

July 30, 2014

The Town Board of the Town of Clayton held a special meeting in the Town Board Room at 405 Riverside Drive for the purpose of discussing the status of the Chippewa Bay Marine Technology, LLC bid contract, and where we stand.

Justin Taylor	Christopher Matthews	Lance Peterson
Robert W. Cantwell III	Mary Zovistoski	Kathy LaClair (Absent)
Janet Sullins		

Terra Bach	Augusta Withington	Rob Campany
Attorney Joseph Russell	Pam McDowell, T I Sun	Katie Clark, WDT

Supervisor Taylor began at 2:00 PM with the Pledge of Allegiance. The Board has copies of all correspondence given July 16th. The signed contract was for the bidder, Chippewa Bay Marine Technology, LLC, to deliver docks and attenuator by July 15 and August 18, respectively. We have yet to receive acceptable submittals for docks, so the termination process has been started. All the proper notices have been filed and the cure time for the breach has passed. Still nothing received in response. Attorney Russell said that there has been no effort to cure breach; it has been seven days after receipt of notice to start cure. Supervisor Taylor then said the action to be taken is to officially terminate contract. Attorney Russell said there is always the option of not terminating and try to reach out again.

Councilman Chris Matthews asked if we were close to receiving anything; each submittal was sketchy, not solid plans, for example: the gangway design. The last correspondence on design was July 25, but with nothing recent pertaining to docks. Rob Campany, of Fourth Coast said that they had let them know what was incomplete, and this was within the seven day cure period.

Councilman Matthews asked about recourse regarding bonding; can we make a claim against the bond? There have been two notices of breach. When damages are suffered, there is less or no revenue. Discussion with Attorney Russell pointed out there are \$200/day in liquidated damages but legal expenses may or may not be recoverable. Costs incurred for engineering may be. Supervisor Taylor said we would review the bonding, talk with the bonding company, which is out of state, but has representatives close by. Attorney Russell said we could put them on notice of a potential claim.

Supervisor Taylor mentioned that at the recent public community meeting, there were two people, with whom he talked after the meeting, who may have been representatives for Chippewa Bay, but they didn't specifically say who they were.

Attorney Russell brought the wording for the letter of termination, the original of which is attached. And it states:

“Based upon Seller’s breaches of the Agreement dated May 27, 2014 between the Town of Clayton as “Buyer” and Chippewa Bay Marine Technology, LLC as “Seller”, as outlined in the Notice of Seller’s Breach, dated July 17, 2014, and Seller’s failure to cure said breaches or to proceed diligently to cure said breaches within 7 days of receipt of the Notice, it is hereby determined by

the Town Board of the Town of Clayton to terminate the Agreement pursuant to Section 11.04 (B)(2) of the General Conditions, with such termination effective immediately upon notification to Seller, and the Town Supervisor is hereby authorized and directed to promptly notify Seller of said termination by written notice to be mailed to Seller by certified mail.”

Motion made by Chris Matthews, 2nd by Bob Cantwell III, to accept the termination and go forward with it. Motion carried.

The next action is to award the bid to the next qualified bidder, Gator Docks of Florida. Rob Campany said we have a verbal commitment to hold their bid price and provide a production schedule of 12 to 14 weeks.

We will not be sending notice of award until we receive notice of receipt of termination from Chippewa Bay Marine.

At 2:20, Motion was made by Lance Peterson, 2nd by Mary Zovistoski to award the bid to Gator Docks for Bid No. 2 in the amount of \$ 422,800.00 with the deduct amount of (\$17,500.00) for a total of \$405,300.00, subject to receipt of required bonds and insurances. In addition, the Town accepts the proposal increasing the required design live load from 30 psf to 50 psf and providing pile guides in lieu of anchor chains which will result in an additional cost of \$65,000, contingent upon effective termination of Chippewa Bay Marine Technology, LLC contract. Motion carried.

Regarding the wave attenuator, Supervisor Taylor has received a draft bid document, and had already sent it on to Attorney Russell and Audie Cerow Insurance for review. Plans are available; Fourth Coast is in final review of said plans. The goal is to have completed bid for dock by Friday August 8, 2014. There will be a public bid notice on the following Friday. Action will be taken on August 13, publishing it in the T I Sun that day also, and have the document available Friday the 15th as well. (Moffatt and Nichols will have a list of advertisers, and we can also use the Dodge Report and the NNY and Central NY Builders Exchange). Rob also has a list. We would have bids returned by September 15. It would take 7 to 14 days to award the bid.

Chris Matthews asked if we could have a list of costs to date from Fourth Coast and Attorney Russell, to be prepared for legal action.

At 2:30, the board went into executive session to discuss pending or threatened litigation. The Board came out of Executive Session at 3:10.

Janet Sullins, Deputy Clerk