

CUYAHOGA FALLS CITY COUNCIL

Minutes of the Public Improvements Committee Meeting

May 19, 2014

Call to Order The meeting was called to order by Mr. Iula, Chair, at 8:25 p.m. A quorum was present.

Approval of the Minutes Without objection, the minutes from the meetings of April 7, 2014 and April 21, 2014 were approved as submitted.

Agenda Items

Sub. Temp. Ord. A-41 (4/21/14) An ordinance authorizing the Director of Public Service to execute a modification of Contract No. 6787 with Karvo Paving Company Inc., and declaring an emergency.

There was no proponent testimony.

The Chair asked why the administration did not provide a copy of Karvo's January 23rd letter to the Council until April 14. The Service Director stated that he received a copy of the letter from the City Engineer, and a meeting was scheduled with Karvo. A second meeting was held, after which it was determined that the matter needed to be referred to Council. The Chair asked which member of the administration referred the letter to the Council. The Law Director stated that he did not recall who distributed the letter to Council.

The Chair asked the City Engineer to review the project grant details again.

Mr. Demasi stated that in June 2010, the City applied for a supporting grant from the Ohio Public Works Commission in the amount of \$1,155,341. The grant was denied on November 17, 2010, but the project was placed on a contingency list. In June 2011, the City was awarded the grant funding for the project in an amount only slightly less than the request, based

upon cancellations and savings in other OPWC grant-funded projects. The City was required to accept the grant no later than November 2011. In September 2011 the City advised OPWC that the City was waiting for the developer to complete final plans for the project. In November, 2011, the City was advised that it needed to make a decision on accepting the grant. As a condition of the grant, the City was required to begin construction no later than July 1, 2012. The administration agreed to this condition and accepted the grant.

The Chair asked when the last time any contractor charged the City with delay costs. Mr. Demasi stated it is the first time he has seen this in 14 years with the City.

The Chair recognized a member of the public, John Scirappa, Project Manager for Karvo Paving Co., 761 Meredith Lane. The Chair asked how many changed lease plats were submitted by Stark Enterprises to the consulting engineer, GGC. Mr. Scirappa stated that 37 revised sets of plans were submitted. The Chair asked when these changes occurred. Mr. Scirappa stated they occurred throughout, from the start of the project in mid-2012 to November 2013. The Chair asked who authorized the changes. Mr. Scirappa stated they were approved by the administration/engineering dept. The Chair asked when the project will be finished. Mr. Scirappa stated that the project has been delayed 14 months. Thompson Electric is currently working on the project. The Chair asked if Karvo ever notified the City that it would be seeking delay costs prior to the January 2014 letter. Mr. Scirappa stated that weekly progress meetings were held starting in 2012, and it was made clear in these meetings that Karvo would be seeking additional compensation. Mr. Scirappa stated that prices increase every year, and the extension of the contract into an additional construction season results in increased costs. Karvo had planned to complete

the job entirely in 2012. The “finger cannot be pointed at any one person.” The administration accepted a grant in order to try to save taxpayers’ money, but the “cart was put in front of the horse.” The development should have been completed first. The changes were made because it was what the developer wanted. Mr. Scirappa stated his cost overrun charges are fair and legitimate.

The Chair asked if there are any e-mails documenting the request for extra costs prior to the January 2014 letter. Mr. Scirappa stated there are “boxes full” of e-mails. The Chair requested that the e-mails be sent to the members of the committee. Mr. Scirappa stated he would do that.

The Chair asked why there were extra charges for 365 days in a year when Karvo does not work 7 days each week. Mr. Scirappa stated that the contract specifications indicate calendar days, and maintenance of traffic and overhead is based on calendar days. The amount in the ordinance is a negotiated amount, not what Karvo is entitled to under ODOT regulations, and Karvo is willing to negotiate an upside maximum if the City wishes to do that.

