

**LAPORTE COUNTY  
COUNTY COUNCIL EMERGENCY MEETING  
May 5, 2008**

The LaPorte County Council met in session for an emergency meeting the 5<sup>th</sup> day of May, 2008, in the assembly room of the LaPorte County Government Complex. The meeting was called to order at 5:00 p.m. by President Mark Yagelski.

**ROLL CALL AND PLEDGE OF ALLEGIANCE:**

Mr. Cooley led those present in the Pledge of Allegiance. Roll call followed.

Mrs. Shuter:	Councilman Cooley:	Present
	Councilman Cunningham:	Present
	Councilman Garner:	Present
	Councilman Ludlow:	Present
	Councilman Mrozinski:	Present
	Councilman Yagelski:	Present

Mrs. Shuter, "You have a quorum, sir." Councilman Jones arrived shortly after the Adoption of the Agenda.

**ADOPTION OF THE AGENDA:** Mr. Cooley made a motion to adopt the agenda and Mr. Ludlow seconded. The motion carried 6 – 0 by voice vote.

**PUBLIC COMMENTS:** There were no public comments.

**EMERGENCY APPROPRIATION/RIVERBOAT FUND:** Mr. Yagelski stated that the purpose of this emergency meeting is to address appropriation of \$84,000.00 for architectural fees for the proposed county building to house the Extension Service, Soil & Water and Solid Waste Offices. Mr. Yagelski reported that he had contacted some of the Council Members after the last meeting due to a slight miscommunication about the contract and the contract being signed. Mr. Yagelski reported that he has a copy of the signed contract from the Commissioners Meeting of January 2, 2008; he read an excerpt from those minutes, "Under new business, Mr. Bohacek made a motion to approve Dh2w as architects for the new LaPorte County Office Building and to allow the President of the Commission to sign the agreement seconded by Mrs. Huston." Mr. Yagelski noted that the motion carried 3 – 0 regarding this agreement.

Mr. Yagelski commented that County Attorney Robert Szilagyi had written a letter which referred to the design of the building involved. Mr. Yagelski referred to Paragraph 11.2.1 regarding an architectural fee of 7% of the actual construction cost with the estimated construction cost of \$1 million with the understanding that the actual cost can be more than \$1 million or less than \$1 million. Mr. Yagelski stated that the contract further states that additional services will be paid separately beyond the basic services as provided in Article 11.3. This letter was sent to the Commissioners and Don Baugher. Mr. Yagelski further read that the new LaPorte County Office Building will be approximately 9,500 to 10,000 square feet in size; the building is to be designed to be as energy efficient as economically possible without obtaining a LEED certification and the building is to be located south of the LaPorte County Fairgrounds on the southwest side of the property.

Mr. Yagelski referred to the following invoices sent by Dh2w: 2/18/08 the estimated fee at 7% of \$1.2 million was \$84,000.00 and the completion was at 35% with a cost of \$29,400.00, on 3/19/08 the completion was at 70% with a cost of \$58,800.00, and on 4/28/08 the completion was at 80% complete with a cost of \$67,200.00. Since Attorney Szilagyi is out-of-town, Mr. Yagelski asked Attorney Shaw Friedman, as the Commissioners representative, to approach the Council. Mr. Yagelski commented that he had contacted Attorney Friedman to come up with an amount to be paid to Dh2w.

Mr. Friedman stated that normally Mr. Szilagyi is involved in competitive bid issues because he is present at the regular meetings of the Commissioners. Mr. Friedman commented that by way of introduction, so that there are no questions about it and he has since clarified for the newspaper, that Mr. Hager at no time has denied that the Commission entered into a contract for the work; what he has denied is authorizing work at \$2.2 million. Mr. Friedman stated that if there is an ambiguity from the Commission President, he well recognizes, as well as all three (3) members of the Commission, that a contract was entered into early January for this work. Mr. Friedman also stated that this work and the project has had good strong support from the Council who wants to see this project move forward and get the County out of the leasing business but clearly the project has to be done at a level the Council agrees with.

