

BOARD OF MAYOR AND ALDERMEN

CALLED MEETING

AUGUST 23, 2015

The Board of Mayor and Aldermen (BMA) met in Called Session on Sunday, August 23, 2015, at 6:00 p.m., at Town Hall, 123 Boone Street, Jonesborough, TN.

Mayor Kelly Wolfe called the meeting to order and led the group in an opening Prayer. C.W. Parker led the pledge to the Flag.

Upon call of the roll those present were: Mayor Kelly Wolfe, Alderman Terry Countermine, Alderman Adam Dickson, Alderman David Sell, and Alderman Chuck Vest. Also present were: Town Administrator Bob Browning, Town Recorder Abbey Miller, Operations Manager Craig Ford and Town Attorney Jim Wheeler

Mayor Wolfe said this is an extraordinary circumstance to have a meeting on Sunday and is not something that brings us any joy and is not something that any of the BMA members would prefer to happen; however, due to a series of events, we are to the point with the Senior Center project where we can almost see the light at the end of the tunnel and must now make some important decisions. He said the plan that the Town thought they had arranged with the bonding company, Westfield Insurance Company (Westfield), has changed and Westfield has informed the Town that one of two options that we agreed upon with them is now no longer viable. Mayor Wolfe asked Attorney Wheeler to talk briefly about the nature of this called meeting.

Attorney Wheeler offered the following brief explanation: he said this is a called meeting and the Tennessee Open Meeting Law requires that reasonable notice be given under the circumstances, depending on the matter that is being deliberated. In this situation there was a need for a quorum and we were concerned because one member of the Board was going to be unavailable beginning Monday morning for over a week and if another member was be unavailable for a called meeting, there would not be the necessary quorum. Because of the importance of this issue we wanted the full Board to be involved in the deliberation and decision. In addition the Town received notice from Westfield Insurance Company at 5:30 p.m. on Thursday that they would no longer be voluntarily overseeing the project. At that point on Friday morning staff began work on preparing a called meeting and became aware of the situation where we may have a lack of a quorum. Staff worked with the Board members and determined that Sunday evening was the latest possible time that they could meet and give the most notice. Notices were prepared and sent out Friday morning once an agenda was prepared. The notices were sent by fax to Johnson City Press News Room, Herald and Tribune, WJCW, WQUT, WXBQ, WJHL-11, WCYB-5, notices were emailed to Johnson City Press and hand delivered to the Herald and Tribune, posted on all outside doors at Town Hall, posted on Google Calendar events for the Town, and Historic Jonesborough Facebook website. The notice was published in the Johnson City Press on Saturday, August 22, 2015. He said in his opinion there has been reasonable notice for this meeting, and the meeting was set at the latest possible time to get a quorum. Mr. Wheeler said that Mr. Browning would speak more to this but that he felt this was not a situation where we could wait any length of time to make a decision on how to move forward. Mayor Wolfe asked if there were any questions for Attorney Wheeler. There were none.

Bob Browning said he prepared a letter directly to Rainey Contracting, LLC and had it hand delivered to a representative on site at the Center project on Friday, August 21, 2015, and also emailed it to Scott Rainey. He said he also talked to Scott Rainey to make him aware of the meeting and to encourage him to attend the meeting where he would be given the opportunity to provide information to the BMA to help them in making their decisions at this meeting. Mr. Browning said that Mr. Rainey sent some information that is included in the packet.

Mayor Wolfe said this has been a long road for the Town, and it should have been a happier journey; the Town is in the third year in building the Senior Center. He said we have ample backing for the claim that the Contractor has not proceeded in a

sufficient manner. He introduced C.W. Parker, representative of Ken Ross Architects. Mayor Wolfe said he had talked with Mr. Parker about the number of times they had to have tasks redone on the site which caused delays and about the lack of supervision on the job site. He added that in some instances it may have been a lack of knowledge on how to perform some tasks.

Mayor Wolfe said there is one item in the packet that Mr. Rainey included stating that the Town would not let him insulate and sheet rock the building before the roof was installed which caused a delay and affected his performance. Mayor Wolfe said he would challenge the manner and speed in which this project has progressed, and that he could not imagine what kind of disaster there would have been if we had let Mr. Rainey insulate and sheetrock the building before the roof was installed; it is bad enough that it took his men five months to roof the building. He said if this becomes an issue in future litigation with Mr. Rainey, he apologizes; however, he would not apologize for not letting Mr. Rainey do what he wanted to before the roof was installed. Mayor Wolfe said there was at least three times that the roof had to be taken off and reinstalled. He said the action the BMA is considering is not a fun thing to do, and is not one we want to do, but is something that we have to do. Mayor Wolfe asked Mr. Browning to tell the Board where we are with Westfield Insurance Company, and what our options are.