The Chair asked what is included in maintenance of traffic. Mr. Scirappa stated it includes setting barrels, signs, lights, striping, and replacement of damaged items. The Chair asked who instructed Karvo to install the median strip on State Road. Mr. Scirappa stated that he believes the City ordered it on the request of Giant Eagle. Mr. Demasi stated that the median was recommended as a result of a December 2012 traffic study by Wells & Associates. It balances the need for turning lanes at Portage Trail and at the entrance to the development, and is the only solution that did not require cooperation of the owner of the Ohio Savings Bank building.

The Chair recognized a member of the public, Roland Seguin, 673 Hunters Trail, Akron, representing

Thompson Electric. Thompson was awarded a subcontract for the streetlighting and traffic signal portion of the public improvements contract. Less than 4% of the change orders resulted from routine minor field changes. Rather, these 37 revisions made major changes to the scope of the electrical project, a 35% increase. Additional traffic signals were included and light poles that were to be provided by the developer per the original contract needed to be purchased by Thompson. Banner poles were not included in the original project at all. The location of the development entrance was moved about 30 feet after it was built, and needed to be removed and rebuilt. Because Karvo was delayed, Thompson was also delayed and delay costs apply as well, including costs for storage of equipment delivered to the site. In the absence of the changes in scope, this project would not have resulted in delay costs.

The Chair asked if there are further changes to the tenant mix, whether there will be further changes to this project. Mr. Demasi stated that this is an administrative decision. Ms. Sheridan stated that Stark does not anticipate any additional changes.

The Chair recognized Mr. Mader, who asked the Law Director if Stark Enterprises is participating in paying some of these cost overruns. The Law Director stated that representatives from Stark Enterprises would attend the next Council meeting to answer questions directly, but Stark has stated that the City was requested by Stark not to begin construction of the public improvement project until the shopping center plans were final. Stark is not participating in paying these costs. Mr. Mader stated he believes it is inappropriate for the developer not to share in these costs.

The Chair recognized Mrs. Snyder, who asked if there is any other documentation other than e-mails which details the history of the delay charges. Mr. Scirappa stated this was conveyed in weekly meetings

beginning in April 2013, at which time the project was 14 months beyond its completion date. Mrs. Snyder asked if the City has any records documenting the start of the delay charges and their accumulation. Mr. Demasi stated that the minutes of the weekly meetings would reflect topics of discussion, but actual numbers were not received verbally until December 27, 2013 when general numbers were disclosed in a meeting on that date. Written submission of actual numbers did not occur until January 23, 2014. Mrs. Snyder asked if the prior administration was aware in mid-2013 that delay costs would be incurred and would be passed on to the City. Mr. Demasi stated this is correct. Mrs. Snyder asked if copies of the meeting minutes would be provided to Council. Mr. Demasi agreed to do so. Mrs. Snyder asked if Karvo's change orders could be provided in summary form as were Thompson Electric's. Mr. Scirappa agreed to do so. Mrs. Snyder asked if a typical change order includes specification of associated delay costs. Mr. Seguin stated that additional tasks can be specified. Mrs. Snyder asked if it is typical that a contractor would not seek delay costs until the end of a project. Mr. Scirappa stated this is correct.

The Chair recognized Mr. Weinhardt, who asked how the change order requiring Thompson to buy the light poles occurred. Mr. Demasi stated that Stark has a representative at the progress meetings, who made the request there, and request was approved by the administration.

The Chair recognized Mr. Colavecchio, who asked, inasmuch as the claim is for delays, not for actual work, if Karvo has charged any other municipality for delay costs. Mr. Scirappa stated that Karvo has made such charges. Mr. Colavecchio asked if work is not being done, why the delay charges would be so high. Mr. Seguin stated that Thompson's delay charges relate to rental of storage for equipment delivered, and increased labor rates due to the job

extending into another year. Mr. Colavecchio asked if further delay charges can be avoided if there are no further delays from this point on. Mr. Seguin stated his company would not amend its claim to seek further delay charges. Mr. Colavecchio asked if Karvo can make the same statement. Mr. Scirappa stated he would put it in writing.

