

**Town of New Scotland
Special Town Board Meeting
04/25/2018**

The following Town Officials were in attendance:

Supervisor:	Douglas LaGrange
Councilperson:	William Hennessy Adam Greenberg Patricia Snyder Daniel Leinung
Highway Superintendent:	Kenneth Guyer
Town Attorney:	Michael Naughton
Town Clerk:	Diane Deschenes

1. Call to Order

Supervisor LaGrange called the meeting to order at 6:00 PM to discuss a contractual issue with a vendor.

2. Pledge of Allegiance

3. Discussion/Action re: Stantec Engineering Feura Bush Water Main Replacement Project Contract Change Order #2

Supervisor LaGrange added an item if the Board wants to entertain it. There was a task order change for Stantec in the amount of \$2,100. The original Feura Bush amount was \$2,000. We approved that back in January or February and then we did a change order for \$5,000 toward the engineering for the emergency water main replacement. Because of different issues that have come up as they've gone along it's taking longer and they have to observe more. There were a couple more crossings that were unexpected as you might imagine with a pipe that was in the ground 30 years ago. It's not exactly known where it was. There have been a couple of issues that they had to be there to observe and Mr. Frueh asked if we could do this change order. He had it in an email that showed that they are a little over right now, but this should satisfy it for the rest of the way. Councilperson Leinung said that part of this is that the initial completion date is almost two weeks later now. Supervisor LaGrange agreed. Councilperson Hennessy said that he's not totally on board with it yet. He thinks that we need a little bit more review of this. He appreciates their efforts, but it was understood early on what this was going to be and he would rather not just agree to this tonight. He'd rather have a little bit more time to review and for him to maybe get more substantiation. Supervisor LaGrange commented that if we're prepared to have them not observe as they are making the lateral connections and finishing up the other stuff that's fine, but right now they're at a deficit. That's certainly something we can entertain. Councilperson Hennessy said that he understands, but they gave us a budget and an estimate. While it's encouraging that we could force someone to do the work based on their estimate for professional services, he still thinks we should be a little bit more leery of this. Easily, he would rather be a little more deliberate in reviewing this.

Councilperson Snyder asked if this was for another 18 more hours of work? Supervisor LaGrange said that it was. Councilperson Snyder asked if this would have any impact on completing the system if we don't approve this, chlorinating the water, etc.? Supervisor LaGrange said that it wouldn't. Right now the main is all in and all connected. It had been pressure tested on either Monday or Tuesday. It was chlorinated and sent in for tests on the first day and then today it was going to be tested again to be sure that everything is correct. If the tests come back fine, as they should, they will start the other improvements and doing the laterals. Councilperson Snyder asked if the Board of Health has to come and test it? Supervisor LaGrange said that they are the ones who do the testing. Councilperson Hennessy asked if they would cease their work if they don't get this. Councilperson Snyder asked if this would interfere with completing the project? Councilperson Hennessy said that it would not. If you were okay with them not coming. Councilperson Hennessy said they would not do that. Stantec isn't going to quit if for \$2,000. Supervisor LaGrange agreed, saying that Engineer Dempf and Mr. Frueh have been pressured from higher ups to be sure that they bill for work done, and we expect the same out of contractors when they're dealing with developers that the developers keep the escrow up and that they don't go beyond what their scheduled hours are. Councilperson Greenberg said that we often don't have escrow for projects they're working on. He believes that that's happened numerous times in the last few months. He thinks it's going on with the Krumkill Road project now where there is no escrow. He's pretty sure we've moved ahead with projects before an escrow had been set up. He is uncomfortable with this from the beginning, and that's why he tried to make us get more estimates and bids on the process. In his opinion it came in high, and now we're being asked to add another 2% to the