Mr. Friedman stated that the question before the Council and the Commission is whether the work needs to be re-scoped and re-bid. Mr. Friedman, in talking to Mr. Szilagyi, commented that it is Mr. Szilagyi's sense that because of the significant changes that are involved we would need to work with Dh2w to have the work re-scoped and a new set of bids presented to bring in the project at, or around, the budgeted amount. He commented that guidance is needed from the Council to clarify that and to understand what role the contractor, or professional group, can provide in helping re-scope the work.

Mr. Cooley commented that there have been several meeting regarding this project and the architect was asked several times if this project was going to stay within budget; when you hire a professional and the project goes over twice the amount, something is wrong with this picture. Mr. Cooley asked, "Are we hiring the wrong people, should we put in contracts if you are wrong you pay us? Does everyone think they can take advantage of County government?"

Mr. Friedman stated that Mr. Cooley's question was a fair one; he does think, as he has talked to some of the professional groups, that construction costs have escalated in the past few months but the bid that came in is a long way off from the estimate given. He commented that we aren't even in the ballpark. Mr. Friedman commented that Dh2w is a well-recognized firm that has the capability to do this type of work.

Mr. Ludlow asked Mr. Friedman, in his estimation, if the project is 80% complete. Mr. Friedman responded that he is not in a position to affirm this but he does know that there needs to be a re-scoping of work done. Mr. Ludlow then asked if the County is going to have to pay for the re-scoping of the work. Mr. Friedman responded that he believes the re-scoping of the work should come within the budgeted amount and he would hope that this matter could be addressed with the professional team because the Council has understandable concerns about how far off the bids came in from the budgeted amount.

Mr. Cunningham asked if Mr. Friedman was aware of any authorization to increase the square footage of the building. Mr. Friedman replied, "No." Commissioner Mike Bohacek stated he had talked to Roger Potratz, one of the owners of Dh2w, and he did, in fact, meet with all of the parties that would be utilizing the building; when Mr. Potratz prepared plans for the building, taking all of this into account and in order to fit the needs of our County now and going forward, Mr. Potratz felt that around 15,000 square feet was where we needed to be. Mr. Cunningham asked Mr. Bohacek if he is of the opinion that the Commissioners can enter into a contract for a building 9,500 to 10,000 square feet and then, because someone meets with Department Heads who will use the building, they have the authority to request an increase of 50%. Mr. Bohacek responded that after the bids came in at 15,000 square feet, he spoke with Mr. Potratz who told him how he arrived at 15,000 square feet; Mr. Bohacek informed Mr. Potratz that this wasn't the best thing to do and he should have called the Commissioners. Mr. Bohacek commented that Mr. Potratz agreed that it was his error and he apologized for it; he also stated that Mr. Potratz has been working diligently to re-scope the project to get it at where it needs to be.

Brian Potratz, who works with Roger Potratz in trying to help facilitate with various agencies, commented that there were actually two (2) sets of plans that have been done. The original scope was 11,000 square feet in two (2) levels which required a good deal of grade work; this plan was unacceptable because of the estimated cost of the grade work. Brian Potratz reported that at this point the project was re-scoped to go to a single level building which means more foundation and more footings; he commented that it is cheaper to build up than it is to build wide.

Mr. Garner asked who chose this as it was his understanding that the architects were not agreeable to turn the building and that is the main reason the basement wasn't accepted plus six (6) different choices of building styles were offered. If trying to stay at a \$1.2 million budget, why six (6) different building styles. Brian Potratz responded that he can't answer this as he was not party to that discussion. Mr. Garner commented that the last meeting he sat in on in March, we were still on project for the two-story building and the next thing he hears is that we are not because of the moving of the land and the County is doing the work. Mr. Garner asked what changed. Brian Potratz commented that they would have preferred a specific orientation and a two-story building initially as designed because it would have provided the greatest solar gain and the most energy efficient usage of the space and the building. Mr. Garner asked who chose the solar building. Brian Potratz understands the confusion because when most people think of solar, they think of equipment; he is talking about passive solar which is based on placing the building at a specific angle to make it as efficient as possible in the space provided. Mr. Cunningham was present at the same meeting as Mr. Garner and has the same understanding as he does.

Mr. Yagelski commented that he had asked Mr. Szilagyi what the County owes contractually based on 7% of the construction cost at 80%. Mr. Friedman responded that, in talking to Commissioner Bohacek, there is a belief that the professional fees are capped and the County will get a re-scoping so that the project can be re-bid within the context of the professional fees; you don't want to have to pay additional fees to re-scope to bring the project in at the amount that was directed in the first place. Mr. Yagelski stated that there is a contract due and he would like to know what is legally owed.

