

Conway Board of Selectman  
Minutes of a meeting held on 7/2/2007

Present: Board Members: Howard Dickinson, Larry Martin, Gary Webster, Mark Hounsell Staff: Earl Sires, Paul DegliAngeli, and BJ Parker, Acting Recording Secretary.

Absent: Dave Weathers

Mark Hounsell chaired the meeting as the chair was called away unexpectedly.

Pledge of Allegiance

Called to order: 10:00 AM

Mr. Hounsell introduced the subject matter of the meeting: Review and Consideration of proposed amendments to the road construction agreement between the Town of Conway and Rock Development, LLC dated June 8, 2006.

Mr. Sires stated that this is an amendment to the existing road agreement between the Town of Conway and Rock Development. The amendment acknowledges that there is an existing agreement and that the Town of Conway has spent \$54,000. It describes the work to be done as illustrated in attached exhibit that Mr. DegliAngeli is present to review with the Board.

Mr. Sires pointed out that the Town of Conway is committing to finish the project by Aug, 1, 2008. He referenced Page 3, Section 4 of the document. He summarized that once the project is completed, whatever amount remains from the Northern Roundabout Payment including all of the interest earned, and after subtracting amounts computed as set forth in the new agreement, the money is reimbursed.

Mr. Sires paraphrased a section on the 2<sup>nd</sup> page of the agreement after paragraph c where the agreement says, "Without the prior written consent of Rock Development, no changes, modifications, deletions or additions may be made to the plans or specifications relating to the work described in this Paragraph 2". Mr. Sires continued that he believes the Town of Conway has complied with this section regarding the schedule and description of each component.

Mr. Sires identified the key issue. Mr. DegliAngeli has estimated the cost of this project. The Town of Conway is bound to the "not to exceed" numbers in Exhibit A. If the cost exceeds these numbers, the Town cannot spend more money without Rock Development's approval.

Mr. DegliAngeli advised that Rock Development has approved the schedule for Alternative Road Improvements and that Mr. Sires does not have in his possession a signed copy, however, Attorney Malia may have the signed copy.

Mr. DegliAngeli clarified changes to the work item in the contract.

As for the schedule, it previously went to bid. We postponed our contractor in order to get signatures. It is our understanding through Town Counsel that Barsamian already signed. I would like our end to be signed because our contractor plans to mobilize one week from today on 7/9/07. Mr. DegliAngeli's goal is to finish the project this year even though deadline is next year.

Mr. Hounsell asked if the Town of Conway is tied to bottom line of the exhibit or each line item. Mr. DegliAngeli explained that the Town is tied to the actual price or unit cost contract. Rather than give an estimate, then pump it up for contingency, we got them to agree that it costs what it costs. In the end, they get what money is left over.

Mr. Dickenson commented that he was opposed to creating a "right turn only" situation. He said he felt there should be adequate signage and speed bumps with earlier warning to slow down. He pointed out that he didn't want to vote against the whole thing but wanted to express his opposition to the "right turn only" project.

Mr. Sires clarified that the portion from MacMillan to Settler's Drive is private at this point but according to the opinion of Town Counsel Malia, as long as no public monies are spent, the Town can legally do the work. The advantage to doing this work is for safety and traffic control. Curbing sidewalks assists with traffic control, parking issues, and facilitates pedestrian safety. These are benefits to the public without the expense.

Mr. DegliAngeli assured the Board that there would be significant daily town oversight.

Mr. Hounsell's final question is that from the last bid until now, there was sufficient time to put the project out to re-bid but doing so would affect attachments. Paul said he re-negotiated with Rock Development based upon the fact that units were going up and not down, written correspondence was exchanged, Rock Development agreed and there is a meeting scheduled for tomorrow to sign contracts so they can start on 7/9/07 if Board approves the amended contract. If we were to rebid this, we would lose months but I'm not sure what justification I would have to re-bid and not deviate from the low bidder.

Paving prices are not being incorporated in the general contractor's price because Pike gave us such a great cost. We checked remaining units and it comes out to 19% increase. The State customarily uses a figure of "not more than 20%."

Mr. Sires pointed out that there is no legal requirement that we bid projects, however we have the town's purchasing policy that requires us to bid. In this case because we were able to secure pricing, there is no conflict with our regulations.

Mr. Martin reminded staff to make sure they call Dig Safe and made reference to two businesses in town that may be subject to fines for failing to comply with regulations related to Dig Safe requirements.

Mr. Sires reported that the staff recommendation is to approve the contract as it complies with policy of free flow traffic on North South Road and as it complies with the best interest of the public.

Mr. Martin made a motion that we instruct the acting chair to sign agreement to accept staff recommended contract. Webster seconded.

It was clarified that the town manager could sign with the Board's authority.

Mr. Martin withdrew his original motion. The second was withdrawn.

Mr. Martin made a new motion to instruct the town manager to sign this contract as amended. The motion was seconded. All agreed to this motion and second.

Mr. Dickinson made a motion to amend the road construction agreement between the Town of Conway and Rock Development, LLC by striking out all references to section 2 (a) which refers to certain improvements including the right hand turn only on the North South Road common court connector. Mr. Martin seconded for discussion.

Mr. Hounsell clarified that the motion was to amend the motion by eliminating all reference to right hand turn provisions only. Mr. Dickinson said, "improvements related to that, yes."

Mr. Dickinson said he felt the right turn only project is a great mistake.

Mr. Webster commended that this is a safety issue that the public is well aware of and if the Board decides to shy away and there is an accident, they could be set up for lawsuit.

Mr. Martin added that they have spent several hours discussing options and he feels they should stick to original agreement and address the money issues for expansion.

Mr. Hounsell reinforced Mr. Martin's statement with reference to traffic studies that show that roundabout and right hand turn only were the best two options. He continued that he felt that had Mr. Dickinson been part of the discussions, he would be more supportive.

No further discussion.

Vote on amended motion was defeated 1:3.

Mr. Sires assured the Board that he would not sign the agreement until after Rock Development representatives have committed to it and signed. He continued that he didn't think there were any other landowners involved.

No objections to call for vote.

Vote 3:1 to pass motion, Selectman Dickinson in opposition.

No public comments.

Motion to adjourn made by Larry Martin and seconded by Gary Webster. Meeting adjourned at approximately 10:00 AM.

Respectfully submitted,

BJ Parker  
Acting Recording Secretary