The Chair recognized Mrs. Klinger, who asked the Law Director if the contract between the City and Stark contains a specific dollar amount for public improvements. The Law Director stated he believes this is correct. Mrs. Klinger stated that if the scope changes are not controlled by the contract, then the City is liable for an infinite number of scope changes. The Law Director stated that the charges at issue emanate from the City's contract with Karvo, not with Stark. Mrs. Klinger asked if there is liability on the part of the prior administration for exceeding the authority granted under the contract with Stark. The Law Director stated that it would be very difficult if not impossible to find personal liability on the part of members of the prior administration, based upon the information available. Mrs. Klinger stated that the prior administration hid their changes to the scope of the project by shifting responsibility for scope changes from Stark to Karvo, and under these circumstances any amount of increased costs could have been shifted to Karvo. The Law Director stated that Board of Control authority would have limited the cost of such scope increases to 10%. The delay costs are not part of the change orders increasing the scope of the project. They are in the original contract. Mrs. Klinger stated that it appears the contract with Stark would have authorized the administration to make unlimited scope changes. The Law Director stated he would need to review the contract with Stark before commenting on that, but no money can be spent on the change orders at issue unless City Council or a Court Order authorizes it. Mrs. Klinger stated that the

contract with Stark is one-sided and now the City is backed into a corner.

The Chair recognized Mrs. Pyke, who stated that she could find only one change order in the minutes of the Board of Control, that of December 9, 2013, which is identified as Change Order #3. Mrs. Pyke asked for copies of change orders 1 and 2. Mr. Demasi stated there were only 2 change orders and the first one can be found in the minutes of April 29, 2013. Mrs. Pyke asked the dollar amounts of the approved change orders. Mr. Demasi stated the amounts of the two change orders together equal 10% of the contract amount. Mrs. Pyke asked if the change orders include the cost of poles ordered by the contractor. Mr. Demasi stated this is correct. Mrs. Pyke asked if Stark ever produced signed leases supporting the change orders. Mr. Demasi stated that this was not the case. Mrs. Pyke asked how Karvo is able to write a letter in January 2014, terminating delay charges as of April. Mr. Scirappa stated it is an educated guess. Mrs. Pyke asked Ms. Sheridan if Stark has produced anything in writing, as promised, indicating that the City will not be expected to pay for any more infrastructure changes. Ms. Sheridan stated she would contact Stark representatives concerning this issue. Mrs. Pyke asked what the City is paying for in the category of "home office overhead." Mr. Scirappa stated that it is the resources for building, staff, meetings and hiring people to perform tasks that Mr. Scirappa cannot handle because he is working on this project, and the field office. Mrs. Pyke stated that the home office overhead charges are produced by an ODOT formula and are not actual costs incurred. Mr. Scirappa stated his calculations are "by the book."

The Chair recognized Mr. Mader, who thanked the representatives of Karvo Paving Co. for their patience, and assured them that Council does not consider Karvo to be "the enemy." The Council is simply trying to understand the issues. Mr. Scirappa

stated that everyone recognizes that the project was “built backwards,” and the development should have been “in stone” before the road work project was started. However, putting together all the numbers, if the old administration had not acted as it did, the City would be paying even more.

The Chair recognized a member of the public, Mr. Seguin, who stated that the lesson learned here is that the authority of the Board of Control as to approving change orders should be clearly defined.

The Chair thanked representatives of Karvo Paving Co. and Thompson Electric Co. for attending the meeting.

There was no opponent testimony.

Without objection the Chair indicated that there would be no motion and Sub. Temp. Ord. A-41 (4/21/14) will be held in committee for further consideration.

Temp. Ord. A-48

An ordinance authorizing the construction of the extension of the sanitary sewer on Hidden Lake Lane in the City of Cuyahoga Falls by a private developer and accepting dedication of the same, and declaring an emergency.

