

The Beulah Special Council Meeting of April 29, 2016 was called to order at 4:00 pm at Beulah City Hall by Mayor Darrell Bjerke.

Present: Alan Kok, Kathy Kelsch, Roger Gazur, Clyde Schulz, Travis Frey, Ben Lenzen

Absent: Kirby Morgenstern, Brant Keller

Also Present: City Attorney Scott Solem, City Engineer Loren Daede, City Coordinator Russell Duppong, Owen Voigt, Ted Eickman, Kate Johnson

Topic: Barton Estates Subcontractor Street Expenses

Owen Voigt of R.S. Giulio presented information to the Council. He stated the bid package had a mistake listing cubic yards rather than tons for Class 5 gravel in Barton Estates SID #23. He questioned the amount paid from the \$144,000 bid and Daede agreed \$76,800 paid from the bid. Ferebee stated the payment was made to Bituminous as the contractor and then it is filtered through to R.S. Giulio as the subcontractor. Voigt stated they didn't receive the payment information initially from Bituminous. He requested and received the information from Ferebee. Voigt presented a portion of the contract. He stated they did not receive notice of a change in the contract. They also did not receive a field order so a change order was not made.

Daede commented they were onsite and he noticed the quantity in the plans was incorrect. There was no written field order on that. Daede stated the payment would be by the yard as shown because the price bid is indicative that it was bid by the yard. He stated there was no mention of wanting a price adjustment at that time, but he understands why there would be for certain fixed costs that would need to be recovered. Daede stated the first time he heard anything was from the notice of claim letter.

Gazur stated the contract the City has is with Bituminous and he questioned why the City is talking directly with the subcontractor. The City doesn't have a contract with them. Daede stated he told Voigt any correspondence for a change order needs to come through the prime contractor. He stated the original letter came directly to him, but R.S. Giulio did forward material to Bituminous who forwarded it to Daede also. Gazur stated he would expect someone from Bituminous here questioning the issue of nonpayment. Daede commented Bituminous stated they would administer anything that would come through, but on the issue of payment they didn't want to get involved. Gazur stated that Bituminous is in that position because they are the contractor. Kok questioned why the field order wasn't sent out. Daede commented they spoke about it, but it wasn't in writing. Gazur questioned if the subcontractor has equipment or manpower onsite. Daede stated they have demobilized and are on 3rd Ave. now.

Voigt commented they were told by Bituminous to approach the Council directly. He stated they intend to pursue this because there was no discussion about them requesting a change order because there was never any information given to them on what the bid price was going to be or whether there was an opportunity for change.

Recessed for Executive Session at 4:20 pm.

Reconvened Special Council Meeting at 5:25 pm.

Solem questioned Voigt on the settlement amount they are requesting. Voigt stated the amount requested at this time is \$40,868.04. Voigt stated because they didn't receive documentation, under the contract Rusty Giulio believes they are entitled to the full amount, which is higher than the amount requested. Solem stated the City has discussed where they would like to be. Bjerke stated lien waivers would need to be in place beforehand. Voigt would like to hear back from the City on their position. He commented on the letter they sent in October and stated he believes the City should have provided notice stating the changed amount. He commented they will not bid anymore city work but they have to finalize this situation. He commented those who bought the lots are paying more in specials because of a mistake in the bid sheet. He stated R. S. Giulio is not going to take a loss on this. Voigt stated Rusty Giulio believes Bituminous is due the full amount in the contract. He stated the material in question is in the road bed, it just wasn't documented on the City side. Gazur commented the lot owners paying specials is the consideration of the City's. He commented on the material stating the City isn't going to pay for material it didn't get. If there is less material used, that is a deduction off the top. Voigt agreed. Gazur stated it needs to be approached in a logical, defensible manner because they have to answer to the taxpayers. An agreement needs to be made that is fair and defensible. Bjerke stated we will look at the calculations and resume this issue Monday night.

Meeting adjourned at 5:40 pm

Darrell R. Bjerke, Mayor

Heather Ferebee, Auditor