

## **Continued Meeting of California Borough Council, December 19 2013, 6:00 pm**

President Bittner called the meeting to order at 6:20 pm

**ATTENDANCE:** Mr. Alfano, Mr. Bittner, Mr. Difilippo, Mr. Glab, Mr. Mariscotti, and Mayor Durdines

**ABSENT:** Mr. Encapera, Mrs. Gutosky

### **ADDITIONS /CHANGES TO THE AGENDA**

No additions or changes

### **PUBLIC COMMENT –**

No public comment at this time

### **PRESIDENT'S REPORT- MR. BITTNER**

#### **WASTE CONTRACT**

Mr. Agraftotis stated that Advanced was the only company to submit a bid. He asked if anyone in the audience was here on Advanced's behalf and Mr. Ottaviano stated yes he is here to speak on behalf of Advanced Disposal. Mr. Agraftotis stated he has a couple of questions. He stated they provided an extensive list of vehicles and equipment and there is no proof of vehicle & equipment ownership and he asked Mr. Ottaviano if Advanced Disposal owned all the equipment & vehicles listed. Mr. Ottaviano responded yes. Mr. Agraftotis stated the Chestnut Landfill listed here is that also where the leaf waste is going to go. Mr. Ottaviano stated he's pretty sure and he doesn't believe there is designated compost there. Mr. Agraftotis stated per the terms of the contract we are supposed to get proof of leaf drop off site. Mr. Ottaviano stated that he is assuming it would be taken to that particular landfill but he will get confirmation on that. Mr. Agraftotis asked if they read in the bid specifications that the borough wants a daily clean up over a two week period the end of the semester in May. Mr. Ottaviano stated they can comply with that. Mr. Agraftotis stated he sees that rates in here for commercial customers and asked Mr. Ottaviano if they are going to negotiate individual contracts with the non-residential customers. Mr. Ottaviano stated yes. Mr. Agraftotis asked if Advanced will honor the rates that are currently in effect for the non-residential customers for 45 days until you are negotiating the new terms with them. Mr. Ottaviano stated yes they are. Mr. Agraftotis asked how hard it would be for them to provide proof of vehicle ownership. Mr. Ottaviano stated that office isn't open now but it shouldn't take long. Mr. Agraftotis stated other than then the evidence of ownership of vehicles and leaf drop off site. Council can technically reject them or award contingent upon Advanced providing proof of evidence of ownership and leaf drop off site. Mr. Bittner asked council what their pleasure is.

Motion by Glab/Difilippo to accept and award the Waste Contract to Advanced Disposal contingent on them providing proof of ownership for vehicles & equipment and certified leaf drop off site by December 23, 2013 duly carried on a roll call vote with all members present voting yes.

Mr. Ottaviano asked what pick up day council would prefer and council requested it stay on Fridays. Mr. Difilippo asked if they will take everything like it is now. Mr. Ottaviano stated he believes it is unlimited in the bid specs. Mr. Bittner asked Mr. Ottaviano what position he holds at Advanced and he said he is the site manager. Mr. Glab asked if he would be the point of contact for the borough. Mr. Ottaviano stated most certainly plus there will be two supervisors assigned to this account also. Mr. Bittner asked if there will be a supervisor here on pick-up days. Mr. Ottaviano stated yes there will be route supervisors in the field so he will be in the vicinity on California pick up days. Mr. Bittner stated and you are aware that recycling is every other Friday and tomorrow is our recycling day so you can figure out your schedule from there. Mr. Difilippo asked about recycle bins. Mr. Bittner stated we received a grant for the last set of bins that we provided. Mr. Bittner asked what they do in other communities. Mr. Ottaviano stated it varies some buy their own and others the municipalities provide them. Mr. Bittner asked how do they handle non-payment. Mr. Ottaviano stated that is based on the contract. Mr. Bittner asked if they leave a tag. Mr. Ottaviano stated yes and they will abide by the terms of the contract and some municipalities help with the collection process, Mr. Bittner stated we don't, Mr. Ottaviano stated we do not shut them off but we pursue the delinquents through other means