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cost of the project based on engineering. He's not sure why since we haven't been updated on the project as to why it's taking so long. If it's taking long because the contractor is taking longer than they said they were going to take, and then it seems to me the contractor should pay for the extra engineering hours. Councilperson Hennessy said that that's common. It probably wouldn't happen here because of the emergency basis of the contract itself and they may not have come in with as much information that they could have known at the outset. Attorney Naughton said they are not past the time of the essence on the contract completion. We had an April 15 deadline but it provided for weather or other events requiring them to finish later than April 30 became a time of the essence. There was leeway in the contract for them to take longer if there was something like a weather condition. Councilperson Greenberg asked if the weather is the excuse they are using. Attorney Naughton said that he didn't know. He hasn't heard any excuses about why it's taking longer, but it would be difficult with them not being past their deadline to back charge the contractor for this amount. Is the contractor saying that they are going to be done by April 30? Supervisor LaGrange said that it sounds like it but he hasn't been down there this week. They have seven or nine laterals to do, and they replaced the culvert they had to dig up. Another thing that happened was that there was a leak that stopped everything on the old main. They had to dig that up and repair it. That was Friday of last week. Again, as he mentioned earlier, it was because there were at least two more crossings of the old main and that they didn't anticipate which caused issues. Councilperson Greenberg asked to have "two more crossings" explained to him. Supervisor LaGrange said that they thought they could go alongside between the old main and the road for the total distance, but apparently the old main kind of snakes in and out so they ran into issues with that.

Supervisor LaGrange offered the following resolution and moved for its adoption:

Resolved that the Town Board of the Town of New Scotland does hereby approve Change Order #2 from Stantec in the amount of \$2,100.

Councilperson Snyder seconded the motion.

Councilperson Leinung said that he understood the first three items, but didn't we have something built in about them looking at the emergency alarm? I know we added that in. Why is that still four hours. Supervisor LaGrange said it's still to be done. Councilperson Leinung asked if that four hours should have been incorporated in the original one? Supervisor LaGrange said that he doesn't know if that was in the original or not so he can't answer that, but we can find out. Councilperson Greenberg said that there are a few things we can't answer right now, but yet you're asking us to vote on allocating these funds. Councilperson Leinung said that he just doesn't know how these agreements work. He understands the way a professional services contract works. They say that this is how many hours we're going to do. They don't bill us and we pay them later. It's almost kind of like an escrow that we're putting this money into. Supervisor LaGrange said it's a commitment not necessarily like a contractor putting escrow in. Councilperson Leinung said that this isn't necessarily under their control, but we're not saying we're not going to pay this either.

Councilperson Snyder asked if we are saying we're not going to pay this, or are we saying we need more time to get more information? Would you feel more comfortable if they were here? Councilperson Hennessey replied yes, adding that he's not going to support it tonight unless there is better substantiation and understanding of the future and the completion. It's an open-ended contract. He'd like to have a little bit more substantiation and something that is more appropriate for the budget. He understands professional services have to go this way, but he'd like to have a little bit more substantiation of this. Even though it is not significant in dollar value, he doesn't want to just keep agreeing to all of the dollar value increases on all of these things that keep happening to us. Attorney Naughton asked Councilperson Hennessey what information he would specifically want to have. Would he want to see time sheets? Councilperson Hennessey replied that he would like to see more substantiation as to why we didn't have the right amount in the first place, or of the required increases, and what is the end result of this. Is this something that is going to end here or are there still some open-ended problems that exist? Councilperson Greenberg stated that he would like to see some time sheets to see what they spend time on. It may have something to do with the contract we have with the contractor where they are taking longer than they said they were going to take. He understands that April 30 was the deadline, but there was also an estimate of about a week's work. April 30 at the time seemed like a reasonable date, but maybe they couldn't start when they needed to start so they might not get started till April 14 and, therefore, might not finish until April 23, so can they have until April 30, and now this one-week job is going to take three weeks. Therefore, the engineering costs are going to

