



CITY OF DOVER

CITY COUNCIL - MINUTES

Meeting Type: Workshop
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: Wednesday, October 29, 2008
Meeting Time: 7:00 pm

Present: Mayor Myers, Deputy Mayor Trefethen, Councilors Callaghan, Carrier, Cheney, Dede, McCusker.

Absent: Councilors Scott and Weston.

Also Present: City Manager Joyal, City Attorney Krans and City Clerk Lavertu.

Councilor McCusker led the Pledge of Allegiance.

Mayor Myers said the City Manager requested time to give an update about the SUR construction project at Indian Brook Drive.

City Manager Joyal said he wanted to go over his findings assembled from an extensive review that was done over the past several weeks. He said in spite of the allegations, the change order was legitimate per the basic terms of the contract. He said the change order was negotiated and agreed upon in a good faith effort to settle the matter for a cost far less than what the contractor would otherwise have been entitled to. Therefore, the approved payment, which had previously been held, was being processed and provided to the contractor. He said on April 24, 2007 the contractor was provided with a formal Notice to Proceed on the project. He said the contract provided that the work would be completed within a set time period, 180 days. He said on April 26, 2007 a preconstruction meeting was held by the contractor with design engineers and City and State officials, to review the intended schedule. The contractor said the work would begin promptly, with signage installed, along with clearing and cutting of trees, followed by excavation and shoulder widening along Sixth Street and Indian Brook Drive. He said the contractor's stated intent was to take the cuts from this excavation, have them hauled, and simultaneously complete the filling requirements for the Exit 9 ramp work. These details were confirmed in notes recorded for the preconstruction meeting. He said the contractor's schedule provided that the City had obtained wetlands permits required for the construction prior to the work starting date. On May 3, 2007, in a written correspondence, the contractor was alerted by the City that the permits were not yet issued, and was therefore required to suspend the fill work in the area of the ramp construction. This was considered by the contractor an order to suspend work until necessary permits were acquired. He said the required permits were ultimately secured on July 24, 2007, three months after the Notice to Proceed. In another written correspondence, the contractor was notified by the City to begin work. He said the delay, three months, clearly caused the contractor to deviate from their intended work schedule. The City received a subsequent contracting schedule reflecting this change and the resulting delay anticipated in completing the project. He said this delay, caused by the City, was considered compensable under the terms of the contract. He said given the circumstances for the delay, both cost and time adjustments were provided for in the contract in Sections 104 and 109.04. He said since the delay was caused by no fault of the contractor this was considered a compensable delay by the terms of the contract, Section 108.07. He said the contract also stated that the contractor would not be charged for damages when the delay is due to unforeseen causes beyond the control of the contractor; General Conditions, Paragraph 43. The contract requires compensation resulting from the delay to be determined using one of four methods: contract prices; unit prices agreed upon when the work is started; an agreed upon lump sum amount; or on a force account basis. He said the contract price option was used to pay for uniformed officers with vehicles, flaggers, portable messaging signs, storm water monitoring and erosion control; costs that were incurred by the contractor due to the schedule



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adjustment. The contractor also incurred costs in the areas of mobilization, excavation, project supervision, and maintenance of traffic, and is subject to reimbursement. Utilizing the forced account basis these costs were verifiable through certified payroll records, invoices, and other documentation supplied by the contractor, in amount of upwards to \$500,000. In lieu of utilizing the forced account basis, the City and contractor negotiated a lump sum amount of \$171,000, which included a \$20,000 surcharge for paving being purchased in the second season of the project. He said the \$9,000 charge was associated with the change of the size of signs, which were different than what was required in the original specifications. He said the change order previously approved was a fair and appropriate settlement. He said he would have copies of his report put in the Councilors' mailboxes and put on the website. Councilor DeDe said he didn't need a copy.

Mayor Myers wanted to remind the citizens that he will be holding "Coffee with the Mayor" on Saturday, November 1, 2008, 10:00 am, at Café on the Corner.

