NAYS: NONE

MOTION CARRIED

ADJOURNMENT:

Meeting adjourned at 8:10 P.M.

Respectfully submitted by

Chele' Weaver
Recording Secretary