

MINUTES OF THE JULY 31, 2008 MEETING OF
THE NATHANIEL WITHERELL TOWN BUILDING COMMITTEE

The twenty-third meeting of the members of The Nathaniel Witherell Building Committee was held in the conference room at Nathaniel Witherell at 7:37 a.m. on July 31, 2008.

Present were:

Voting Members: Dik Glass, Jeremy Kaye, Peter Arturi, Leslie Tarkington, Andy Fox, Stephen Soler, Christopher Lacey, Lloyd Bankson and Paul Toretta.

Non-voting Members: Jonathan Shankman, Thomas Saccardi, Frederic H. Brooks, Lin Lavery and William Kowalewski.

Guests: John Wayne Fox, Esq., James Latham, Jack Hornak, Ray Augustine, Lynn Bausch, David Ayres, Ken Henderson, Susan Welsh, Joyce Jordan, Joseph Jordan, Margaret Wayne, Linda Marini, Patricia Burns, Kathleen Conatech, Carol F. Kellogg, Sally Van Leeuwen, Charity Poth, Christina Tholen and Ashley DeMain.

Mr. Glass asked whether the minutes of the June 23, 2008 meeting were reviewed by all and were approved. Upon motion duly made and seconded the minutes were approved.

Mr. Bankson asked Town Attorney Wayne Fox whether the Committee could go into executive session since there are legal issues to be discussed.

Mr. Wayne Fox advised that the Freedom of Information Act permits executive sessions in very limited circumstances, for example discussion of pending litigation or pending claims. Since neither exists at this time, and the potential for litigation does not suffice as a reason to go into executive session.

Mr. Glass then stated that the July 23, 2008 meeting was adjourned to today in order to have the input from both Jim Latham and Wayne Fox.

Jim Latham provided a handout, the first page of which is entitled "JGL's Presentation to TNW Building Committee, 7/31/08 @ 7:30am, RFP #6481 Project Renewal Witherell Architectural Services".

Mr. Latham advised that the 9 voting members of the Committee could review the scoring decision of the Architect Selection Task Force. The Committee could accept the recommendation of the Architect Selection Task Force or reject it. If the Committee were to reject the recommendation, Mr. Latham advised that the RFP process would have to start from the beginning. He went on to say that the Committee cannot override the scoring or decision of the Task Force and that if the Committee were to disregard the scores, the highest ranking finalist would have grounds for a lawsuit.

The RFP contained a list of the members of the Architect Selection Task Force and set forth the criteria to be used to rank the proposals.

Mr. Latham concluded that the Purchasing Department wants the proper public purchasing procedures to be followed and to engage BL as the architectural firm to be used.

Wayne Fox said that there are areas where municipalities can get into difficulty and that one of those areas is where standard procedures are not followed.

He went on to say that the Committee can accept or reject the highest scored firm, but that the Committee should not decide, in connection with this vote, to use the services of a different firm. If the Committee approves of the highest scored firm, then the selection goes on to The Nathaniel Witherell Board for its approval. If that firm is rejected, then the Committee would need to start a new RFP process.

Mr. Brooks asked Wayne Fox how far back in the RFP process the Committee would need to go if BL was not approved. Wayne Fox indicated that the process would have to go back to the beginning. He did say that the Committee has wide latitude how to proceed and would not have to follow the same bidding procedure as previously used.

Mr. Brooks then asked whether only the voting members of the Committee could be the voting members of the Task Force or whether non-voting Committee members could be voting members of the Task Force. Mr. Brooks pointed out that Ms. Tarkington had noted that if only the voting members of the Committee voted on the Task Force, a different architectural firm would have scored the highest.

Wayne Fox said that only the voting members of the Committee could cast a vote today on the choice of architect, but went on to say that it is not uncommon for subcommittees to be formed and that members of subcommittees can vote on subcommittee decisions.

Mr. Brooks also asked how BL was advised that they were selected as the architect for the project. Mr. Latham responded that BL was not advised that they were

awarded the project. They were advised of the scoring only. In their enthusiasm, BL sent a thank you note for the award. They have since retracted that communication and were advised that they have not been awarded the project.

Ms. Tarkington thanked Mr. Latham for the information he presented today, but indicated that the information should have been provided to the Committee prior to today. She stated that the initial packages received from the various architects had been provided to the Task Force members in advance of meeting with the architects, but that the final presentation packages were not provided in advance of meeting with the architects. Ms. Tarkington pointed out that the Committee, pursuant to the Charter provision it is empowered under, has the powers of the Commissioner of Public Works, which provides leeway to the Committee in how it might act.