Bob Browning, Town Administrator, said in the third week of July he communicated with the Bonding Company after numerous discussions at our weekly progress meetings about the fact that there was not enough manpower on the job, that we were constantly getting complaints from subcontractors about not getting paid, and the subcontractors did not have the necessary manpower on the job to move it along. He said the Town is in the process of bidding out the furnishings and equipment and we want to have the building finished when those items are delivered, but we have had no real indication as to when we are going to be able to get in the building. Mr. Browning said he communicated with Westfield and a copy of the letter that went to them is included in tonight's packet. He said he requested that they provide oversight assistance with the intent of there being an in-between step to allow Rainey Contracting to finish the job but at the same time to assure the Town that there was some quality supervision and management that would allow the project to be finished in a timely manner. Westfield responded back and there was a meeting in Jonesborough with a representative of Westfield, Eddie Phillips of Ken Ross Architects, Rainey Contracting, LLC, and the Town staff, and there was a discussion and agreement on what we thought was going to be a good plan. Mr. Browning said that Westfield did take financial responsibility for the project which was a major road block for the Town at the time because the subcontractors were concerned about not being paid; the subcontractors were staying on the job with just enough manpower to say they were on the job, but the project was not moving forward. He added that when Westfield came in and took over, a lot of the subcontractors were paid and we did get a better response from the subs to move the project forward. He said we expected Rainey to request Westfield that they provide construction supervision, consultation and assistance. Westfield, under normal circumstances, uses Landmark Corporation in Johnson City as their representative on the job site when they are involved in a project in the area. He said Larry Calloway is the owner of Landmark and he has been in business for over forty years. His company built Town Hall, and they are a good solid company. Mr. Browning said he felt that scenario would give the Town confidence that the project would move forward. He said one concern about terminating the General Contractor is the termination of the subcontractors as well, and with the initial agreement, we would not have to worry about terminating all of the subcontractors. He said Rainey's request for assistance did not happen and when he was communicating what Landmark's role would be in the project, he found out that at that point Landmark was not going to have any role in the project. He said Rainey had to voluntarily ask for some assistance but had not done so. Mr. Browning said he had delivered to Rainey Contracting, LLC a letter giving them the choice of either voluntarily asking for that supervisory assistance or he would recommend to the BMA that they terminate Rainey Contracting from the project so we could have some assurance that there was competent leadership on the job site. He said Rainey then asked for assistance, and Westfield took action this past Monday; Landmark came in and did an assessment two days last week; they communicated with

the subcontractors to determine where the project stands. He said they provided information to Westfield and that is when we received the letter from Westfield that said after they assessed the situation and received the information from Landmark that they did not have the confidence that their participation in the project with Rainey Contracting, LLC was going to lead to a successful conclusion, and, therefore, they would not invest more money in the project with Rainey. He said if the Board decides to continue with Rainey under the contract as it is now without Westfield's assistance, it does not mean that we can't go back to Westfield, but the comment from Westfield was that if we continue with Rainey and then we go back to them to change contractors, to keep in mind that "that does not happen overnight and would take time".

Mayor Wolfe asked Mr. Browning if he had addressed with Westfield the issue of the contracts with the subcontractors. Mr. Browning said he had talked to Westfield and what would have to happen if the BMA determines that we need to terminate Rainey Contracting, LLC, is that Westfield would be notified of Rainey's termination and be requested to immediately take over the construction of the project; Westfield would then contact Landmark and Landmark would go to the subcontractors and try to ratify the existing contracts with them. He said he has asked Ken Ross Architects, Westfield, and others about what the response of the subcontractors would be and he was told that everyone would be surprised if the subcontractors were not willing to agree to finish the project. Mr. Browning said that Rainey has used very good subcontractors, and we are confident that they will want to finish the project.

