



Town of Reading Meeting Minutes

Board - Committee - Commission - Council:

School Committee

Date: 2016-10-13

Time: 7:30 PM

Building: School - Memorial High

Location: Superintendent Conference Room

Address: 82 Oakland Road

Purpose: Executive Session

Session: Executive Session

Attendees: **Members - Present:**

Linda Snow Dockser, Jeanne Borawski, Elaine Webb, Julie Joyce, Chuck Robinson, Gary Nihan

Members - Not Present:

Others Present:

Superintendent John Doherty, Director of Finance Gail Dowd, Board of Selectmen - John Halsey, Barry Berman, Kevin Sexton, Dan Ensminger & John Arena, Town Manager Bob LeLacheur, Town Counsel Ray Miyares, Fincom member Peter Lydecker, Attorney David Doneski

Minutes Respectfully Submitted By: Linda Engelson on behalf of the Chair

Topics of Discussion:

Executive Session 7:45 p.m.

A. Call to Order

School Committee Chair Borawski called the Executive Session to order in the Superintendent's Conference Room at 7:45 p.m.

Selectmen Chair Halsey called the Executive Session to order at 7:45 p.m.

High School Construction Litigation

School Committee Chair Borawski explained that a tentative agreement has been reached with TLT.

Mr. Doneski provided the background to the case. The lawsuit was filed in 2007. TLT alleged the Town owed them \$4.4 million dollars for work performed under the contract. The Town denied that claim and asserted a counterclaim against TLT for breach of contract.

In 2013 the case was referred to a Special Master who conducted evidentiary hearing which started in December of that year and concluded in March of 2015. In June of 2015, the parties submitted to the Master their respective requests for findings of fact and rulings of law, and closing arguments were presented in July of 2015.

Mr. Doneski said that the first draft ruling was on the issue of asbestos abatement. He went on to review this ruling. The Master found largely in favor of TLT. He determined that the material contained in the exterior walls was an unforeseen condition therefore TLT was entitled to additional compensation. In the draft report regarding the track the Master determined that the Town was entitled to a credit for costs incurred for replacement of the original track surface. The master also determined that the Town was entitled to a partial credit for the stadium lighting and additional site work and TLT was awarded a credit for the additional site work performed.

The next steps in the process is that each party had an opportunity to respond to the individual draft rulings with proposed amendments or revisions. After issuance of all draft reports and receipt of proposed revisions from counsel, the Master will then prepare a final ruling and report to the Superior Court. Mr. Doneski pointed out that the Superior Court would not address this case, if it got to this point, until sometime in 2017.

At various times since April of 2014 TLT had been approached with settlement offers. The offers were consistently met with rejection. Following the issuance of the Master's first three draft reports (asbestos abatement, track and stadium light) in April of 2016, the School Committee met with counsel to review the rulings. At that time, it appeared that the net result of the Master's ruling could be \$2.6 million dollars or more, which would be subject to 12% annual interest from the date of the complaint which was November of 2007. After the meeting, the School Committee voted to authorize a settlement offer to TLT of up to \$5 million dollars. An offer of \$4.1 million dollars was made. This offer was rejected.

A draft report on the project schedule and phasing which includes liquidated damages was issued in early September. The Master ruled in favor on portions of the claim for both sides. If judgement were to entered into on this date, an award of \$3 million dollars would be subject to interest in the amount of \$3.2 million dollars. If the case were to continue without settlement, it would likely be several months before a judgement would be entered in Superior Court.

At their meeting on September 26th the School Committee voted to authorize counsel to make a settlement offer of up to \$6.5 million dollars. Counsel contacted TLT's counsel with a revised offer of \$5.75 million dollars which was countered with an offer of \$6 million dollars. Mr. Doneski informed TLT's counsel that he would recommend that the Town accept this offer. TLT's counsel confirmed agreement on the settlement figure and understands that a Town Meeting vote will be required. The Town will endeavor to complete the process by December 30th but cannot guarantee final payment within that time frame. TLT's counsel understood and agreed to that stipulation.

Mr. Doneski reviewed the process to formally complete the process. Lastly he indicated that a former associate of TLT is asserting an attorney's lien on any payment by Reading to TLT. This matter will be addressed in the settlement agreement – to protect the Town from any further claims – by some form of assurance or indemnification obligation.

Funding options were discussed which include the amount of the remaining balance of the project appropriation, free cash and a source to be determined. There are two liens on the settlement (Western Surety and the former associate).

The settlement agreement will be structured as a Change Order.

Mr. LeLacheur asked if Town Meeting should act prior to an executed agreement. Mr. Miyares indicated Town Meeting could appropriate the funds contingent on a signed settlement. Mr.

Berman feels this matter should not go before Town Meeting prior to having a signed agreement. Mr. Doneski pointed out that the action of the body will be the appropriating the funds.

A question was asked about MSBA reimbursement. Mr. Miyares indicated that \$1.8 million dollars has not been disbursed to the Town on this project. The finds are in different categories and we may not be able to get the full amount.

Mr. Ensminger left the room at 8:29 p.m.

Mr. Doneski continued by sharing that the Master is now on hold and the settlement is not bound by the Master.

Dr. Nihan asked to focus on the settlement. Mr. Berman is concerned about what is going on in the community with an override election approaching. He had hoped for a little more disclosure.

Mr. Ensminger returned at 8:32 p.m.

Mrs. Borawski said that the School Committee has made every effort to be inclusive in sharing information on the lawsuit.

It was agreed that the sooner the information regarding the tentative agreement was shared with the community the better. All agreed that the timing of this announcement is not great.

Dr. Doherty pointed out that due to the Columbus Day holiday and Yom Kippur this was the earliest we could have this meeting. Chair Borawski will read the press release when the Boards return to open session.

Mr. LeLacheur reviewed the funding options. Options include the use of \$800,000, which is the remaining balance in the construction line, \$1.2 million dollars in free cash and \$4 million dollars to be borrowed. There will be adjustments to the capital plan such as deferring projects. The high school project is a capital project.

Dr. Nihan left the room at 9:00 p.m.

Mrs. Borawski asked if we have cases against other parties.

Dr. Nihan returned at 9:02 p.m.

Mrs. Webb said the School Committee had asked on multiple occasions since the appointment of new counsel Brackett & Lucas be put on notice. Mr. Robinson added that the Committee was under the impression that the litigation was progressing and did not receive appropriate updates until Mr. Doneski and his firm were hired as replacement counsel.

Mr. Miyares shared that in order to win a malpractice case there needs to be proof that the advice or specific item would have resulted in a different outcome. At this point there is no evidence of malpractice and does not recommend pursuing this matter.

Adjourn

Mrs. Webb moved, seconded by Mrs. Joyce, to adjourn and return to open session. The roll call vote was 6-0. Mr. Robinson, Mrs. Webb, Mrs. Borawski, Dr. Nihan, Mrs. Joyce and Dr. Snow Dockser.

Mr. Ensminger moved, seconded by Mr. Halsey, adjourn and return to open session at. The roll call vote was 5-0. Mr. Halsey, Mr. Ensminger, Mr. Arena, Mr. Berman and Mr. Sexton.

Meeting adjourned at 9:24 p.m.

Approved 1.12.17
Released 1.12.17