

April 2, 2018
Selectboard Executive Session #2 (but discussed #3)
Town Hall, 1 Avenue A, Turners Falls
8:45 PM

Present: Selectpersons: Chris Boutwell, Michael Nelson, Richard Kuklewicz, Chair; Town Administrator Steven Ellis, Executive Assistant, Wendy Bogusz

On Phone: Atty. David Doneski 8:50 PM

RE: Executive Session under G.L. c 30A, Section 21 (a)(3) to discuss potential litigation concerning Baltazar, Votes may be taken

Documents and Exhibits: Letter to Baltazar dated 11/1/16 and 9/17/14

Kuklewicz goes over review of what previously happened with the Baltazar case

Prior WPCF superintendent didn't want us to go against CDM. Problem didn't start with Baltazar and they didn't pick it up until they were partly done connecting the pipe. CDM didn't pick up on the errors either. What we have is old now, there were other people involved

Ellis: It is expected that Baltazar will file a claim to dismiss since the Town did not file/assert a claim within 30 days that the condition arose which is in the contract and was referenced in Baltazar's November 14, 2016 response letter. It does appear this would be a complex case. Atty. Doneski stated the facts present various hurdles to overcome in obtaining a judgement, he would not be able to say that it is more likely than not that the Town could obtain some payment from Baltazar. Short of a litigated result, it is possible that Baltazar would make a nominal settlement offer to avoid the expense of litigation, but this cannot be assumed. And there is the question whether the full \$459,500 would be recoverable and in the letter from Baltazar they stated they would counterclaim for \$60,000 in lost profits (based on removal of paving work from the phase II option of the project) if we were to commence litigation.

Kuklewicz: Their mistake was not reporting, but it was not the mistake that caused it to happen. The information they were provided was erroneous. The Engineering firm did a sloppy job at getting the information.

Doneski participates remotely at 8:58 PM

Doneski: Town would need to make a claim for breach of contract with Baltazar. We can anticipate they will argue our claim is a negligence claim and would have to state why the claim was not brought forward in 3 years of the events that took place. In any complaint we might file, we would have preliminary skirmish about whether it's within the statutory limitations period. They breached contractual obligation which has 6 years. Differential found in field which required they notify the town or engineers in 2013 before installing pipe or manhole #39 only to find alignments were off by 1-1/2 feet. Their argument was that the initial discrepancy was only a couple inches which didn't require they notify us. Our case is different saying there is a breach and saying after the fact there is an adjustment. This is a hurdle we would have to overcome not sure we could even get a nominal offer from Baltazar.

No principal to this matter, uncertain payoff no matter what direction we go on, would need to litigate.

Kuklewicz: We will meet with Tom when he returns from vacation and will see what he has to say.

9:16 PM hung up phone

Nelson makes the motion to adjourn Executive Session. Boutwell seconded, unanimously approved. Nelson - Aye, Boutwell - Aye, Kuklewicz - Aye

Approved:

Boutwell Kuklewicz Nelson

Release to the Public:

Yes _____ Not Yet 3/11/19 Date

Date Released to the Public: 3/12/19