Mr. Cunningham asked where is the authorization to increase the square footage when there is a contract for 9,500 to 10,000 square feet, not to exceed \$1.2 million. Roger Potratz answered that the program requirements of the three (3) entities that will occupy the building were cut down to the bare minimum and his firm thought they could do it for 11,470 square feet. Mr. Cunningham asked if this process is backwards and it should have been determined what we needed before we entered into a contract. Roger Potratz responded that the program requirements were not known at the time the contract was signed and this was a best guesstimate on his part. Mr. Cunningham asked if the Commissioners are comfortable with this statement. Mr. Hager was the only Commissioner still in attendance.

Mr. Cunningham asked if the sum total of the square footage in the space occupied by these departments currently is known. Roger Potratz replied that he can't answer this question. Mr. Cunningham asked if this wouldn't have been a good starting point. Mr. Potratz stated that it would have been a good starting point but part of the program requirements would be to provide a meeting space for two-hundred (200) people.

Mr. Yagelski asked the architect if it is normal for them to sign the contract and then change it without going back to the people that signed the contract; he referred to the E-911 project. Roger Potratz responded that the scope didn't change much on that project. He stated that when he presented to Mr. Hager the original concept of a two-story building for 11,470 square fee, Mr. Hager indicated that it was a good design but there was going to be too much work involved in earth moving to contour the land to get the solar orientation to the south and there would be too much cost involved. Mr. Hager asked that the design be redone.

Mr. Jones commented that he agrees with Dh2w that when an architect or engineer is hired, you really don't know the scope of work because you can't expect them to lay out much research in the way of a drawing until they are being paid to do that. Mr. Jones stated that once they are being paid, they also have a professional reputation to provide a building that is not inadequate, not undersized and not a laughing stock; the client has its hopes, wishes and dreams also and the Council's was to stay within the \$1.2 million. Mr. Jones believes our only recourse moving forward when we enter into these relationships is to judge people by their projects and their performance; if this building is "fluffed up" too much and we don't want energy efficient buildings, this is a whole separate subject. Mr. Jones stated that if it is bigger than it needs to be, that is a problem, too, but it is also a problem if it is undersized; he has always said don't throw good money at a bad project. Mr. Jones doesn't want to see a severed relationship with Dh2w at this point as he would like to see the building accomplished; if they go back to the drawing board and decide that it is unrealistic to construct at \$1.2 million and it will cost \$1.6 million, and it is a conservative building that meets our needs without chandeliers and extra goodies, he would be willing to move forward.

Mr. Yagelski reminded that this meeting was called to take care of the contract. Mr. Friedman stated, after talking with Council Attorney Don Baugher, that 75% claimed would be a reasonable claim based upon the work performed. For the record, Mr. Friedman also stated that Dh2w understands that the project needs to be re-scoped within the confines of the existing contract and that the project is brought in at, or near, the budget level that the Council has indicated.

Mr. Baugher stated his position. He commented that within the AIA document the contract is broken down into phases: schematic design phase would be about 15% of the cost, the design development phase would be around 10%, the construction document phase would be around 50% with 25% left to cover the construction phase and negotiating and bidding phase. Mr. Baugher stated that 25% under the terms of the contract are to be set aside and this is how the 75% comes up and it seems that the architect is pretty well through the construction documentation phase and into the bidding phase.

Mr. Baugher pointed out, and he recognizes that this has been a joint project and everyone wants it to go forward, that in order to have binding contract with a governmental agency three (3) things have to occur: the agency that entered the contract had to have statutory authority and the Commissioners clearly have that authority, the contract has to be entered into in a way that is legal and it appears that it was, and the third element is that no agency can contract and bind the government to a contract when the money has not yet been appropriated.

