

MINUTES OF THE SEPTEMBER 10, 2008 MEETING OF
THE NATHANIEL WITHERELL TOWN BUILDING COMMITTEE

The twenty-sixth meeting of the members of The Nathaniel Witherell Town Building Committee was held in the conference room at Nathaniel Witherell at 7:35 a.m. on September 10, 2008.

Present were:

Voting Members: Andy Fox, Paul Toretta (by phone), Jeremy Kaye, Peter Arturi, Lloyd Bankson, Leslie Tarkington, Stephen Soler and Christopher Lacey.

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

Guests: Jack Hornak, Ray Augustine, Lynn Bausch, Ken Henderson, Joyce Jordan, David Ayres, David Ormsby, Chris Thurlow, Bill Hughes, Susan Welsh, John Wayne Fox (by phone), and Ashley DeMain.

Mr. Fox called the meeting to order. He asked whether the minutes of the August 27, 2008 meeting were reviewed by all and were approved. Leslie Tarkington pointed out two revisions, which all agreed should be made. Upon motion duly made and seconded the minutes, as amended, were approved.

Mr. Toretta then reported that 2 weeks ago tomorrow, he had a conference call with Mr. Bankson, Mr. Ormsby and BL concerning BL's fee for the project. It was suggested to BL that it reconsider its fee since it has become clear that the project is to be substantially a renovation rather than new construction. BL subsequently forwarded a new proposal which reduced its fee by \$290,570. BL was told that the Committee and BL were \$600,000 apart not \$290,570. BL indicated that it could not come down further in its fee without a change in the scope of its work.

Mr. Toretta proposed that the Committee terminate the current RFP which BL was the successful candidate for and send out, to the 3 finalists (BL, SLAM and JCJ), a new specification sheet which would detail that the project is substantially a renovation.

Mr. Bankson indicated that while Mr. Toretta's proposal was one option, there was another option which Wayne Fox could describe.

Wayne Fox then said that there is no contractual obligation with BL. If the Committee were to decide not to move forward with BL, the Committee should vote to

withdraw its offer. Wayne Fox explained that if the offer were withdrawn, then there would be 3 options available to the Committee, as follows: (1) have further discussions with BL; (2) start all over and send out a new RFP, which he indicated would be the best route to follow in order to avoid any claims with respect to the procedure regarding the old RFP; or (3) narrow the scope of the original RFP and obtain a revised price proposal from the 3 finalists. Wayne Fox indicated that it is Mr. Latham's opinion that if the offer were to be withdrawn, there should be a new RFP. Mr. Fox said that Mr. Latham believes that it would take between 4 and 6 weeks to obtain new bids with a new RFP. Wayne Fox concurred that it is his belief that the second option would be the cleanest way for the Committee to proceed, but that the third option is defensible.

Mr. Kaye asked whether the Architect Selection Task Force would need to be reconstituted since the Committee had voted to disband it. Mr. Toretta replied that there is no need to reform the Task Force since the Committee as a whole can act in that capacity. Wayne Fox concurred.

Mr. Soler expressed the opinion that BL would not participate in a rebid process if a new RFP were to be sent out.

Mr. Soler asked if the Committee concluded the negotiation process with BL and an agreement could not be reached, could the Committee move on to the second highest scoring firm to negotiate with. Wayne Fox said he would not recommend that the Committee take this course of action because the Committee would then be violating the very process which the Committee had set up in the RFP.

Mr. Soler asked whether the Committee could proceed with the next highest scoring firm if BL withdrew from the offer. Wayne Fox said that he thought the Committee could proceed with the next highest scoring firm if that were to happen, but that the Committee should not request BL to withdraw.

Mr. Toretta pointed out that when he spoke with BL on Monday at 4:30 in the afternoon, he advised them that the Committee was not meeting until Wednesday morning and that if they had any thoughts on how to bring the fee down prior to that time, they should let him know. There has been no further communication from BL.

Mr. Lacey expressed his opinion that if BL does not withdraw, that the Committee should withdraw the offer and open up the bidding again to any interested parties via a new RFP. Mr. Fox disagreed with that.

Mr. Ormsby said that the third option gives the Committee the opportunity to provide the revised architect's agreement which has been substantially revised, including the scope of the work, since the original RFP was provided. Mr. Ormsby indicated that he favored the third option.

Mr. Fox indicated that over the past couple of weeks, work has been ongoing to revise the architect's contract and the scope of services so that they are consistent.

Mr. Soler said that he thought that the revised architect's contract should be given to BL and that they should be told that they have one more chance to revise their bid and if they did not, then the offer would be withdrawn.

Mr. Toretta then said that the discussion which was had with BL advised them of the changes in the scope of work and that they would not move any further on their bid. Therefore, he thinks that the Committee should withdraw the offer and ask the 3 finalists to rebid.

Ms. Thurlow asked Wayne Fox whether as a result of the Committee recommending BL to the Board of The Nathaniel Witherell, and the Board approving of BL, if a financial resolution with BL is not found, has the Town's position with respect to a lawsuit by BL been compromised.

Wayne Fox said that there is no significant threat to the Town if an agreement cannot be reached with BL on its fee. Wayne Fox does not think that there is liability based upon the Board of The Nathaniel Witherell having approved of BL since no contract has been entered into with BL.

Mr. Bankson then moved that the Committee withdraw the offer to BL. Ms. Tarkington seconded the motion. The Committee voted 7 to 1 in favor of the motion, with Dr. Arturi voting against the motion.

Mr. Bankson then moved that the Committee request that BL, SLAM and JCJ to rebid their services for the project based upon a narrowed scope of work, a revised contract form and a revised bid form. Ms. Tarkington seconded the motion. The Committee then voted with 7 in favor and Dr. Arturi abstaining.

Mr. Toretta then signed off from the meeting.

Wayne Fox agreed to call counsel for BL this morning to advise of the Committee's action. Ms. Tarkington suggested that Wayne Fox draft an E-Mail to be forwarded to all 3 finalist firms and that Mr. Latham review that E-Mail and then forward it on to the 3 finalists.

Mr. Lacey stated that the RFP and the contract for the Construction Manager have been completed and that the questionnaire is being worked on. He advised that the Committee will need to do 2 things: (1) make sure that the documents all work together for the project; and (2) complete the scoring methodology.

Mr. Lacey suggested that all of the voting members of the Committee approve of the scoring sheets.

Mr. Soler moved that all of the voting members of the Committee be the voting members of the Construction Managers Selection Task Force. The remaining 7 voting members of the Committee voted in favor of the motion.

A discussion then ensued, commenced by Mr. Saccardi, regarding how bids between Construction Managers might be compared. Mr. Fox and Mr. Lacey indicated that the RAMSA budget categories need to be clarified before the bidding takes place.

Mr. Fox said that he would update the time line based upon today's discussions.

The next meeting of the Committee will be on October 1, 2008 at 7:30 a.m.

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

"Disclaimer: These notes were taken at the meeting of September 10, 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