

December 17, 2010
Hawthorne, NJ

The Special Meeting of the Municipal Council of the Borough of Hawthorne was held on the above date at 5:00 p.m., in the Council Meeting Room of the Municipal Building, 445 Lafayette Avenue, Hawthorne, New Jersey. Present were Councilpersons Mele, Sinning, Wojtecki and Bertollo. Also present was Mayor Goldberg and Borough Clerk Witkowski. Council Vice President Matthews arrived at 5:03 p.m. Absent were Councilpersons Bennett and Lane.

FLAG SALUTE

Council President Bertollo invited all present to join him in the flag salute.

STATEMENT

Adequate notice of this meeting has been posted on the Public Bulletin Board at the Municipal Building, emailed to the Hawthorne Press, Herald News, The Record, The Gazette and all persons who have requested the mailing of such schedule, and a copy of such notice is on file in the Borough Clerk's Office.

CLOSED SESSION

Council President Bertollo continued that pursuant to N.J.S.A. 10:4-13 and the Attorney General's formal opinion 29-1976 moved that the public be excluded from the remaining portion of the work session in order that the council may discuss negotiations. Items to be discussed in closed session can be disclosed to the public when a course of action is determined or a decision has been reached. Motion was made by Councilman Mele, seconded by Councilman Sinning. On a roll call vote, all voted yes. Council went into closed session at 5:05 p.m.

On a motion by Councilman Mele, seconded by Councilman Sinning to reconvene the Regular Meeting at 5:16 p.m. On a roll call, all voted yes.

PUBLIC COMMENT (Agenda Items Only)

Council President Bertollo opened the meeting to the public. He stated if anyone desired to be heard, please raise your hand to be recognized, come forward to the microphone and state your name and address. He stipulated this was for agenda items only. Seeing no one, Council President Bertollo entertained a motion to close the public portion, moved by Councilman Sinning, seconded by Council Vice President Matthews. On roll call, all voted yes.

NEW BUSINESS

Councilman Sinning inquired to the status of a claim submitted by the Little League for FEMA money. Mayor Goldberg indicated the items claimed are unsubstantiated, therefore not approved. Councilman Sinning continued that previous year's awarded money was never made available to them. Administrator Maurer indicated the money was never collected by year's end, therefore the money is returned for the next year's expenditures. Mayor Goldberg suggested the Little League Treasurer call Administrator Maurer for follow-up. Councilman Sinning inquired as to the status of certification cards for those who attended defibrillator training. Both Mayor Goldberg and Administrator Maurer indicated they would follow up with OEM Coordinator Rich McAuliffe.

Council Vice President Matthews suggested that a status letter be sent to the Little League President in regards to their FEMA claims. Mayor Goldberg indicated that efforts have been unsuccessful in coordinating a meeting with the Little League in regard to the claims. Administrator Maurer indicated he would follow-up with OEM Coordinator Rich McAuliffe on this issue.

RESOLUTIONS

CONSENT AGENDA: R 234-10 THROUGH R 236-10

R 234-10 Resolution, Introduced by Councilman Wojtecki

WHEREAS, the Borough of Hawthorne maintains a sanitary sewer system serving properties located in the Borough of Hawthorne; and

WHEREAS, the Borough detected a collapsed sewer main in or about the area of Fifth Avenue requiring immediate repair; and

WHEREAS, the Borough solicited quotations for the work from reputable contractors capable of performing that work with the lowest quotation being submitted by Colonelli Brothers, Inc., a firm well-known to the Borough as capable of performing such repair; and

WHEREAS, the amount of the quotation was less than the bid threshold set forth in the Local Public Contracts Law and was also less than the \$17,500 threshold set forth in the Pay to Play Law, thereby exempting award from either body of laws; and

WHEREAS, after retaining Colonelli Brothers to perform the work in question, the same was undertaken and completed at a price consistent with the quotation; and

WHEREAS, immediately upon completion of the work, when the repaired line could be properly examined with video equipment, another more serious problem was found in the vicinity of the repair requiring the immediate replacement of approximately 50 feet of additional pipe, together with other related work; and

WHEREAS, at the same time the damage was detected, the County of Passaic reported that it had detected a discharge of effluent into the Goffle Brook, which it traced to the same location that Hawthorne had detected the sewer main break; and

WHEREAS, the detection of the additional break in the sewer main and determination that a discharge of effluent was emanating there from constitutes an emergency condition and a threat to public health, safety and welfare requiring emergency repair; and

WHEREAS, as a result of the emergency condition, the Borough, in consultation with its Engineer and Public Works Director, determined that Colonelli Brothers was mobilized on the site, was capable of making the required repair and that there was no time to obtain additional quotes; and

WHEREAS, the Borough further determined that the quotation it received from Colonelli Brothers for performing this additional emergency work was fair and reasonable under the circumstances and was unquestionably lower than any quotation it would receive from any other contractor, given the fact that Colonelli was already mobilized on the site; and WHEREAS, the estimate for the work as determined by the Engineer and as quoted by Colonelli Brothers, brings the total job cost to \$32,000, which is less than the \$36,000 threshold of the Local Public Contracts Law but in excess of the Pay to Play legislation; and