Mr. Baugher also pointed out that there are at least five (5) clauses in the contract that require the architect, exercising their professional judgment and advice, to advise the owner as to the contract budget and the construction budget an estimated cost of building; he doesn't know where that went in this case and he believes that there is an explanation due on this issue. Mr. Baugher stated that if it is the intent of the Council to pay the contract on an amount as provided for in the contract, 75% of something is exactly the number. He further stated that 75% of something is probably a percentage of the proposed budget of \$1.2 million. Mr. Baugher commented that if the Council wants some of the questions answered, they may want to see some written documents as to where we are going from here. He further commented that the Council may also want to ask themselves what professional standards have been met and what professional standards have not been met because this architect had a contractual obligation to advise on the construction budget and it was clear what the construction budget was; it didn't come in anywhere near what it should have.

Mr. Friedman commented that Mr. Baugher has stated the situation very well and he has had extensive dealings in construction law over the years. Mr. Friedman stated that 75% is the figure recommended at this point in the project and the Council has every expectation and right to have updates. Mr. Yagelski asked if \$1.2 million is legally the construction cost. Mr. Friedman responded that the architect should answer that question for the record. Roger Potratz stated that it was initially \$1 million but the Commissioners then stated that \$1.2 million was as much as they could go; he also thought, regarding consultation, that his meeting with Mr. Hager on the design met the obligation.

Mr. Yagelski asked if the amount to be paid would be based upon the initial \$1 million project for 9,500 to 10,000 square feet. Roger Potratz commented that the direction he was given was to base the fee upon \$1.2 million and not \$1 million. Mr. Yagelski responded that he is trying to go on construction cost which is, in his eyes, the original contract of \$1 million.

Mr. Ludlow asked if Roger Potratz saw the drawings that were done by Rick McVay, County Highway Engineer. Mr. Potratz responded that he did. Mr. Ludlow asked if the drawings were what the 10,000 square feet and the \$1.2 million were based upon. Mr. Potratz replied that the 10,000 square feet had to come from some figure and he believes that this would be a pretty good explanation.

Mr. Yagelski asked Roger Potratz if his firm received \$3,500.00 when they signed the contract. He replied, "No, sir." Mr. Cooley stated that he and Mr. Hager never questioned the size of the building but had directed that the architect stay within the budget. Mr. Cooley commented that the County was going to do some of the work to hold the balance down but the total budget is still the total budget; every time he asked Dh2w if they were staying within the budget, they said, "Yes." Roger Potratz responded that they honestly thought they were. There was further discussion regarding costs per square foot and the size of the building. Roger Potratz stated that for 15,750 square feet the cost per square foot would be \$80.00 which is unrealistic.

Mr. Friedman stated that \$1.2 million is specifically referenced in the contract. Mr. Cunningham asked if Mr. Potratz would accept \$42,000.00 and enter into an agreement that Dh2w will complete the drawings in the scope of \$1.2 million give or take a little.

Roger Potratz reported that he talked to a gentleman from Morton Buildings in Westville. Based upon that conversation, he believes he could do this project for \$1.6 million.

Mr. Yagelski commented that, based upon construction cost, there was no way Dh2w could do this project for \$80.00 per square foot. Roger Potratz responded that this is Mr. Yagelski's opinion but he felt that he could.

Mr. Garner stated that we have an energy efficient building that could save a lot of money in the future; can we still build it for \$1.6 million without changing it. Roger Potratz commented that he believes that it can be done; the floor plan wouldn't be changed but the way the structure is put together would change. Mr. Potratz has had consultation with the low bidders, Ziolkowski and Larson-Danielson, with the approval of Mr. Hager, and they have submitted to Dh2w very rough cost reductions based upon the information provided by Dh2w. Mr. Potratz commented that it is his understanding that the project will still need to be re-bid.

Mr. Yagelski reminded that this meeting was called for one purpose and the contract negotiation portion needs to be straightened out. Mr. Cunningham made a motion to authorize payment of \$42,000.00, half of the \$84,000.00 based upon the contract of \$1.2 million, with the understanding that Mr. Potratz will continue working on this and will bring something back that is acceptable to the Commissioners and Council. Mr. Cooley seconded.

Mr. Mrozinski asked what we are getting for this money and what will we have that we can physically see what we spent \$42,000.00 of the taxpayers money on. Roger Potratz responded that it will take about three (3) weeks redrawing this project in order to re-bid it; during this time he would like to meet with the Commissioners and Council to show what they are doing. Mr. Potratz stated that what he didn't hear in the motion was that he would be re-numerated for the rest of the funds for his efforts.