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go up. If they're asking for money, they should be able to send a representative to the meeting. Additionally, it's a special meeting. It's quite possible we never would have been meeting tonight and they wouldn't have gotten this \$2100 until our May meeting anyhow. So if they would have stopped working because they didn't get paid or voted on until May it's worrisome that our town engineer would say that. Councilperson Snyder asked if they had billed for these hours yet? Supervisor LaGrange replied that these are anticipated hours but the \$2100 is for what's going to happen in the next week. Councilperson Leinung said that he understood that they wanted the money there, and they don't want to go into a deficit situation. He doesn't think we are saying that we aren't going to pay this; we are just saying that we need a little more information before we say we are. Is this an "up-to" amount? Attorney Naughton replied that it is. Councilperson Leinung feels that the Board needs a little bit more conversation with Stantec to answer some of these questions. Attorney Naughton stated that if they are not going to meet the time-is-of-the-essence April 30 deadline, that would be a situation where we would have a basis for back charging the contractor for taking longer and running up additional engineering fees. Procedurally, he doesn't hear three votes in support so the Board may want to withdraw the motion so it doesn't look like it got voted down.

Supervisor LaGrange withdrew his motion and Councilperson Snyder agreed.

Supervisor LaGrange was delayed with his bonding. There were issues there, which doesn't affect Stantec, but this is why they're not done by April 15. Then we had a couple of deluges of rain plus the water main break which put them out a day. It hasn't been the perfect situation for them to work on this. Councilperson Snyder asked if Stantec would be at the May 9 Board meeting. Supervisor LaGrange responded that they would. The final details can be reviewed of how it all ended up. Presumably the project will be done by then, and we can finalize any costs that were incurred.

Supervisor LaGrange asked for Board members to send him emails with any questions they may have so that he can discuss them with the contractor. Attorney Naughton said that one of the easiest things to do would be to have them provide a printout of the itemized statement including their billing codes and itemized hours for each day for oversight. There should be some description of what they were doing. The statement would have a summary of each of the time sheets that are submitted. If there is a log completed by the construction observer, we could look at the log book maintained on this project to see what has gone on every day.

Supervisor LaGrange said that their stopping of observation is not being used as a threat or coercion, but they have been given a lot of grief from above and have been told not to work without proper escrow or something equal to that.

Councilperson Hennessy said that he asked Engineer Dempf if he was paid on the escrows on all the bills that were paid last month. He didn't think that he was; all that escrow had to be in place. The water district extension in New Salem, which we accepted as a complete job and paying Stantec their final bill, yet he didn't think there was an escrow for it. Supervisor LaGrange stated that there was and we paid out about \$30,000. Councilperson Greenberg said that this wasn't the same as escrow because it was coming out of the water district fund. It is a budgeted item in a sense.

4. Executive Session

Resolution 2018-100

Supervisor LaGrange offered the following and moved for adoption.

Resolved that the Town Board of the Town of New Scotland go into Executive Session to discuss a contractual issue.

Councilperson Greenberg seconded the motion. All present and voting, the motion carried (5 Ayes).

Executive Session began at 6:22 PM.

Supervisor LaGrange made a motion to adjourn Executive Session, seconded by Councilperson Snyder.

Executive Session adjourned at 7:15 PM.

No action was taken in Executive Session.

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Proposed Local Law F of 2017

Attorney Naughton stated that we received our referral from the County on proposed Local Law F of 2017. It was deferred to local action. They didn't see any intermunicipal, countywide impacts. We are ready for our hearing at the May meeting.

DASNY update

Supervisor LaGrange wanted to update everyone on a letter he received from DASNY on April 25. "The authority has audited your reimbursement request #1. We will be processing a payment in the amount of \$75,000 on April 30, 2018." That is the Amedore grant. They were very picky about documentation; we had it all, but we are still hung up on less than \$2,500 because we didn't have certain documentation that we never had a part of. It was Hudson Mohawk and their negotiations acquiring the property. We might be short that amount when we are done, but it is just a very unreasonable request. We have gone to Hudson Mohawk to ask them to submit what she thinks she needs, but they don't have what she thinks she needs either; they and their lawyers have been very cooperative.

5. Adjourn

Councilperson Hennessy made a motion to adjourn, seconded by Councilperson Leinung. The meeting adjourned at 7:20 PM.

Diane R. Deschenes, Town Clerk