WHEREAS, the nature of the emergency, consistency of the quotation received from the contractor with the estimate received from the Engineer, reputation and expertise of Colonelli Brothers and fact that Colonelli Brothers was already mobilized on site resulted in a recommendation from the Municipal Engineer that the work be undertaken by Colonelli Brothers without delay; and

WHEREAS, the Borough Attorney has rendered an opinion to the Borough that given the significant risk posed to person and property, the experience and expertise of the contractor, the reasonableness of its cost estimate and the fact that the contractor was mobilized and ready to proceed immediately, the Borough may enter into an agreement with Colonelli Brothers for the making of emergency repairs as the same would represent an exception to the Local Public Contracts Law if in excess of the threshold; and

WHEREAS, the Administration, based upon the opinion of the Borough Attorney, has concluded that the award of a purchase order to the vendor would not be subject to the Local Public Contracts Law as being specifically exempt there from pursuant to NJSA 40A:11; and

WHEREAS, the Municipal Council adopted a resolution finding that an emergency did in fact exist and finding further that funding for the same would be by way of Temporary Capital Emergency; and

WHEREAS, the Chief Financial Officer has determined that funds sufficient to pay for the required improvement are available through the 2010 Municipal Budget of the Borough of Hawthorne and not by way of Temporary Capital Emergency; and

WHEREAS, as a result, the resolution adopted by the Municipal Council was incorrect and in need of amendment;

NOW THEREFORE, BE IT RESOLVED, by the Municipal Council of the Borough of Hawthorne that it does agree that an emergency situation does exist and does therefore authorize the emergency award of purchase order or contract to Colonelli Brothers, Inc., based upon the quotation submitted, in accordance with NJSA 40A:11-6; and BE IT FURTHER RESOLVED that the resolution previously adopted by the Municipal Council is amended and revised so as to provide that funding for the required improvements are available through the 2010 Municipal Budget of the Borough of Hawthorne.

R 235-10 Resolution, Introduced by Councilman Wojtecki

WHEREAS, the Borough of Hawthorne has contracted for collection of solid waste, recycling and yard waste pursuant to a five year contract awarded in 2005 and due to expire on December 31, 2010; and

WHEREAS, in anticipation of the expiration of said contracts, the Borough of Hawthorne solicited bids for the pick-up of all such material in accordance with the Local Public Contracts Law; and

WHEREAS, upon opening of bids for such services and analysis by the Municipal Clerk, Borough Administrator and Borough Attorney it was determined that the apparent low bidder for each such service was as follows:

Solid Waste/Garbage – Future Sanitation
Recyclable Materials – Future Sanitation
Yard Waste – Joseph Smentkowski, Inc., and;

WHEREAS, the Borough of Hawthorne in fact authorized the execution of a contract with each such entity for provision of the respective service commencing on January 1, 2011 and ending on December 31, 2015; and

WHEREAS, prior to delivery of any said contracts a lawsuit was filed by Joseph Smentkowski, Inc., the apparent second-low bidder on the Solid Waste and Recyclable Materials contracts, contending inter alia that the bid submitted by Future Sanitation was fatally defective, rendering the same invalid; and

WHEREAS, an Order to Show Cause with Temporary Restraints was entered by the Superior Court of the State of New Jersey prohibiting the Borough of Hawthorne from awarding or entering into said contracts pending further determination of the Court; and

WHEREAS, the Court entertained legal argument and rendered its decision on December 16, 2010 determining that the bid submitted by Future Sanitation was in fact fatally defective and therefore invalid; and

WHEREAS, the Court further determined that as a result, all bids received were to be rejected and the contracts in question rebid in accordance with law; and

NOW THEREFORE, BE IT RESOLVED, by the Municipal Council of the Borough of Hawthorne that it does authorize the bidding of contracts for solid waste, recyclable material and yard waste collection in accordance with the determination of the Superior Court of the State of New Jersey.

R 236-10 Resolution, Introduced by Councilman Wojtecki

WHEREAS, the Borough of Hawthorne has contracted for collection of solid waste, recycling and yard waste pursuant to a five year contract awarded in 2005 and due to expire on December 31, 2010; and

WHEREAS, in anticipation of the expiration of said contracts, the Borough of Hawthorne solicited bids for the pick-up of all such material in accordance with the Local Public Contracts Law; and

WHEREAS, upon opening of bids for such services and analysis by the Municipal Clerk, Borough Administrator and Borough Attorney it was determined that the apparent low bidder for each such service was as follows:

Solid Waste/Garbage – Future Sanitation
Recyclable Materials – Future Sanitation
Yard Waste – Joseph Smentkowski, Inc., and;

WHEREAS, the Borough of Hawthorne in fact authorized the execution of a contract with each such entity for provision of the respective service commencing on January 1, 2011 and ending on December 31, 2015; and

