BOARD OF ESTIMATE AND TAXATION
AUDIT COMMITTEE
"LESSONS LEARNED"
HAMILTON AVENUE SCHOOL CONSTRUCTION MEETING
Minutes
Tuesday, June 23, 2015 8:00 A.M.
Town Hall Meeting Room

Present:
Committee: Arthur Norton, Chairman; William Finger, Leslie Tarkington, John Blankley

Attendees:
Peter Mynarski, Comptroller; Ron Lalli, Risk Management Director; Pat Maranan, Internal Auditor; Mary Lee Kiernan, BET; Barbara O'Neill, Chairwoman, Board of Education; Katie DeLuca, Planning & Zoning Director; Ben Branyan, Town Administrator; Leslie Moriarty, MISA Building Committee; Laura Erickson, Board of Education; Jackie Welsh, Vice Chair, MISA Building Committee; John Toner, Selectman; Frank Mazza, former member of the Hamilton Avenue Building Committee; John Wayne Fox, Town Attorney; John Frangione, Board of Education Building Operations Supervisor; Robert O'Brien (via telephonic call-in).

The meeting was called to order at 8:04 A.M.

1. Presentation by John Wayne Fox, Town Attorney

Mr. Norton started the meeting by explaining that the "Lessons Learned" policy was started years ago by the BET Audit Committee and it dealt only with legal settlements out of the Risk Fund for more than $100,000.

Mr. Norton asked Attorney Fox if he felt that an Executive Session was warranted based on the fact that a "Confidential Attorney-Client Privilege" Memorandum has been distributed and the document needed to be discussed at this session. Attorney Fox responded that the need for an Executive Session would be based on the content of questions asked.

At 8:11 A.M., Ms. Tarkington made a motion to go into Executive Session to discuss the confidential memorandum prepared by Attorney Robert J. O'Brien. There was no second and the motion failed.

At this point, Attorney Fox connected with Attorney O'Brien via telephonic hookup to discuss the contents of a "Lessons Learned"/Hamilton Avenue School Construction Project memorandum prepared by Attorney O'Brien.

Attorney O'Brien initiated the discussions by explaining that the Town entered into an Owner/General Contractor agreement with Worth Construction, which may have been the basis of problems that subsequently arose. Attorney O'Brien explained that the Town of Greenwich was more successful with other Town construction projects by utilizing a Construction Manager (CM) method of project delivery. He added that the Town entered into CM as advisor arrangements whereas the CM acts as the owner's representative with the owner holding the subcontracts. Attorney O'Brien stated that these relationships existed with other Town projects such as Glenville School, the Nathaniel Witherell Project Renew and the Greenwich High
School Music Instructional Space & Auditorium (MISA) projects. Attorney O'Brien told the Audit Committee members that the CM approach does not guarantee the absence of problems on a job. He said that the CM's role and its obligation often serve to protect the owner's interest more effectively than the traditional general contractor model.

Mr. Norton asked Attorney O'Brien to comment on the role the Architect played in the Hamilton Avenue project. Attorney Fox responded first by saying that the relationship between the Architect and the Project Manager was contentious at times. He added that there were email exchanges between these two parties that were damaging to the settlement of the suit against Worth Construction. Attorney O'Brien answered that the level of change orders in this project were unusually high and to answer Mr. Norton's question, Attorney O'Brien stated that you really can't change the role of the Architect. Attorney O'Brien offered that the Town should have hired an architect and entered into a CM arrangement at the same time instead of the general contractor arrangement that was utilized.

Ms. Tarkington asked if Attorney O'Brien could quantify the number of change orders. Attorney O'Brien said there were hundreds of change orders and that he could not remember exactly how many. Mr. Mazza countered by saying that he didn't think the number of change orders was out of line. Mr. Mazza clarified his statements by saying that Worth Construction processed many change orders that were rejected and subsequently never processed. Mr. O'Brien added that there was constant friction between the Project Manager and the Architect. Mr. Mazza stated that in his opinion, the Architect was a young woman that appeared to be in her first job, which complicated the relationship with the Project Manager.

Mr. Blankley asked about the source of the change orders. Attorney O'Brien answered that the change orders, which he labeled as "Proposed Change Orders" came from both the Town and Worth Construction, but substantially more came from the contractor. Attorney O'Brien further elaborated that the Proposed Change Orders that came from the contractor were attributed to design flaws in the building specifications.

Ms. Tarkington wanted to clarify that the reference in the confidential memorandum to the Nathaniel Witherell project was incorrect. She stated that the CM on the Nathaniel Witherell project was a CM at risk, with a contract that was modified to a Guaranteed Maximum Price contracts.