1. CABLE ACCESS COMMITTEE REPORT

City Manager Joyal introduced Parks Christenbury, Chairman of Cable Access Committee. Mr. Christenbury introduced the other members of the committee: the City Manager, Councilor Dede, Aviva Grasso, Audrey Lurvey, Sarah Fisher Fuller, and Laurie Verville. He thanked the City Manager and City Attorney for their input, which enabled him to give his presentation. He went over his Cable Access Committee Recommendations presentation with the Council. He said the purpose of the Committee is to get more televised on the cable access channels: board meetings, school sports, the Thanksgiving parade, to have the people of Dover feel they are getting their money's worth.

Mayor Myers asked the Council if they had any questions.

Deputy Mayor Trefethen thanked Mr. Christenbury for his presentation. He referred to the 40% School building aid reimbursement that the City would potentially receive for the McConnell Center; and asked if the money to build initially came from the franchise fee, where did the reimbursement go?

City Manager Joyal said the franchise fee will be paid to the School Department, less the cost for paying utilities and so forth at the McConnell Center. He said \$25,000 was also subtracted out for internet integration. He said the balance would go to the School Department. He referred the Council to the third page of the handout, and explained the Funding Sources and Estimated Expenditures.

Deputy Mayor Trefethen asked, when the School reimbursement comes back from the State, if it stays with the School Department unless there is money that needs to be paid back.

City Manager Joyal said the building aid will go to the School Department as a reimbursement, and the School Department would then allocate that specific amount of money back to the operation of the cable system that they are operating.

Deputy Mayor Trefethen asked if the School Department was running this, and the money is accounted for in their budget.

City Manager Joyal said it was a Special Revenue Fund by the School Department.

Deputy Mayor Trefethen asked how that works in relation to the tax cap, and if it was considered initial revenue.



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City Manager Joyal said it would be considered self-supporting and would not have an impact on the tax cap.

Deputy Mayor Trefethen asked, if this became part of the School's curriculum, is the expectation that students, who become involved in this, will be volunteers or will they be paid?

Mr. Christenbury said there will be some paid individuals who run the cameras, but it would be part of the curriculum for the students and they would not be paid.

Deputy Mayor Trefethen asked if there was a channel available to use as a second channel.

Mr. Christenbury said yes, that was part of the contract with Comcast to give the City two additional channels.

Deputy Mayor Trefethen asked if the City knew what channels they would be.

Mr. Christenbury said no, that hasn't been provided. Comcast has control over where they place the City on the dial, but they have to provide the City with three places.

Councilor DeDe said students from other districts would compensate the School for their participation, and that sets up a potential for income for the School Department as they set this up.

Councilor Cheney said she didn't see how a contract could be set up in a week, when it took three years to negotiate the cable contract. She voted for the cable contract with the understanding that the second studio would be at the high school, and felt it was the best place for it.

Mr. Christenbury said if the Committee had been around a few years ago, the recommendations that were made during the contract negotiations with Comcast probably wouldn't have been made. He said the purpose of the 3% franchise fee is not to enhance the school department, but to provide additional programming. He said the McConnell Center was a better place to have a studio for what the City wants to have for additional programming. He said the School Department hasn't looked at a curriculum yet, so they don't know what they are going to provide at this point. He said with the technology today, a lot of it can be done at the high school. He said filming could be done and then passed on to the production studio at the McConnell Center. He said they were balancing what the rate payers want and trying to include the students. He said most of what was going to be done to get this up and running was going to be a lot of volunteer work by the Committee. He reminded the Council that in three years with the school renovations a studio could be built with a 70% reimbursement. He said he felt the Committee has come up with the best recommendations that are needed now.

Councilor Cheney said maybe the City should save the money to use in a few years to build a studio at the high school.

Mr. Christenbury said the cable for the high school wouldn't cost anything.

Councilor Cheney asked why that wasn't done first.

Mr. Christenbury said there were going to be major renovations at the high school. He said the Councilors can't be distracted by the students, because they will be involved, but to give the customers what they want, which was more City.

Councilor Cheney said the second channel was supposed to be for educational purposes, the games, theater, and concerts. She said she is seeing the plan being changed to do more for the City and not for education. She asked if there was only going to be one person to do this.

Mr. Christenbury said there won't be just one person, and it will be overseen by the School Department. He said the Committee was trying to recommend a plan to the Council that public is going to embrace.



