

THE CORPORATION OF THE TOWNSHIP OF HORTON

## Special Council Meeting

April 22, 2014

There was a Special Meeting of Council held in the Municipal Council Chambers on Tuesday April 22, 2014. Present was Mayor Don Eady and Councillors Robert Kingsbury, Glen Campbell, Jamey Larone and Margaret Whyte. Staff present was Mackie McLaren, CAO/Clerk.

There were approximately 6 members of the public in the gallery.

1. CALL TO ORDER

Mayor Eady called the Meeting to Order at 7:00 p.m.

2. DECLARATION OF PECUNIARY INTEREST

There was no declaration of pecuniary interest by Members of Council or Staff.

3. CLOSED MEETING PURSUANT TO SECTION 4.2) f) OF PROCEDURAL BY-LAW 2014-11 TO RECEIVE ADVICE FROM THE TOWNSHIP SOLICITOR THAT IS SUBJECT TO SOLICITOR-CLIENT PRIVILEGE

Mayor Eady told the Members of Council that we had received an opinion from our Solicitor to Council's question whether payment to Marshalls Construction for payroll costs incurred during the Community Centre Expansion project would be permissible under the Township's Procurement By-law. He noted that there had already been several meetings on this subject and questioned why the Township had to go into Closed Meeting. Councillor Larone asked if our solicitor requested that her opinion be discussed in Closed Meeting. The CAO/Clerk said our Solicitor asked that her letter be discussed in confidence. There was no resolution put forward to proceed into Closed Meeting. Council remained in open session.

Mayor Eady asked each Council Member individually to comment.

Councillor Whyte said the Solicitor's comments justify her own comments which were her first inclination. She referenced several sections of the legal opinion. She said she believes there is a legal obligation to pay Marshalls. He needed to use his men due to lack of volunteers. In the end he met our timelines. Pay Marshalls.

Councillor Larone said he had questions that he would like to have Mr. Bennett's responses to and as he was present in the room, he asked for Mayor Eady's approval to invite Dave Bennett to approach the Council Table. Mayor Eady polled the Council Members and they agreed. Mayor Eady invited Mr. Bennett to the Council Table.

Councillor Larone said the work was done and done well. Kudos to Mr. Bennett for this under difficult positions. There were numerous times during the process he had interaction with Council. A number of people from Recreation Committee stepped up and volunteered. Mr. Bennett donated equipment, his own time as Project Manager, design and layout meetings with engineer and explored heating options. He has nothing but respect how Mr. Bennett stepped up and took on a lot of personal things others wouldn't have due to lack of time.

However, now there is a discussion of monies that is before Council. We have received our legal comment and our lawyer asked two questions, which are:

- Is it fair that Marshalls be compensated; and

- Even though there is no contract, is there some legal obligation to Marshalls?

Council received a surprising invoice. It couldn't have been for work within the final few weeks of construction, as that would have only amounted to \$5 – 7,000. Councillor Larone said he didn't know when the clock started to claim his company's net labour cost. He said he understands that the claim does not include profit and the costs are the actual costs the company spent on the project for the community. He said he researched the past minutes and did not see any inkling that there would be such a request coming.

Councillor Larone noted that there was a building meeting held on February 20<sup>th</sup> which discussed the project to date and remaining work. If there was only a spread sheet brought forward at that time. Council has an obligation to clear up this issue. The Community has a new structure that was needed.

#### Questions of Mr. Bennett

Councillor Larone asked if Mr. Bennett would acknowledge that Council did not give authority to incur this expense. Mr. Bennett said yes.

When did the "meter" start – January – February? Mr. Bennett said yes.

Can we work together to install the furnace and other final items? Knows that there is budget remaining for this but needs to be installed before fall. Councillor Larone suggested that these can be completed within the next 3 or 4 weeks. Mr. Bennett said yes.

There was a contract to construct the basic structure. The project was to be completed by volunteers. Councillor Campbell provided you with a list of volunteers and they weren't used. Mr. Bennett said that the list was for the last week of December 2013 and first week of January 2014. We did not have electricity before this time and couldn't use the volunteers. There was an indication that these volunteers were not available later.

Councillor Larone said that the issue of payroll costs first came forward at the March 19<sup>th</sup> 2014 Recreation Committee Meeting. There was a recommendation that Finance Committee consider the reimbursement of payroll to Marshalls. Was Recreation aware of the \$23,481.99 amount at that meeting? Mr. Bennett replied that most of the Recreation Committee volunteered on the project. So they would have seen Marshall employees working alongside them. Mr. Bennett said that he has over \$160,000 of his own money and company resources into the Community and he would not be asking for this reimbursement if it was not for a slow time of the year for his company.

