

## City of Fairview

**BOARD OF COMMISSIONERS****March 23, 2010**

Ken Brison, Mayor  
 Stuart L. Johnson, Vice-Mayor  
 Eddie Arney, Commissioner  
 Allen Bissell, Commissioner  
 Toney Sutton, Commissioner  
 Andrew Hyatt, City Manager  
 Larry Cantrell, City Attorney  
 David Mayberry, Recorder

Present: Brison, Johnson, Bissell, Sutton

Others Present: Cantrell, Lovvorn

**1. Mayor Brison called the meeting to order at 7:00 p.m.**

- A. The Purpose of this special-called meeting was to discuss and/or take action on change orders for bay door size and materials at the new fire station.

City Manager Hyatt presented the Board with a Change Order in the amount of \$6,321.82. This change order had been approved by the Ad-Hoc committee, but not yet recommended to the full Board because of questions around who was responsible for payment.

Attorney Cantrell then addressed the Board, informing them that according to the contract, Horace Spoon is the initial decision maker, and we need to get his opinion as to who was responsible for the doors being too small and how they got changed from the original plan. He presented two proposals to the Board regarding this change order. They could either 1) approve the change order and place the money in the retainage account until the dispute was resolved or 2) approve the change order, pay the cost to TG Constructors, but get TG Constructors to agree not to use the defense of final payment if the City wanted to contest it later.

Tony Gainous then addressed the Board, stating that he had received 2 sets of drawings with 4 addendums. He sent a Request For Information (RFI) to the architect on December 16, 2009, related to the door sizes. He got a response a day later, and proceeded to build the doors according to the RFI. In his opinion, the doors are built correctly and the size discrepancy is not his fault.

Commissioner Sutton then asked Gainous about the heights of the doors. Gainous replied that they were specified to be 13'6" tall, but were changed to 12'8" tall per the RFI he received.

Mayor Brison then asked Cantrell if he recommended putting the money in an escrow account. Cantrell replied that could be done, or just pay TG Constructors the amount now and arbitrate it later if needed, citing the 5% retainage as partial protection for the city. Gainous added that he'd like to talk to his attorney before agreeing to anything.

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Commissioner Bissell then asked Gainous who had changed the height, stating that it had to be the Architect, the Engineer or the City. Gainous stated that he brought this to everyone's attention through the proper channels and his response came from the structural engineer. Cantrell advised that we would need to address this question to the Architect, as he is listed as the one to resolve disputes in the contract.

Gainous then stated that he had already paid for this out of his own pocket, and Cantrell recommended paying them but preserving the City's rights later to resolve this dispute.

Vice-Mayor Johnson asked if they should approve it, being good stewards of the Public's money. Cantrell replied that the City could pursue it with the responsible party later once it was determined who that was.

City Manager Hyatt then stated that the doors were at a standstill until this item was resolved, adding that we could at least pay for the work that was already done.

Gainous then presented another change order related to the width of the bay doors, as they were smaller than the original plans as well. The total of the two change orders was around \$10,000.

Mayor Brison then asked Cantrell if it was his recommendation to pay these two change orders for now. Cantrell replied that he did recommend to approve them, subject to the TG's approval of the conditions stated earlier. Mayor Brison made a motion to approve the change orders subject to TG agreeing to not use the defense of final payment later. Commissioner Sutton seconded. *For:* Brison, Bissell, Sutton. *Against:* Johnson

The Meeting adjourned at 7:30 p.m.

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Ken Brison  
Mayor

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David Mayberry  
City Recorder