WHEREAS, prior to delivery of any said contracts a lawsuit was filed by Joseph Smentkowski, Inc., the apparent second-low bidder on the Solid Waste and Recyclable Materials contracts, contending inter alia that the bid submitted by Future Sanitation was fatally defective, rendering the same invalid; and

WHEREAS, an Order to Show Cause with Temporary Restraints was entered by the Superior Court of the State of New Jersey prohibiting the Borough of Hawthorne from awarding or entering into said contracts pending further determination of the Court; and

WHEREAS, the Court entertained legal argument and rendered its decision on December 16, 2010 determining that the bid submitted by Future Sanitation was in fact fatally defective and therefore invalid; and

WHEREAS, the Court further determined that as a result, all bids received were to be rejected and the contracts in question rebid in accordance with law; and

WHEREAS, the minimum bid period for such contracts is 60 days; and

WHEREAS, as a result, the Borough will be without contracts for the collection of solid waste, recyclable materials and yard waste as of January 1, 2011, thereby creating an emergency situation; and

WHEREAS, the current providers of such services, other than the provider of yard waste pick-up, which is seasonal, were asked if they would continue to provide such services on an interim basis while bids were being solicited; and

WHEREAS, Future Sanitation, as current provider of solid waste collection services has agreed to continue to provide such services at a price of \$26,000 per month, or \$78,000 for a three month period; and

WHEREAS, the price quoted by Future Sanitation is \$5,600 per month less than that currently being paid by the Borough; and

WHEREAS, Gaeta Carting, as current provider of recyclable material collection services in the Borough has also agreed to provide such services on a continued basis however the price quoted by Gaeta was \$18,500 per month, versus the \$13,900 per month currently being paid by the Borough for such services; and

WHEREAS, as a result of the price increase quoted by Gaeta, the Borough also solicited a quotation from Future Sanitation, based upon its role as current provider of solid waste collection services, for collection of recyclable material; and

WHEREAS, Future Sanitation agreed to provide such collection services for a three month period at a price of \$14,000 per month, or \$42,000 for a three month period, virtually meeting the price currently being paid to Gaeta for that service; and

WHEREAS, as a result of the emergency situation, the very short time frame anticipated for providing such service, the favorable prices quoted by the current provider, Future Sanitation, for both solid waste collection and recyclable material collection, and the ability of Future Sanitation to provide such services seamlessly, based upon its familiarity with the Borough, it is the recommendation of the Administration that an emergency award of contract be made to Future Sanitation for collection of solid waste and recyclable material for a 90 day period at the prices set forth herein; and

WHEREAS, the Borough Attorney has advised the Mayor and Council that an emergency situation, in his opinion, exists requiring such extraordinary action; and

WHEREAS, the Administration, based upon the opinion of the Borough Attorney, has concluded that the award of a contract to the vendor would not be subject to the Local Public Contracts Law as being specifically exempt there from pursuant to NJSA 40A:11;

NOW THEREFORE, BE IT RESOLVED, by the Municipal Council of the Borough of Hawthorne that it does agree that an emergency situation does exist and does therefore authorize the emergency award of purchase order or contract to Future Sanitation, for a three month period commencing January 1, 2011, and ending on March 31, 2011, based upon the

quotation submitted, in accordance with NJSA 40A:11-6 subject to the adoption of a temporary emergency budget by the Municipal Council for payment of such expense.

Council President Bertollo entertained a motion to approve the Consent Agenda R234-10 through R236-10, moved by Councilman Wojtecki, seconded by Councilman Mele. On a roll call, all voted yes.

PUBLIC COMMENT

Council President Bertollo opened the meeting to the public. He stated if anyone desired to be heard, please raise your hand to be recognized, come forward to the microphone and state your name and address.

Seeing no one, Council President Bertollo entertained a motion to close the public comment portion of the meeting, moved by Councilman Mele, seconded by Councilman Sinning. On a roll call, all voted yes with the exception of Council persons Lane and Bennett who were absent.

ADJOURNMENT

At 5:28 p.m., Council President Bertollo entertained a motion to adjourn the special meeting, moved by Councilman Sinning, seconded by Council Vice President Matthews. On a roll call, all voted yes with the exception of Council persons Lane and Bennett who were absent.

COUNCIL PRESIDENT BERTOLLO INDICATED THAT THE NEXT REGULAR MEETING OF THE MUNICIPAL COUNCIL WILL BE ON WEDNESDAY, JANUARY 5, 2011. THERE WILL BE NO WORKSESSION, THE REGULAR MEETING WILL BEGIN AT 7:00 P.M. PERSONS WITH DISABILITIES WHICH REQUIRE AIDES SUCH AS: SIGN LANGUAGE INTERPRETER, TELECOMMUNICATIONS, BRAILLE, TAPES OR LARGE PRINT, SHOULD NOTIFY THE BOROUGH CLERK'S OFFICE TEN DAYS PRIOR TO ATTENDANCE AT A MEETING SO ACCOMMODATIONS MAY BE MADE.

John Bertollo
Council President

Susan Witkowski
Borough Clerk