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August 29, 2014

Special meeting of the Mayor and Council of the Borough of Victory Gardens, held on August 29, 2014.

Mayor Holeman called the meeting to order and declared a quorum present. Please remain standing for a moment of silence for our military. Flag Salute.

This meeting has been advertised in one newspaper, The Daily Record, in compliance with the New Jersey Open Public Meeting Act.

ATTENDANCE: Councilwoman Cegelka, Councilwoman Cheatham, Councilman Glass, Councilwoman Hedgepath, Councilman Lorenzo, Councilwoman Garcia Montes.

ABSENT: None

Attorney Feintuch was present at this meeting.

The Mayor said this is a special meeting of the Mayor and Council to discuss the Monroe Avenue Project. At this time the meeting was turned over to the Attorney.

Did we have 48 hours for this meeting? You don't need it the Attorney said. It was an emergency meeting. It didn't say that in the paper.

The Attorney said he asked for this meeting because as a result of research from the last meeting I am very concerned about the plight that we are now in. We are going to get sued if this contract is not signed. Mark Paving will sue us and the reason he can go that is because he has made arrangements and has incurred costs and material and the like to perform this contract. He has the right to do this because we had awarded the contract to him which did not include a price - but we awarded the contract to him. The contract that he offered - which was awarded for a price. The action that we took breached the contract and breached the contract law.

He had every right to assume that signing the contract after we voted on it and approved it, he had every right to assume and rely upon that. Which he did. I then spoke to Leon Hall. I asked Leon if the specs would change at all and he said no. The number that was in the contract is never met. It is either higher or lower. You can take a calculated guess but it is never right. No one knows exactly what the asphalt or filler is going to be. You can take an educated guess. It is set forth in the contract as such and the price is adjusted.

You are going to get sued. It will cost you tens of thousands of dollars to defend it. You really have no defense and that is why I asked the Mayor to call the meeting. I also asked Leon if we continued and decided not to sign the contract, in addition to getting sued, this could not be done this year, because it has to be rebid, the specs won't change, you will not get it done and you may have to give the grant back. The work itself probably won't get done until the Spring of next year.

With this information, I would ask the Mayor to ask for a motion to rescind the vote of Tuesday and take a new vote, and at that point in time if there is a motion and it is granted we can discuss further whatever you may want to ask.

I have an obligation to the town to protect you. Councilwoman Cegelka said we can't take formal action tonight. The Attorney said you can. The Mayor said that is what this whole meeting was about. You have to advertise that formal action may or may not be taken. The Attorney said he would take that chance.

Motion was made to rescind the vote taken by the Governing Body regarding Mark Paving that was taken at our Council meeting held on August 26, 2014.

Councilwoman Montes said we wanted the amount dropped that we spoke to Leon about. You accepted the bid as was with an addition of having Leon make the changes as discussed by the Council. You still accepted the bid. You asked Leon to adjust the price and he said he would do that. He stated that on the record. Councilwoman Montes said if something changes on a contract then it is no good. The Attorney said that is not true. The cost of the asphalt would come down. There is no contract that we awarded for this type of work where we paid the exact price. Sometimes it was more, sometimes less.

This is how these contracts run the Attorney said because there is no way to fix the amount of tonnage for asphalt. That is the whole key. You can guess. That is why you have your Engineer overseeing the job. He makes sure we are being charged for what is being delivered. He has to be satisfied with the numbers. The asphalt is an unvariable - it is something we don't know for sure. To take the chance of spending tens of thousands of dollars because there is an issue with \$1,500.00 is lunacy. It will cost you all this money to litigate and you are going to end up in the same place. Councilwoman Montes asked the other people that bid on this project can they turn around and sue us for not rebidding? No, the Attorney said. You would do a work change order on this project.

Councilwoman Cegelka asked what type of grant this is? It is a DOT grant. When did we award the contract? At the July 22, 2014 meeting. When did we get the grant from DOT? I don't know the exact date. At one time we applied for a grant through Community Development for this road but we never got the grant. They didn't fund it. When we didn't get the money from Community Development, we applied for one from DOT. How long do we have to do this project? I am not sure but I think it is 18 months from start to finish. What motion did we make at the last meeting? Councilwoman Cheatham made a motion that we go forward with the contract awarded to Mark Paving for \$68,765.71 as originally designed. Councilwoman Cegelka said if we rescind that motion then we are going to be putting the private property back in the contract. The Attorney said no that is not true. You told Leon to take that out. It is a work change order. It will change during the course of construction. I want to rescind the action that we took. What was that?

At the end of the meeting on August 26, 2014 a motion was made by Councilwoman Montes to have the Monroe Avenue Project go out to rebid for same plans except for the private property modifications seconded by Councilman Lorenzo. There were 2 no votes and 3 yes votes.

The Attorney said it is recommendation that the motion be rescinded. I am looking out for what is in the best interest of the Borough. You are being foolish by making this a big issue.

Councilman Glass made a motion to rescind the action of the Council at the meeting of August 26, 2014. Seconded by Councilwoman Cheatham. Roll call:

- Councilwoman Cegelka Yes
- Councilwoman Cheatham Yes
- Councilman Glass Yes
- Councilwoman Hedgepath Yes
- Councilman Lorenzo No
- Councilwoman Garcia Montes No

The Attorney said we now need another motion. This motion should be to continue with the award/bid that was awarded at the July 22, 2014 meeting. This means we sign the contracts.

The motion should be that the contract is awarded as bid with the understanding that those portions of private property will not be paved. Motion made by Councilwoman Cheatham, seconded by Councilman Glass and approved on roll call:

- Councilwoman Cegelka Abstain
- Councilwoman Cheatham Yes
- Councilman Glass Yes
- Councilwoman Hedgepath Yes
- Councilman Lorenzo No
- Councilwoman Garcia Montes Abstain

The Attorney said he believes that the Council made the right move.

Motion to open the meeting to the public by Councilwoman Montes, seconded by Councilwoman Cegelka and approved on verbal vote. None opposed.

Jim Janone - Not 48 hours notice. This is in violation. You did not say that there would be action taken or not. Mr. Glass can't vote to rescind a motion if he wasn't here. Material list was done by Leon Hall. There are marks on the pavement but is this for curbing at the end of Monroe?

Motion to close the meeting to the public by Councilman Glass, seconded by Councilwoman Cegelka and approved on verbal vote. None opposed.

Councilwoman Cegelka asked if the Mayor signed the Recommendation of Award? Yes. When was it signed? I think it was at the meeting of July 22, 2014.

Motion to adjourn the meeting by Councilwoman Montes, seconded by Councilwoman Hedgepath and approved on verbal vote. None opposed.

Submitted By:

*Deborah Evans*

Deborah Evans  
Borough Clerk