Attorney O'Brien was asked to compare the Hamilton Avenue project to other Town projects and to try to explain what went wrong. Attorney O'Brien said that one of the most important reasons was the fact that there were four different project managers on the Hamilton Avenue project. Attorney Fox added that sometimes luck enters into the success of a project. Mr. Mazza, using the Police Complex Project as an example, added that the Town used URS as the Project Manager, who had complete control over the project and did a great job.

Mr. Finger asked if the building of a school, with a building committee such as Hamilton Avenue, was a factor in comparison to building a Police building. Mr. Mazza responded by saying that the complexity of each of these projects was not a factor in the delays and cost overruns for the Hamilton Avenue project. Mr. Mazza firmly stated that in his opinion that worst way to build a building is to have a building committee involved in the project.

Ms. Tarkington asked Attorney O'Brien and Mr. Mazza if they felt that the Hamilton Avenue Building Committee ("Building Committee") was left out on its own. Mr. O'Brien responded by
saying that the Architect was not strong enough and the Project Manager was not providing enough support to the Building Committee.

Mr. Finger asked Mr. Mazza if there was anything that the Town, its departments or the Boards should have been doing differently to support the Building Committee. Mr. Mazza started by saying that there were three bids. Worth Construction was the low bidder. At the same time of the bidding, it was learned that Worth Construction was removed from doing construction work in New York City, due to their connections to organized crime. He qualified his remarks by saying that Worth Construction was still an accepted bidder by the State of Connecticut. Mr. Mazza said that the Building Committee was uncomfortable with Worth Construction, but there was not enough money appropriated to go to the next lowest bidder. To answer Mr. Finger's question, Mr. Mazza stated that Board of Education should have asked for an appropriate amount of money up front for the Board of Estimate and Taxation to appropriate which would have allow the Town to go the next lowest bidder.

Mr. Norton asked about the "liquidated damages clause" mentioned in the confidential document and if the Town should include such a clause for the upcoming New Lebanon School project. Mr. O'Brien responded by saying that such a clause is routine and it gives you a fair amount of leverage. He recommended that such a clause be included in future construction contracts. Mr. Finger asked that if such a clause was included, would the contractor want a bonus clause added in. Mr. O'Brien responded by saying that he would strongly opposed of any bonus clauses being included in any public construction projects.

Ms. Tarkington asked Mr. Mazza if the Board of Education prepared building specifications were adequate. Mr. Mazza stated the original specifications for this job were appropriated at about $21.5 million dollars in the beginning. He added that the building specifications were inadequate. There were missing important cost estimate parts of the project, such as the garage, rock removal costs, drainage costs and other requirements. Mr. Mazza wanted it clarified that the cost overruns were not so much attributed to changes orders, but appropriately caused by bad cost estimates. He said that the final costs of this project added up to about $29.5 million dollars.

There were questions about the reference to the inclusion of the Shipman and Goodwin LLP blog listed in the confidential document. Mr. O'Brien admitted that he had not visited the web address and Ms. Tarkington said that she had gone to the blog and did not recommend its review.

Mr. Norton asked Mr. Mazza if Best Business Practices were followed. Mr. Mazza responded by saying the change order process was taking too long. He said that a great deal of the change orders were constantly being rejected slowing the process. Mr. Mazza added that what hurt this project the most was the turnover with four different project managers and dealing with the volatile nature of the Worth Construction owner.

Ms. Tarkington asked if he felt there was sufficient support from the Board of Education administration on this project. Mr. Mazza started by saying that the Building Committee considered calling the bond on this project but decided it was not worth calling the bond and let the insurance company take over the project. In response to Ms. Tarkington's question, Mr. Mazza said that he felt the Board of Education lost confidence in the Building Committee. As an example, he said that they went out and hired a consultant and never told the Building Committee. In addition, the First Selectman also went out and hired a consultant at a cost of $70,000 to oversee the project and that also did not work out.
The meeting concluded with several lessons learned during this session:

- The scope of any future construction project has to be clearly defined.
- Be wary of conditioning funds at appropriation time as this can lead to being forced to accept the lowest bidder.
- Ensure early involvement of all parties to avoid personality conflicts.
- We have learned the value of utilizing a Construction Manager (CM), as defined by Attorney O'Brien and the CM should be asked about his attitude to change orders.
- Request audited financials should be required at the RFP process.
- A Liquidated Damages Clause should be included in any future construction contracts.

Mr. Norton thanked Attorney Fox and Mr. Mazza for their participation in this session.

2. Adjournment

Upon a motion by Mr. Finger, seconded by Ms. Tarkington, the Committee voted 4-0 to adjourn the meeting at 9:24 A.M.

Arthur D. Norton, BET Audit Committee Chairman

Peter Mynarski, Recording Secretary