

Lewisville Town Council
Special Called Meeting and Action Meeting Minutes
Friday, January 22, 2021 - 6:00 p.m.
Digitally originating in Council Chambers 1st floor - Lewisville Town Hall
6510 Shallowford Road

Jan 22, 2021 06:00 PM Eastern Time (US and Canada)

Special Called Meeting to consider contract construction changes in the Mary Alice Warren Community Center

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/82473333875?pwd=VExuS2xldkweG01R1JKRmw2Z2cyUT09>

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Or

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1. **Call to Order**

a. Roll Call

i. Mayor Horn opened the meeting being simultaneously streaming electronically at 6:02 p.m. Council members attending electronically were Jeanne Marie Foster, Fred Franklin, Melissa Hunt, Ken Sadler, David Smitherman, and Jane Welch. Also attending electronically were Town Manager Hank Perkins, Attorney Bo Houff, Finance Director Pam Orrell and Public Works Director Ryan Moser. Also admitted electronically were Bob Moran representing ADW and Emily Clodfelter and Bill Heard representing Fairwood Construction.

b. Approval of Agenda

i. Council Member Smitherman moved to approve the agenda. The motion was seconded by Council Member Fred Franklin and approved unanimously with a roll call vote of ayes from Council Members Jeanne Marie Foster, Fred Franklin, Melissa Hunt, Ken Sadler, David Smitherman, Jane Welch and Mayor Mike Horn.

2. **Considerations**

a. Changes in terms related to the construction contract with Fairwood Construction for the Lewisville Mary Alice Warren Community Center

i. Unexpected increased costs in framing materials due to market prices were discussed by the contractors.

(1) The contractors explained that they generally include a 5% variance in their bid in cost changes for materials; however, costs for framing materials (lumber) have skyrocketed since the project was bid (153,901.⁰⁰) in July 2020.

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- (a) The contractors advised they had come to Council to advise of the magnitude of the change in price to purchase the lumber package.
 - (b) When the bid was placed in July, the cost for lumber was at an all-time high and there was no indication that the cost would continue to escalate.
 - (c) The cost to purchase the lumber package has risen to \$271,828.⁰⁰ as of January 8, 2021, a difference of \$117,927 from the bid.
 - (d) Some of the rise in costs have been contributed to Covid, i.e. mills shut down due to personnel out because of the virus.
 - (i) There was a question whether there had been any relief from Covid disbursements.
 - (ii) The only assistance came from PPE (Personal Protective Equipment) help.
 - (e) Another contributor is the housing and commercial boom in construction.
- (2) Because of the rise in costs, the contractor did say that he had charted costs and noted that there was a spike in mid-September, then dropped, then climbed again.
- (3) Council Member Franklin provided information tracked on the stock exchange which provided information on the possible cost of *board feet* since wood would be needed for studs, sheathing (load bearing supports), and roof trusses.
- (a) Council wanted to know if aluminum studs or metal could be used instead of wood.
 - (b) A change would require a redesign and the repricing of other items.
- (4) Council was advised that six suppliers in the area had been contacted and that Carter was the lowest bidder, even now.
- (a) It was also noted that other companies bidding for the job also used Carter.
 - (i) Council Member Sadler, in reviewing the original bids questioned whether the other bidders had accounted for potential increases in cost and whether that may have been the reason the selected contractor may have had the lower bid.
 - (b) It was noted that other suppliers are in the same situation.
- (5) There was a question about the availability of material.
- (a) Other companies are not keeping material in stock.
 - (b) The town was asked if there was a place drywall could be stored if the package were purchased now.
 - (c) Carter will hold the lumber package through Monday at the new price quoted after which it will be repriced.

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- (6) The Town's contractor and the contractor's sub-contractors are all working on absorbing the added costs.
 - (a) Would the project stop if the Town did not provide the additional funding?
 - (i) No. The contract will be honored and the lumber order placed regardless of the decision and it will be done with quality.
 - (b) A list of other materials was noted as having a rise in cost.
 - (7) Mrs. Welch asked if a shark tank approach could be used to determine how much the town could contribute.
 - (i) The contractor did say they had absorbed quite a bit and was willing to do what they had to.
 - (ii) It was noted, however, that ADW is the legal agent for the project with the owner, architects and contractor as though there were a "three legged stool" that would provide a win/win situation for all.
 - (8) There were questions about whether there should be changes to the contract.
 - (a) Was the Town *obligated* to pay the excess cost?
 - (i) Council Member Sadler also asked if the Town was liable for the increased cost.
 - 1) No.
 - (b) Council Member Hunt asked whether an addendum could be added to the contract?
 - (i) Attorney Houff indicated there could only be changes if both parties agree to the changes; however, there could be potential problems from the other bidders.
 - (ii) Mr. Heard mentioned that they will be looking at escalation clauses for future contracts.
- ii. Discussion on funding
- (1) Council Members discussed whether to use the contingency fund.
 - (a) So far, \$16,732.⁰⁰ has been used of the \$183,000.⁰⁰ set aside for contingency.
 - (2) Using the contingency now would deplete the fund and the project is only 35% complete, leaving other unknowns through the end of the project.
 - (3) Money can be used from another fund and it will not be a legal issue.
 - (4) Mr. Perkins offered an alternative to using the contingency: approve a change order, budget amendment and amend the capital project ordinance.

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- (5) After additional discussion, Council Member Franklin moved to approve a budget amendment in the amount of \$118,000.⁰⁰, which would include the \$5,800.⁰⁰ already absorbed by the contractor (stating he likes round figures). The motion was seconded by Council Member Smitherman.
 - (a) Mayor Horn asked if they would accept an amendment to the amount to be \$112,031.⁰⁰ to which they both agreed.
 - (b) The amended motion was approved 6-1 with a roll call vote of six (6) ayes from Council Members Foster, Franklin, Hunt, Smitherman, Welch and Mayor Horn and one (1) nay from Council Member Sadler.
- (6) Council Member Franklin moved to approve Change Order #2. The motion was seconded by Council Member Smitherman and approved 6-1 with a roll call vote of six (6) ayes from Council Members Foster, Franklin, Hunt, Smitherman, Welch and Mayor Horn and one (1) nay from Council Member Sadler.
 - (a) The Capital Project Ordinance will be amended to reflect the change.

iii. After the approvals, Ms. Clodfelter noted all of the lumber will be purchased.

3. Council Comments

- a. Mrs. Hunt commented that this is a learning opportunity on contractual agreements and insurance protection as the Town moves forward.
 - i. Mayor Horn advised that the town had entered into similar arrangements with other vendors and gave Waste Management as an example.
- b. Council Member Sadler said that he found no problems with the contract and had asked earlier in the meeting if the contract was sufficient to protect the town. In other words, was the town at risk for the additional cost as a result of the contract. It was agreed that the town really had no exposure and that any decision to make the adjustment was just an accommodation to the contractor.
- c. Council Member Smitherman noted that Covid might impact more going forward.
- d. Council Member Franklin looked at the profiles of two (2) of the lowest bidders and said he supports this contractor but did not want to see any corners cut.
- e. Mr. Heard invited Mr. Franklin to participate in the punch list walk-thru at the end of the project.

4. Adjournment

- a. Having no other business to discuss, Council Member Smitherman moved to adjourn the meeting at 8:14 p.m. The motion was seconded by Council Member Hunt and approved unanimously with a roll call vote of ayes from Council Members Foster, Franklin, Hunt, Sadler, Smitherman, Welch and Mayor Mike Horn.

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Mike Horn, Mayor

ATTEST:

Joyce C. McWilliams Walker, Town Clerk