

## **Sutton School Building Committee**

Executive Session, Wednesday, 9/4/13, 7:01 PM  
Sutton Town Hall, 3<sup>rd</sup> Floor Meeting Room

**Present:** W. Mead, M. Hopkins, R. Raymond, J. Smith, T. Friend, D. Davis, M. Bailey,  
T. Harrison, P. Brennan, R. Weaver  
**Absent:** M. Jerz, G. Coulter, K. Stuart,  
**Guests:** T. Alix (SBS), A. Minkus (SBS), J. Winikur (SBS)  
V. Dubé (Flansburgh Assoc.), D. McClelland (Flansburgh Assoc.)

### I. Call to Order:

Wendy Mead opened the public meeting at 7:00 PM.

### II. Retire to Executive Session at 7:01 PM: Motion by Paul Brennan Second by Donna Davis Vote: 10-0-0

Wendy Mead invited SBS and Flansburgh Associates representatives to attend the Executive Session and to present information.

Topic: Continued construction delays and recent action regarding TLT

Wendy stated that, after the building tour on 9-3-13, the Board of Selectmen met in Executive Session. She, Ted Friend, SBS representatives, Flansburgh Associates representatives and Timothy McEnaney, Town Counsel were invited to attend.

Wendy stated that the bond carrier, Western Surety, had been contacted and put on notice of the delays and possible action. (During discussion, Wendy clarified that the decision to contact the bond carrier was made by the Board of Selectmen. Jim Smith acknowledged that the decision was made at the 8-15-13 BOS meeting.) At this time, TLT was aware that the bond carrier has been contacted. The bond carrier has asked for project documents from TLT and SBS.

Firing of TLT was discussed at the BOS executive session.

The Board of Selectmen voted to call the bond and has instructed Town Counsel to prepare the communication document. Jim Smith added that this was expected to be completed very soon, possibly on Thursday of this week.

At the time of this meeting, TLT was unaware of the decision of the Board of Selectmen.

Wendy explained that the bond carrier has three options:

- 1) Infuse money into TLT to complete the project
- 2) Bring in another general contractor
- 3) Remove TLT, in which case project management must select a new general contractor using state bidding requirements.

She added that a response from TLT is needed to determine what the town may do or may have to do next. TLT could seek an injunction.

Jon Winikur clarified that had the Board of Selectmen voted to fire TLT, that option would have been taken away from the bonding company. The decision to call the bond means that Western Surety becomes actively involved in meeting the requirements of the project and the bid.

Tim Harrison commented that the third option would produce a new general contractor with a new bid amount. Jon added that, under this option, Western Surety must meet the bid of the selected responsible contractor including covering any shortfalls in the current budget. Wendy also added that claims could be entered for increases or additional expenses (e.g., rental of another facility and extra transportation costs) but would not be resolved until post-project.

Paul Brennan asked if TLT might shut down the project. Wendy acknowledged that possibility and added that, if done, the facility could not be used in its present condition.

Roger Raymond inquired of SBS and Flansburgh representatives if they had encountered a similar level of problems on other projects. Jon responded that SBS had not previously dealt with project problems that reach the point of requiring action by the bonding company. Nor has MSBA. He further commented that insolvency of the contractor is different as it eliminates some of the complexity of making changes.

Duncan McClelland added that Flansburgh had experience with another project where the GC went bankrupt. The surety company rebid the project, which took about 6 months. Martin Hopkins offered that, based on his professional experience, the surety company will probably consider completion of the project as soon as possible to be their best option.

Ted Friend commented about direct payment to sub-contractors to keep the project going. Jon explained that, according to the terms of the construction contract, sub-contractors who are filed sub-bidders can be paid directly. However, sub-contractors who are not filed sub-bidders (i.e., those working directly for TLT) cannot be paid directly.

Jon further explained that no payment to TLT has been made since June as TLT has failed to submit the required documents to confirm payment to sub-contractors through May. Some sub-contractors have contacted SBS about direct payment. SBS has contacted others, some of whom have not responded. Direct payment is being made to some sub-contractors, as permitted by the terms of the construction contract.

Martin inquired about what needs to be completed to obtain an occupancy permit. Tim Alix summarized these as:

- Fire protection system, in particular a problem with the system panel
- Egress, in particular walks and driveways
- Kitchen
- Elevator

Wendy called for a public forum to apprise all interested citizens of the current status of the project. She advised waiting until the response from TLT had been received before scheduling the forum to assure that the most accurate information would be available. Tim Harrison, Martin and Paul made similar comments supporting the forum but asking that it be done as soon as possible even if TLT's response is unknown.

Motion to schedule the public forum on Wednesday, September 25, 7:00. Meeting to be held at the Simonian ELS auditorium. (Note: Meeting was subsequently moved to the cafeteria area of the new MS/Hs complex.) Motion by Tim Harrison  
Second by Martin Hopkins  
Vote: 10-0-0

Motion to return to public meeting. Motion by Tim Harrison  
Second by Jim Smith  
Vote: 10-0-0

III. Return to Open Session at 8:13 PM

Ross Weaver, Recording Secretary