such as through the local magistrate. Mr. Ottaviano stated they do have a relationship with County Hauling and he is going to have to figure out the customer base. Mr. Ottaviano asked if the borough would have a residential list he could work from. Mr. Bittner warned him that there are some folks that have W. Brownsville, Coal Center, and Daisytown mail addresses but they are located in the borough. Mr. Agrafiotis asked how long the land fill permit issued on Sept. 16, 2011 is good for. Mr. Ottaviano stated he didn't know. Mr. Glab asked where the Chestnut Valley disposal site is located. Mr. Ottaviano stated right next to wear we keep our trucks and our office at 1192 McClellandtown Road. Mr. Mariscotti asked if customers are able to pay online. Mr. Ottaviano stated he wasn't sure but possibly. Mr. Ottaviano asked if these items are what council wanted him to supply; Term of land fill permit, proof of ownership on vehicles, leaf drop off site confirmation and on line payments. Mr. Agrafiotis stated that is correct.

#### **TRANSFER OF FUNDS**

Motion by Difilippo/Glab to transfer \$300,000.00 from the sewer fund savings to the sewer fund checking duly carried on a roll call vote with all members present voting yes.

#### **PUBLIC HOUSING – MR. ALFANO**

Nothing to report

#### **PUBLIC WORKS – MR. MARISCOTTI**

#### **COHEN LAW GROUP INVOICE**

Motion by Mariscotti/Difilippo to authorize payment to Cohen Law Group for their final invoice in the amount of \$4,315.58 duly carried on a roll call vote with all members present voting yes,

#### **ICE RINK**

Mr. Mariscotti stated we have talked to Redevelopment and they gave us the go ahead to install the ice rink at the Hollywood Theatre site so he would like Shirley to call and get them added to the insurance. Mr. Bittner stated he spoke with them but for her to call over there and get the specifics as to what they want and what we need.

#### **PUBLIC SAFETY – MR. GLAB**

#### **FIANANCE – MRS. GUTOSKY**

Nothing to report at this time.

#### **PUBLIC HEALTH – MR. DIFILIPPO**

Nothing to report at this time

#### **PERSONNEL – MR. GLAB & MR. ENCAPERA**

Nothing to report at this time

#### **MAYOR'S REPORT – MR. DURDINES**

Nothing to report at this time

#### **ENGINEER'S REPORT – MR. JOHNSON**

Nothing to report at this time

#### **SOLICITOR'S REPORT - MR. AGRAFIOTIS**

#### **UPDATE TOWNING ORDINANCE**

Motion by Glab/Difilippo to authorize the Solicitor to review and update the Towing Ordinance to reflect the necessary changes duly carried on a roll call vote with all members present voting yes.

#### **LEGAL OPINION**

Mr. Agrafiotis stated we were previously asked to do a legal opinion concerning Mr. Walter R. Weld Jr. being the Mayor and also having Weld Towing Company on the borough's approved towing list to be called by the police department. Mr. Agrafiotis provided a letter of opinion and it is attached to the end of these minutes. Mr. Durdines asked if we are intent on making some changes to the ordinance. Mr. Agrafiotis stated yes council has authorized the solicitor to review it. Mr. Durdines stated one thing he thinks should be changed is the provisions that state they

must be located within the borough. He feels that is a little bit outdated. If he opened a towing business in Coal Center Borough he would actually be closer the police station that Weld towing is but would prohibited from towing in the borough. He stated the same thing with some parts of West Pike Run Township and possibly Long Branch. He asked if we could change it to be from a radius of the center of the borough. Mr. Glab stated or even contiguous municipalities. Mr. Agrafiotis stated we could definitely discuss that.

#### **OLD BUSINESS**

No old business at this time

#### **NEW BUSINESS**

No new business at this time

#### **RECOGNITIONS OF CITIZENS**

Mr. Maddiex stated when council does the track at Rotary Park he suggested putting a loop in the middle to make it shorter. If the water is pooling at the far end then you might want to look at placing a catch basin there. Mr. Maddiex also questioned whether or not the borough receives liquid fuels for Kaukonen Drive because there is supposed to be a cul-de-sac on the end.

#### **ADJOURNMENT**

Motion by Mariscotti/Alfano to adjourn the meeting at 7:00 duly carried with all members present stating aye.