Councillor Kingsbury said he has acknowledged we have all "dropped the ball" including Mr. Bennett as we didn't have a plan B. He said plan B would be to ask ourselves "what if" as it appeared that all work was completed as planned. We have learned a valuable lesson from this project and to look more outside the box. He added that this amount will be fundraised as the Recreation Fundraising Sub-Committee has already agreed to do so. He asked Council to agree to front the money as they have done for the construction of the project. He said that the bill has to be paid.

Councillor Kingsbury provided a response to several of Councillor Larone's questions. He referred to the January 30 Committee of the Whole Meeting Minutes where Mr. Bennett declared that he had over \$9,000 into the project and there was no comment from Council.

Councillor Campbell stated that Mr. Bennett and the Marshall employees did a good job. The final work is now being completed. He said he has to make an informed decision. He represents all the ratepayers of the Township. Council

agreed to expand the Community Centre. We realized we couldn't afford it when the costs came in. Council was urged to complete the project by our Member of Parliament.

The lack of a schedule is a tough thing for him. He said that he asked for a schedule for volunteer training on October 18, 2013. He said that part of his "plan B" was to have a schedule to work with if there was a problem. He had previously declared that the company he works for would not bid a job in Horton. He said the short turn around deadline pushed some volunteers away. Murdoch Electric needed a set of electrical drawings to quote, Mr. Murdoch had suggested he could offer a 20% discount to the Community but couldn't bid as there were no electrical drawings prepared. Valley Automation was awarded the electrical installation work on condition that the work is completed before the Christmas Holidays. Councillor Campbell said he submitted a 12 person volunteer list, which was not for just between the holidays.

Councillor Campbell said shortly after the electrical was completed he asked again for a schedule and volunteer opportunities i.e. who was installing the insulation and drywall etc. He said that Mr. Bennett seemed less than enthused at the next building meeting, but he wanted to make sure that the work was done on time. Councillor Campbell quoted from the CAO/Clerk's letter to Ms. Bradley, Township Solicitor concerning Mr. Bennett's original \$17,000 volunteer commitment for fundraising. He said he believed that the cost for Marshall's employees must be coming from this donation.

Dave Bennett said the \$17,000 was a commitment made last October. This was for the set up and tear down of the community centre for events. This saved the Township from replacing the person who formally did this and had stepped down due to his health. Also he would take the rink attendance positions and volunteer to provide this service without a cost to the budget. This savings would be transferred as part of his donation to the construction fundraising. To date he and his company have met \$14,000 of this commitment. He said he anticipated that his commitment would be completed by October 2014.

Councillor Campbell said that when Mr. Bennett reported the \$9,000 costs spent on the project at the end of January 2014, he assumed it was part of the \$17,000 commitment. He said he never considered that this was over and above the \$17,000 donation.

Councillor Campbell said the Schedule requested in January didn't come. He said that the volunteers needed to be trained. He needed to discuss where best to use his volunteer list. Mr. Bennett said that Councillor Campbell has Project Management experience. But he has more project manager experience. The first thing to determine is when the work force will be available. Up to December 14<sup>th</sup> there was no possibility to give dates. Some of the volunteer list included people who were travelling away on the winter holiday. It took time to get the trainer who was not available over the Christmas holiday. You can say that he didn't keep Council informed but both Councillor Larone and Councillor Campbell could see that volunteers weren't showing up for training. Organization falls on everyone. The delay when framing was completed to when the electrical was completed was when there was down time. He couldn't put a schedule together in October.

Councillor Campbell suggested that Mr. Bennett could have put a list together of what people could do before. Mr. Bennett said yes.

Councillor Campbell said electrical was to be done before the holidays. Mr. Bennett said all the electrical companies were contacted and given the opportunity to tender. He couldn't provide the layout for the electrical himself.

Councillor Campbell said we could have put a schedule together in January when the work was ready to proceed. Nothing was stated in the weekly

meetings of payroll costs. He said "communication" was a term Recreation used against Council. He said he hoped his email to the CAO/Clerk in January would have provided a list of work so he could provide some of the volunteers. He said he is trying to listen to every Committee that comes to the table. Thought we reached that goal. He said he saw an opportunity for a used stage. He saw the Marshall workers and considered they were volunteers. He acknowledged that the claimed hours is a net payroll cost.