Mayor Wolfe said at this point we have only one of the two options remaining involving the bonding company. He said one option was to finish the contract with Rainey with Westfield providing financial backing and Landmark working with Rainey. He said this has been ruled out by the bonding company and is not a viable option at this point. Mayor Wolfe said the only remaining option is to dismiss Rainey as the general contractor and work with Westfield to hire a new general contractor, to ratify the existing contracts with the subcontractors, and to try to finish the project in the time frame that will still meet our deadlines. He added that this option will give the Town more confidence and assurance about the outcome of the project. Mr. Browning said there are still two options, because one is to remain with Rainey with Westfield handling the finances only; however, there is only one option that would allow the bonding company to be involved in completing the construction.

Alderman Vest said Rainey sent a letter to the Town on Friday afternoon stating some of the reasons for the delay and one was unforeseen existing conditions on another major Rainey project; he was admitting that there were other reasons that caused the delay to this project. Alderman Vest said if the Senior Center project was important to him, Mr. Rainey should be at this meeting to ask to remain on this project.

Alderman Countermine asked if the BMA takes this action, is Landmark going to be willing to come in and complete the project. Mr. Browning said Landmark has a relationship with Westfield and has agreed to finish the project. He added that Landmark has already asked Ken Ross Architects for a set of construction plans and has been familiarizing itself with this project.

Bob Browning said one of his ongoing concerns has been a lack of supervision on the project, and the fact that work has had to be redone several times. He said Rainey is always willing to redo the work, but now there are so many tasks that have to go on at the same time, and without good supervision, we could end up with a bad project. Mayor Wolfe said the last five percent of any project is twenty percent of the effort, and this is crunch time where every task must be done correctly. Mr. Browning said there has been some substandard work and we have made them go back and fix things. He said every time this happens it extends the schedule further out. He said with adequate supervision on this project and with the current subcontractors, the Town can end up with a building that we can be proud of and it will be in good shape for the seniors we are trying to serve. Mayor Wolfe said it is time to put joy back in this project and it will come from good supervision and a firm deadline for the project.

Mr. Browning said it is not necessarily going to be smooth on the job site because there are doors and other items that we have to make sure have been ordered and get delivered. He said there is a commitment from Town staff, Ken Ross Architects,

and Landmark to finish this project in a timely manner. Mr. Browning said the staff is still hoping that this will be completed by the end of September or first of October.

Alderman David Sell asked how much extra money all of this has cost the Town with the staff time and effort on this project because this has taken away from other projects that the staff needed to be on. He said he has heard a lot from the public, and few of them have any confidence in what is going on at the Senior Center.

Attorney Wheeler recommended the first action by the Board be to make the agenda presentations and attachments a part of the Minutes as a basis for any other action taken by the Board at this meeting. Motion was made by Alderman Vest, seconded by Alderman Countermine and duly passed to make the following agenda presentation and attachments a part of the Minutes of the meeting:

INSERT INFORMATION

Attorney Wheeler said the second action would be to vote on the recommendation to find Rainey Contracting, LLC to be in default of its contract for the reasons described during the course of this meeting and as stated in the agenda presentation. Mayor Wolfe asked Attorney Wheeler if he could defend this determination successfully if needed, and Mr. Wheeler said there is never a guarantee with litigation but he felt we have a strong position. Alderman Vest made the motion, seconded by Alderman Sell and duly passed to declare Rainey Contracting, LLC to be in default of its construction contract with the Town of Jonesborough.

Attorney Wheeler said the third vote would be to act on the recommendation to terminate Rainey Contracting, LLC from the project. Alderman Countermine made the motion, seconded by Alderman Dickson and duly passed to terminate the construction contract with Rainey Contracting, LLC for the construction of the Senior Center.

Attorney Wheeler said the fourth vote would be to act on the recommendation to authorize Mayor Wolfe and/or the Town Administrator to notify Rainey Contracting, LLC, and Westfield Insurance Company of the Board's actions and request Westfield Insurance Company to complete the project and authorize the Town Administrator to take any action he deems necessary to carry out the intent of the Board in the actions taken at this meeting between now and the next Board meeting.

Mr. Browning pointed out that the Board has an updated letter to Westfield that has additional language as recommended by Attorney Wheeler. Mr. Browning said the letter includes language that Rainey Contracting, LLC did not pay subcontractors in a timely manner which resulted in numerous complaints and further project delays.

There being no further business the meeting was adjourned.

ABBAY MILLER, RECORDER

KELLY WOLFE, MAYOR