Mr. Cooley asked if the costs would include everything or would the Commission come back and ask the Council for more money for the driveway, the plumbing hookup, the electrical hookup, etc. Roger Potratz responded that it was his understanding that these things never were part of the contract.

Mr. Yagelski commented that the contract was signed that Roger Potratz filled out, and it was stated that Dh2w had intentions of asking other people questions; is this contract binding for the Council to pay some amount of money whether they get a piece of paper in their hands tonight or

not; is the Council obligated at this point. Mr. Friedman believes that there is an amount of money that is due for performance of work on contract and it is reasonable for the Council to set a figure as per the motion and request to require that certain information continue to be provided. Mr. Friedman stated that Roger Potratz has indicated a willingness to re-scope and to re-bid as indicated because the change is so significant; he doesn't think that you can negotiate with the two bidders at this point without re-bidding.

Mr. Mrozinski referred to the next Council meeting on May 19<sup>th</sup> and asked that the Council be informed of the progress. Mr. Garner stated that if the project comes in at \$1.6 million, will the amount of the fee increase from \$84,000.00. Mr. Potratz responded that this is not what he is saying; he will base his fee upon \$1.2 million.

Mr. Baugher commented that this is something we will need to work out way through as we have a fair amount of time invested and money on a project that everyone concedes is important to the County. Mr. Baugher is not necessarily of the opinion that the County Council is legally bound to honor this; he does think as a practical matter you have to go forward; he stated that he and Mr. Friedman would meet with Mr. Ambers, the architect's attorney, and hammer out a proposal back to the Council that would state precisely what is to be paid, what is the scope of the project and give the Council something to look at before they ever considered paying any additional monies above \$42,000.00.

Mr. Jones, following up on what Mr. Baugher said, commented that Roger Potratz has just agreed on record that his fee will not exceed \$1.2 million even though the choice of the building may come in at \$1.6 million and this will be in the negotiation, is that correct. Mr. Baugher answered that it would be. Mr. Cunningham suggested a bonus if the project comes in at less; the mold should be broken since the Council is in the business of spending the taxpayers money.

Roger Potratz encouraged that from now on before a contract is signed, that a schematic program be worked out between the parties that are going to occupy the building which would be a great help to the architect. Mr. Yagelski responded that there were meetings and this was taken care of; people had a wish list and personal opinions. Mr. Ludlow asked Dick Reel if there had ever been a 4-H meeting where there were two-hundred (200) students in one room. Mr. Reel responded, "Yes."

Roll call was taken on the motion to approve \$42,000.00 with the stipulations mentioned.

Mrs. Shuter:	Councilman Mrozinski:	Aye
	Councilman Ludlow:	Aye
	Councilman Cooley:	Aye
	Councilman Cunningham:	Aye
	Councilman Garner:	Aye
	Councilman Jones:	Aye
	Councilman Yagelski:	Aye

Motion carried 7 – 0.

Mr. Jones asked whatever happened to, along with Soil & Water, the federal office coming in and paying rent. Mr. Hager commented that the federal office has a contract for another year; after that year is up, they will be talked to. Mr. Jones asked if we are building in anticipation of

that. Mr. Hager responded, “Yes.” Mr. Jones stated that, moving forward, it would have been nice to see some sort of business performance that shows the Council what the off-set will be since there is a federally set amount of rent money; this sort of thing should be on paper so the Council would feel a better comfort level in spending this kind of money.

Mr. Mrozinski will be anticipating something on May 19<sup>th</sup>. Mr. Garner asked that the Council be kept more informed than they have been the last few months.

Mr. Cooley stated that anyone that would come in the building would pay rent.

Mr. Yagelski commented that 5 ½ years ago the Council was promised that those offices that are to move into the proposed building would be moved out and we would have a building in six (6) months. He stated that it didn’t come through and every year it became a mockery of the rent. Mr. Yagelski commented that with the sewer and water hookup, paving, etc., we will be at \$2 million and this project was agreed to be at \$1 million; he has every respect for the group that needs to do this but he is not happy with spending that kind of taxpayer dollars.

**ADJOURN:** Mr. Cooley made a motion to adjourn at 6:00 p.m. and Mr. Ludlow seconded. Motion carried 7 – 0 by voice vote.