Councillor Campbell referred to the Solicitor's opinion and said that it was not a single direct response to Council's question.

Councillor Campbell said the process would have been better if schedule/timeline established. Mr. Bennett said in the end Recreation is taking responsibility for raising the funds. The issue is to keep them focused so they don't lose interest in fundraising.

Mayor Eady said the reason we are here is that this expenditure was not authorized up front. Now he wants to make sure everything is 100% legal. He said there was a lot of miscommunication. He said he did feel that the \$9,000 was part of the \$17,000 fundraising commitment. He knew that he had volunteered to set up and tear down but not the rink attendant.

Mayor Eady said that there was an estimate of 700 volunteer hours required to complete the project. But when you add them up they come to over 1500 hours. He said he has some concern with fundraising. How committed are they? Is there some way this can be nailed down somewhat – like a written document in good faith?

Mayor Eady said he found out about this request at the March 19<sup>th</sup> Recreation Committee meeting and again at the March 31 meeting requested by Mr. Bennett. It was further discussed at the Committee of the Whole Meeting of April 11 and now tonight. He said that we have not been tardy in responding to the request. He has heard all comments from Council, lawyer and CAO/Clerk. He asked if a proper motion will come forward.

Mayor Eady asked Mr. Bennett to possibly look after the Township's legal bill as a gesture of good faith. He thanked Council Members for all their comments.

Dave Bennett said his commitment as Building Committee Chair was to ensure funds raised for the project did not come from the tax base. His gesture has been there since March 31 as he hasn't stopped work. Since March 31 \$5400 has been incurred for the stage and cabinets that he is donating.

Mayor Eady said at the March 31, 2014 Meeting that Mr. Bennett requested, he asked for reimbursement of some of the payroll costs that amounted to \$23,481.99. Mr. Bennett said he would like the funds paid that his company paid to the workers prior to March 31. He has put in a commitment that no other person would do. He requires this amount to be paid. Mayor Eady said that this is a separate issue that Council didn't cause.

Councillor Campbell asked who is volunteering to finish the work. Mr. Bennett said Bob Kingsbury, Robert A. Johnston, Arnold Dickson, Bruce Golden, Randy and Nathan Corbin and Lyle Armstrong. Councillor Campbell said that this burden isn't entirely on Mr. Bennett's shoulders. There is still an opportunity for additional volunteers. He can still get volunteers. We are still here if needed.

Councillor Larone suggested that he could meet tomorrow night with Councillor Campbell and Mr. Bennett to work out the balance of work.

Dave Bennett said that the plumbing is volunteered. The stage steps are already built and will be installed tomorrow. Hand railing will be a short time later. His worker volunteers are working on the movable cupboard. There is still work

filling in the former storage room doorway that could be done by volunteers. 50 man-hours required for the movable counters. All material is on site.

Councillor Larone said this addition will benefit the Community long into the future. People have already mentioned the hall and expansion with volunteers. He would like to move forward. Council has supported the project, some members put in time and payroll deductions. Recreation needs to be kept focused with their fundraising efforts. This is what they asked for. They need to follow up with fundraising.

Mayor Eady said the trend in Horton has been to build recreation facilities using volunteer labour. He referred to the original Sportsplex and now this facility. Luckily we have the cash flow to finance upfront costs. He has stated we will not raise the tax rate to cover the construction costs. Plan B would be to use reserve funds to replenish the upfront financing if fundraising efforts failed to cover the entire amount.

Moved by Bob Kingsbury  
Seconded by Margaret Whyte

Resolution No. 2014-135

That Council reimburse Marshalls the amount of \$23,481.99 to cover net payroll costs spent by Marshalls in providing labour to complete the Horton Community Centre expansion project.

Discussion

Councillor Larone asked if this is the amount that Mr. Bennett asked for. Mr. Bennett said yes.

He asked that there were no other costs from Marshall. Mr. Bennett said yes but there would be about \$1500 in material from Lockwood/Castle Building Supply.

Carried on Division

Opposed Councillors Campbell and Larone.

4. CONFIRMING BY-LAW 2014-28

Moved by Glen Campbell  
Seconded by Margaret Whyte

Resolution No. 2014-136

That Council enacts and passes the following by-law:

- By-law No. 2014-28 – Confirming By-law.

Carried

5. ADJOURNMENT

Moved by Jamey Larone  
Seconded by Bob Kingsbury

Resolution No. 2014-137

That Council adjourns this Special Meeting at 8:25 p.m.

Carried

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MAYOR

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CAO/Clerk