Proponent testimony was offered by the City Engineer, Tony Demasi. Mr. Demasi stated that the developer of Hidden Lake is seeking to develop a vacant block of land on Hidden Lake Lane near State Road. This block is not served by sanitary sewer. The developer wishes to install sanitary sewer on Hidden Lake Lane and dedicate the facility to the City. The plans for the sewer are complete and have been reviewed by the City and the relevant regulatory agencies. The ordinance authorizes the developer to enter into an agreement with the City to permit installation of the facility in the right-of-way. A performance bond in the project amount, and a 2-year guarantee will be required.

There was no opponent testimony. There was no public comment.

Motion by Mr. Mader to release Temp. Ord. A-48 with a favorable recommendation. Seconded by Mrs. Snyder. Motion adopted by acclamation.

Temp. Ord. A-54

An ordinance authorizing the Director of Public Service to enter into a contract or contracts to perform emergency repairs to various roads and storm water facilities located throughout the City of Cuyahoga Falls, and declaring an emergency.

Motion by Mr. Mader to amend Temp. Ord. A-54 by substitution with Substitute Temporary Ordinance A-54 (5/19/14). Seconded by Mrs. Snyder.

Motion adopted by acclamation. The amendment was approved.

Proponent testimony was offered by the Service Director, Eric Czetli. Damages from the storm of May 12th have been categorized into projects that can be handled in-house and those that cannot. There are 13 projects which are too large to handle in-house and should be contracted out. The Service Director referred details to Storm Water Superintendent Russ Kring.

The Chair recognized Mr. Kring. Mr. Kring stated that there are 15 areas which were damaged so severely that the City will need the help of contractors.

The Chair asked what these projects will cost. Mr. Kring stated that the 6 largest projects together will cost \$127,000, which includes guardrails and culverts that were washed away. The total cost of all of the projects is estimated to cost \$200,000 to complete.

The Chair recognized Mr. Rubino, who asked for a list of the 15 projects. Mr. Kring stated that he would provide it.

The Chair recognized Mrs. Klinger, who asked how these projects would affect the Miscellaneous Improvements line-item in the Storm water budget. Mr. Kring stated that some of the Miscellaneous Improvements budget has already been spent, but the rest will "taken into account" with these projects. Mrs. Klinger asked if the Galt box culvert project has been done. Mr. Kring stated that it has not been done, but he hopes to have the design work done with this year's funding. Mrs. Klinger asked how the planned projects and the emergency projects will be accomplished without overspending the fund balance. Assistant Finance Director Scott Fitzsimmons stated that the project will be supported by two funds, the storm water fund and the Capital Projects Fund, as well as budget savings from other departments.

The Chair recognized Mrs. Pyke, who asked if the annual street resurfacing program will be reduced in scope to address these emergency projects. Mr. Czetli stated that the administration is trying to leave the street resurfacing program alone. Mrs. Pyke asked if there is any limit to what the City will spend on these emergency repairs. Mr. Czetli stated that if money cannot be found to conduct the 15 projects using contractors, the City will prioritize them and do the rest with in-house forces. Mrs. Pyke asked if the flooding between 9th and 10th Streets is one of the projects. Mr. Kring stated that this flooding is on private property and does not affect roadways, which is the City's priority.

The Chair recognized Mr. Weinhardt, who asked if there is a storm water plan for the City, and if additional rain gardens would be useful. Mr. Kring stated that there is a capacity plan for the City's sanitary and storm sewer system. Mr. Czetli stated that after the 2003 storms, the City made a major effort to plot the locations of flooding events and develop a strategy to address specific areas, mostly related to sanitary backups. The administration plans

to follow the same strategy as to the storm water flooding. Mr. Demasi stated that the City received four inches of rain in 30 minutes on May 12th. The sewer work done after the 2003 events held up remarkably well, but no sewer system is able to handle that volume of water.

There was no opponent testimony. There was no public comment.


Motion by Mr. Mader to release Sub. Temp. Ord. A-54 (5/19/14) with a favorable recommendation. Seconded by Mrs. Snyder. Motion adopted by acclamation.

Non-Agenda Items


None.

Adjournment

Without objection, Chairman Lula adjourned the meeting at 10:14 p.m.



Jeff Lula, Chair



Paul A. Janis, Clerk of Council