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Councilor Cheney reiterated that the second station was for education broadcasting. Mr. Christenbury said the second station is a pay channel like the first channel, and the City will decide the content. City Manager Joyal said as soon as the second studio is built Comcast will activate the second channel. He said the intent has always been that one channel will be governmental, and the second channel would be educational. The School Board will manage the second channel, and it is up to them to take advantage of it. Councilor Cheney asked about the square footage of the third floor of the McConnell Center that would be used for the studio. Mr. Christenbury said it was 3,400 square feet. It consisted of four rooms; two large rooms and two small rooms. He said Room 306 would probably be the School Board Chambers. He said next to that would be the cable access production facility. He said across the hall would be a conference room for public meetings that would be filmed. He said another small room would be the Cable Access Administrator's Office. Mayor Myers asked, for clarification, if the location of the studio would change the content of the programming. He understood that the City would have the same remote capabilities regardless of where the studio was located. Mr. Christenbury said he was correct. He said one of the things that was being planned for was a portion of the capital to be put aside to have money to match the participating grant money in anticipation of building a studio at the high school. Deputy Mayor Trefethen asked if the actual access contract is basically a plug in the wall. Mr. Christenbury said that was correct. Deputy Mayor Trefethen referred to the square footage at the McConnell Center. The original plan was for a small studio. Now the plan is a studio, the School Board Chambers, and the production room. Mr. Christenbury said that was correct. Councilor Callaghan said he thinks this is a great idea. He asked if there would be rent charged to use the room. Mr. Christenbury suggested an oversight advisory board to continue with issues like that. Councilor DeDe said in 1998 there was an overall policy that was established for cable content and everything has to emanate from the City of Dover. He said the idea of independents coming in to use the cable access channel for broadcasting channel is not considered to be something that will be part of the City's future. Councilor Callaghan said he didn't mean outside of the City, but used the Recreation Department as an example. Mr. Christenbury said that was something outside the scope of the Committee. Councilor Callaghan asked who was developing the contract between the City and School. Mr. Christenbury said City Attorney Krans was working with the City and School Department, with the Committee giving some direction. Councilor Callaghan asked when the Council should expect the contract. City Manager Joyal said he hoped to have a draft next week. Councilor Callaghan hoped for another workshop when the contract is complete. He hoped for a tentative date for the high school studio in the CIP. He asked about the \$250,000 to build the studio.



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Mr. Christenbury said that might be lower because of volunteers helping out and doing some of the work.

Councilor Cheney asked what the rate for basic cable was going up to.

Mayor Myers said \$3 to \$4 depending on coverage.

Councilor Cheney asked how much the City has.

City Manager Joyal said over \$100,000.

Mr. Christenbury thanked the Council for their time.

Mayor Myers thanked Mr. Christenbury, Ms. Grasso, and Ms. Lurvey.

2. FASTRANS OVERVIEW

Mayor Myers referred to the presentation a few weeks ago with Mr. Bruce Woodruff, City Planner, and Mr. Rad Nichols, Executive Director of Coast. He said they were back with an update for the Council.

Mr. Woodruff apologized for the absences of Mr. Rad Nichols who was at a conference in North Conway, and Mr. Ed. Pigman who was in Florida. He went over his presentation on the Dover Fastrans Service. He said the service will start on December 1, 2008.

Mayor Myers asked the Council if they have any questions for Mr. Woodruff.

Mr. Woodruff wanted the Mayor to know that Coast wanted a ribbon cutting, and recommended December 1, 2008. He said Coast has hired a dispatcher, and new bus drivers are being trained. He also wanted the Council to consider starting a Fastrans Oversight Committee.

City Manager Joyal had one thing to add. He wanted it understood that this is being financed by federal grant funds, and at the end of three years, unless there are additional grant funds or the Council funds the program, this service will probably cease.

Mr. Woodruff said he is still looking for financial partners.

Councilor Carrier said his concern was marketing to inform the public, and looking at very aggressive ways to market this program.

3. ADJOURN

Deputy Mayor Trefethen made a motion to adjourn; seconded by Councilor Callaghan.

Vote: 7/0.