



**City of Newport
Special City Council Minutes
August 22, 2013**

1. CALL TO ORDER

Mayor Tim Geraghty called the meeting to order at 5:40 P.M.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL -

Council Present – Tim Geraghty, Bill Sumner, Steven Gallagher

Council Absent – Tom Ingemann, Tracy Rahm,

Staff Present – Deb Hill, City Administrator; Renee Helm, Executive Analyst; Fritz Knaak, City Attorney; John Stewart, City Engineers

Staff Absent – Bruce Hanson, Supt. of Public Works; Curt Montgomery, Police Chief; Mark Mailand, Fire Chief;

4. RESOLUTION NO. 2013-39 – PROVIDING FOR THE SALE OF \$1,480,000 GENERAL OBLIGATION IMPROVEMENT BONDS, SERIES 2013A

John Stewart, City Engineer – I thought it would be a good thing to do to update the City Council on an issue with the contractor before you order the bonds. I don't think it'll impact the bonds but I think it's good. At our last meeting we talked about sewer services and fixing joints on the pipe. We thought we had an agreement with the contractor on the pricing so we called them up to issue a change order. The contractor said that the sub-contractor wants to be paid more for digging in deeper parts of the project. We have a number of options. We can say that the option was agreed to and that they need to do the work with the agreed upon prices, which would result in arbitration. I don't want to do that. The sub-contractor wants to add about an extra \$113,000 to the project before it even starts. I don't want to let him do that. We had a meeting with the contractor yesterday and our proposal is that we cut the budget back to where the sewer is as deep as he is willing to dig. If it's acceptable to you, we will continue to walk down this road and cut back the contract at any point where he will add cost to the City.

Councilman Gallagher – Did the contract with McNamara state a depth for the sewer work?

Engineer Stewart – We gave them up to 20 feet.

Councilman Gallagher – What are the change orders that we would do?

Engineer Stewart – Two things. The contractor says that he bid this job thinking he could replace all the service line between the main line pipe and the property line. Our plans show that the service lines are to be replaced as directed by the Engineer. If he made the assumption that he was going to do the whole thing, that's not our fault. The more he digs, the more he gets paid.

Councilman Gallagher – Isn't that an issue between the contractor and sub-contractor?

Engineer Stewart – That's why he did it the way he did, so that they are budding heads.

Councilman Gallagher – Can the contractor find a new sub-contractor?

Engineer Stewart – It's unlikely to happen because they sign agreements with the sub-contractors to lock in their prices

as soon as we award the bid.

Councilman Sumner – Didn't they lock in a price that we've agreed to?

Engineer Stewart – The contract says that they will replace service lines as the Engineer directs. So if he digs the hole and we determine that he needs to replace one foot, he'll replace one foot. He wants to replace 20 feet. That's his assertion that he needs to dig that much pipe up to cover his cost for digging the hole.

Councilman Sumner – He misunderstood the bid. What does the Attorney see?

Attorney Knaak – I think what John is describing is accurate. The bottom line is that they did bid at a fixed price. You are allowed, if there are unanticipated conditions, to redo it. As a practical matter, if it's a significant change, you could hold the contractor's feet to the fire but that would most likely end up in litigation, which would hold up the construction.

Councilman Gallagher – I would think it's the responsibility of the contractor to get the job done with the price they bid.

Attorney Knaak – It is but as a practical matter there are provisions that provide for unforeseen circumstances or material changes in conditions that a reasonable contractor or sub-contractor could not have anticipated.

Mayor Geraghty – The specs that were put out were up to 20 feet?

Engineer Stewart – We had given them a list of expected depths and we stopped at 20, we should have gone up to 30. We're proposing that we'll only do the areas where he won't have to dig more than 17 feet.

Councilman Sumner – Didn't he agree to 20 feet?

Engineer Stewart – He'd given his prices to 20, yesterday he said he'll go to 17. He said that he'll ask for a change order after 17 feet because he didn't have a chance to look at the as-built drawings before he bid the project.

Mayor Geraghty – The contract does allow us to change the scope of the project. If you take out the blue areas (see attached map), how much is the total savings?

Engineer Stewart – The blue areas are probably \$150,000 of the \$980,000 contract.

Mayor Geraghty - That's for everything?

Engineer Stewart - Yes.

Councilman Gallagher – How much is the change order that the sub-contractor is asking for?

Engineer Stewart – About \$113,000 over what he bid.

Councilman Sumner – Can we cancel the entire contract and re-bid it in the spring.

Attorney Knaak – That's an option.

Mayor Geraghty – It's all advisory to us in conjunction with doing the Resolution. If we pass the Resolution, it'll still be for the \$1,480,000 and the extra can be used next year to finish this up.

Councilman Gallagher – Can we finish this next year?

Mayor Geraghty – In conjunction with Ford Road and John will put in a depth up to 30 feet.

Councilman Gallagher – So you're saying that we'll fix everything up to 17 feet and anything more will be fixed next

year?

Engineer Stewart – Yes. The change order will be on your next Council meeting so the project won't start until then.

Councilman Gallagher – On the next contract, can we state that we don't want this sub-contractor?

Engineer Stewart – There are two ways of doing bidding. One is the lowest bid, the second is the best-value bid. Under the second way, we assign points to items such as prices, contractor's reputation, sub-contractor's reputation, etc.

Councilman Gallagher – Can we do that next time?

Engineer Stewart – Yes.

Stacie Kvilvang, Ehlers, presented on this item as outlined in the August 22, 2013 Special City Council Meeting packet. Ms. Kvilvang noted that the City can bond for the \$1,480,000 and set aside the money for the removed streets to be used next year.

Councilman Sumner – Do we need to have the bonds sold before we start the project?

Ms. Kvilvang – No.

Mayor Geraghty – How much were we anticipating for the 2014 bond?

Engineer Stewart – I believe it would be around \$3,000,000.

Mayor Geraghty – What about 2015?

Engineer Stewart – We haven't done the paperwork for 2015, I believe we estimated \$1,000,000. Half of the 2015 project is dependent on the transit station development. My guess is that we won't end up doing that, instead we'll do things on 15th Street east of Highway 61.

Councilman Gallagher – Could we decrease the bond by \$150,000?

Ms. Kvilvang – You could do that and then add it to next year's bond.

Engineer Stewart – If you do that, you're taking a risk that these projects will not be completed until next year.

Mayor Geraghty – And I'm not sure we'd get 3% next year.

Motion by Geraghty, seconded by Gallagher, to approve Resolution No 2013-39. With 3 Ayes, 0 Nays, 2 Absent, the motion carried.

5. ADJOURNMENT

Motion by Gallagher, seconded by Geraghty, to adjourn the special Council Meeting at 6:12 P.M. With 3 Ayes, 0 Nays, 2 Absent, the motion carried.

Signed: _____

Tim Geraghty, Mayor

Respectfully Submitted,

Renee Helm
Executive Analyst