### **MELENYZER & AGRAFIOTIS, LLC**

*Attorneys at Law*

D. Keith Melenyzer  
Thomas P. Agrafiotis

411 Washington Avenue  
Charleroi, Pennsylvania 15022

724-489-9523  
1-800-297-4445  
FAX 724-489-9531

E-mail: [melenyzerandagrafiotis@comcast.net](mailto:melenyzerandagrafiotis@comcast.net)

DATE: December 19, 2013

TO: Borough Council

RE: Legal Opinion on Walter R. Weld, Jr. Being Mayor While Weld Towing Company is on the Borough's Approved Towing List to be Called by the Police Department

Pursuant to 75 P.S. § 3353(c), "Any city, borough, incorporated town or township may, by ordinance, provide for rates to be charged for removal of vehicles and for municipal regulation of authorized towing services." Further, as per the Borough Code, specifically section 53 P.S. § 46202, under subsection thirty-four (34), the specific powers of the borough shall include the power to "... to authorize or contract with commercial towers that agree to tow vehicles for a negotiated price as the official towers for the borough for the lawful removal of motor vehicles, tractors, trailers, recreational trailers and other vehicles from highways, roads, streets and public property of the borough in accordance with Federal and State law and to impose fees in the same manner as hereby authorized when the towing is performed with borough vehicles and equipment. A commercial tower that agrees not to charge in excess of the negotiated price and is otherwise lawfully authorized to tow vehicles in accordance with Federal and State law, shall be put on an official rotation list for the borough if borough council provides for a list. This clause shall apply only when the borough is requesting a vehicle to be towed."

Pursuant to Borough of California Ordinance, No. 459, Section IX "Garages," "Any resident holding a valid salver's license from the Commonwealth of Pennsylvania, any resident of the Borough of California who owns and operates a tow truck business, or any other person who owns a garage and towing business located within the Borough shall be eligible to provide towing for any wrecked and/or impounded vehicles as identified by the Borough police department as long as they meet certain criteria as outlined in said Ordinance. Further, pursuant to Section X "Approved Towing, Impounding and Storage," of said Ordinance, "Whenever it is necessary to have a wrecked vehicle or an immobilized vehicle towed and impounded, the Police Department of the Borough of California shall use the names on the list approved by Council on a rotating basis subject to their availability." Further, "whenever it is necessary to have a junked or abandoned vehicle towed or impounded, the Police Department of the Borough of California shall use the names on the list of salvers approved by Council on a rotating basis subject to their availability."

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I have been advised that Weld Towing Company is presently the only towing company on the Borough Council's approved list. Therefore, there is presently no issue about evenly rotating the towing tasks to multiple towing companies. Further, I have been advised that Walter R. Weld, Jr. has no ownership interest in Weld Towing Company. Accordingly, the incoming mayor has no pecuniary interest in Weld Towing Company being on the approved towing list. Therefore, there would be no direct conflict in Walter Weld, Jr. being mayor and having Weld Towing Company on the Borough's approved towing list to be called by the Police Department.

That being said, there is the appearance of a conflict with Walter R. Weld, Jr. being Mayor and any potential towing matter that may come before Council and the Mayor. It is my opinion that Walter R. Weld, Jr., while he is mayor, should refrain from discussing any issue relating to towing within the Borough, should not exercise the tie-breaking vote if the occasion arises on a towing issue, and should neither approve nor veto any measure if passed by Council and submitted for the Mayor's approval regarding towing within the Borough.

There are specific legal prohibitions governing personal interest in contracts and purchases that appear both in the Pennsylvania Public Officials and Employees Ethics Act., 65 P.S. § 1101, et seq., and in the Borough Code, 53 P.S. 45101, et. seq.

Any mayor, including Mr. Weld, must be very careful to avoid the possibility of a conflict between their personal and private interests and their role as a public officer. The Pennsylvania Public Officials and Employees Ethics Act., 65 P.S. § 1101, et seq., states that the people have a right to be assured the financial interest of public officers do not conflict with the public trust. This is the basis for my opinion that there is the appearance of a conflict and that Mr. Weld, to avoid any appearance of impropriety, should abstain as I have outlined herein.

If you have any further questions, please do not hesitate to contact me.

Very truly yours,

MELENYZER & AGRAFIOTIS, LLC

BY:   
Thomas P. Agrafiotis, Esquire

TPA:rls