Mr. Kaye said that he agreed with Ms. Tarkington's statements, but that he did not think that any members of the Task Force felt that any of the finalists were unable to do a good job on the project. There were differences of opinion, however, as to which firm would do the best job. In light of the information provided to the Committee by Mr. Latham and Wayne Fox, he did not believe that it would be beneficial for the Committee to proceed further with discussing the merits of the various firms and moved that the Committee approve of BL and recommend them to the Board of The Nathaniel Witherell.

Mr. Lacey then indicated that he felt that BL was the best firm for the project.

Mr. Soler said that the selection process for an architect was a lengthy process. He emphasized that the Task Force had received many inquiries initially and had narrowed the list to 3 finalists who were interviewed and who then presented their proposals. He stated that the process had been transparent and that the boards presented by the architects at their presentations were never intended to be the final plan.

Mr. Bankson supported taking a vote.

Mr. Toretta said he thought that the presentation books for each of the final architects should have been available to the Task Force members prior to their presentations being made. Mr. Toretta said that BL's materials indicated that they based some of their suggestions on their site visit, and they should not have done that. He went on to say that he had some concerns about their financial position and the fact that they have not worked on a project in the Town. He indicated that he would not vote for BL and would probably abstain.

Mr. Andy Fox then said that the delay in proceeding is costing the Town between \$60,000 and \$70,000 a month.

Mr. Kowalewski said that he has 25 years' experience in the nursing home field and that he was the only member of The Nathaniel Witherell to have input into the architect process. He said that it is clear the BL has the most experience in the field. He pointed out that all 3 finalists had a return visit which was led by Jim Latham to insure that there was a level playing field for the firms and that all had the same opportunity to have the same knowledge about the facility.

Mr. Saccardi pointed out that all 3 finalists met with various people at The Nathaniel Witherell before the joint visit with Jim Latham. He further pointed out that the design ideas presented are not what is going to be constructed.

Ms. Lavery said that she has only been on the Committee since December, but thinks that the process for choosing an architect was clear and that a decision should be made on the choice of an architect today.

Dr. Arturi said that he expected, after 13 months, that the Committee would be presented with the opinions of the members of the Task Force before a decision had to be made. Dr. Arturi went on to second Mr. Kaye's motion.

Ms. Tarkington advised that she would not support the selection of BL, but that if they were chosen, she would enthusiastically work with them. She felt that BL did not address the work required by the Entech report and that there was a lack of clarity on the relationship between BL and DiMella Shaffer. The projects that BL referenced for their experience were only a portion of the size of this project. She went on to say that BL does not have knowledge of working in the Town of Greenwich.

Mr. Bankson said that, in the future, he would like to see that materials are provided to appropriate members in advance of any presentation.

Mr. Andy Fox said that when Mr. Latham produces the RFP for the Construction Manager, all members of the Committee should read and understand it.

Mr. Soler stated that BL has been selected by the State of Connecticut for various projects and that the State would not use them if they were not a financially viable company. He went on to say that a firm should not be discounted from being used simply because it had not done work in the Town before, since this would prohibit any new firm from ever doing work in Town.

Mr. Glass then said that public projects are completely different than private ones. He said that the Town has a purchasing manual which details how projects are to move forward. He complimented Jim Latham and Wayne Fox for the great work which they have done on this project. He stated that this has been an open process.

A vote was then taken on approving of BL and recommending them to the Board of The Nathaniel Witherell. Mr. Glass, Mr. Kaye, Dr. Arturi, Mr. Bankson, Mr. Fox, Mr. Soler and Mr. Lacey voted in favor of the motion. Ms. Tarkington voted against the motion. Mr. Toretta abstained.

Mr. Lacey then reported that he will sit down with Mr. Latham to complete the RFP for the Construction Manager.

Mr. Toretta indicated that the Board of Education does not follow the Town Purchasing Department rules and asked Wayne Fox whether the Committee must follow the Town Purchasing Department rules. Wayne Fox said that the Committee has broad discretion as to the process it follows. Section 57.1(g) of the Charter provides that the Committee has all powers and duties of the Commissioner of Public Works. The purchasing policy of the Town says that certain agencies are exempt from Town purchasing procedures including the Board of Education and Department of Public Works. Section 7.7 of the purchasing policy strongly recommends that the agencies exempt from following the purchasing policy procedures follow those policies, including the use of RFP's for professional services.

Ms. Lavery and Mr. Bankson agreed to serve on the Construction Manager's Task Force. Mr. Kowalewski is also a member of that Task Force, having been appointed by Mr. Glass to that Task Force.

The next meeting of the Committee will be on August 13, 2008 at 7:30 a.m. There will be no meeting on August 20, 2008.

The meeting was adjourned at 8:41 a.m.

"Disclaimer: These notes were taken at the meeting of July 31, 2008. If there are any changes to be made please email within 48 hours of this submission for revision, otherwise these minutes become record of all events as of the issuing date."

Respectfully Submitted,

Jeremy Kaye
Committee Clerk