

**VILLAGE OF SOUTH LEBANON  
MINUTES  
WORKSHOP MEETING  
JUNE 5, 2014  
7:35 P.M.**

1. Mayor Lawhorn called the meeting to order at 7:35 p.m.
  
2. Linda Allen - Present  
Randall Atkins – Present  
James Boerio – Present  
Sue Johnson - Present  
Steve Riley – Present  
James Smith – Present
  
3. Gary Vidmar stated in October 2013, he discovered the village has a contract signed back in 1994 and have been paying monthly service fees for the maintenance of our water tank. He said the contract was executed with a company called Phoenix Tank Services and the reason I became familiar with that contract is I was contacted by the current company servicing that tank because it was becoming due for painting this year. He said he wasn't aware we had such a contract and he began researching and found out in 2007 Phoenix Tank assigned this contract to a company named United Tank Services and the rest of the history of this contract is spelled out in my memo. Gary said there were a number of concerns, one being this contract has no expiration date and there is a cancellation clause and gives the company the right to increase the service fees on this contract every so often, which it has done. He said it does not give Phoenix Tank the right to assign that contract, although it did do that. He said annual inspections were to be done and neither company did that. He said paramount is the tank is due for painting this year and we have discovered the specification that the contract is based is obsolete. He said the company currently servicing the tank will not consider painting the tank under those specs. He said Darrell from Utility Service Company had nothing to do with the contract and has been researching and learning about the contract as we are. Gary said his company is not able or willing to paint the tank under the terms of this contract because of the deficiency in the specs. He said Darrell has prepared a proposal for long term maintenance going forward.

Darrell Bowling – Utility Service Group – stated the contract was owned by Phoenix Tank. He said Utility Service has been in business since 1963 with close to 7000 tanks in these programs. Darrell said Gary mentioned no closing date on the contract and his company has no ending date on their contracts as well, they can be cancelled at any time. He said they operate in forty two states and around 2007 Utility Service bought these contracts from Phoenix Tank. He discussed the spec with the D102 and that contracts would say in parenthesis “or current standards” and this contract says -78 and refers to 1978 standards. He said in 1991 AWWA revoked the 1978 standard. Darrell said in 2007 they purchased a bulk of contracts from

them and some were good and some not and this is one that is not. Reviewed spot sanding in 1978 standards and that is not allowed by today's standards. He said Utility Service will not do work on a standard that doesn't even exist. Darrell said for them to do the work at today's standard he gave Gary a proposal. He said the costs are set up to spread out the original up front renovation costs and then yearly fees after that to allow for recoating and repainting in the future. Darrell says it allows them to have a full warranty on those coatings. He said it is their responsibility to make sure the tanks stay up to all standards. He said grant money is scarce so people are using these programs more and more. He said in the ORC it is considered professional service and taken out of the bid process. Darrell said it boils down to Phoenix had a paragraph that if any environmental changes happened that they had the ability to change the price. Smith asked what would justify going from \$960 a month to \$86,000. He was told it was a typo, that is a year. Darrell said when they took the contract over they did paint the tank in 2007. He said they did not collect any money from Phoenix, so when they took over the contract, we already spent over \$200,000 and had collected no money from Phoenix. Gary stated they painted the exterior. Gary said it is the interior due this year. Darrell said they were inside the tank in February and it was covered with ice. He said if you came to us today and asked to put that tank in our program it would be taken to steel and start over like it should be. He said around 2017 the overcoat needs to be done again and would be \$200,000. He said when they look at the scope of work to do the interior to current AWWA spec and look at the exterior coming up it ends up being roughly a \$500,000 job. Darrell said it is not a good situation for you or us. Mayor Lawhorn asked if we had inspection reports from this company and Gary said we did not have inspection reports from 2007 to 2013. Mayor Lawhorn said if they were contracted to do something and didn't do it are we going to go into another contract with them. He said if you didn't do inspections and we paid for them, why should we go into another contract and Darrell said that is a valid concern. Boerio stated in his reading of the contract, if you look at the first page it says Phoenix will inspect and service the tank annually, so we have some inspection reports and according to my analysis here, out of the twenty years that this contract has been in effect, we have five inspection reports. He said in the next paragraph it says annually beginning with the first inspection in 1994, the water storage tank will be completely drained, Phoenix will clean and remove all mud, silt and accumulations. He said you acquired the contract in 2007, has that ever been done, has the tank ever been drained and cleaned of mud, silt and other accumulations? Darrell said that was done and I think you have reports, but not annually. Gary said there was one. Boerio said something that really bothers him about this, according to his estimate it is roughly a thousand dollars a month we have been paying, so that is roughly \$200,000 we have paid. He said we got five inspection reports instead of twenty and we are not sure how many of these drainings and cleanings may have occurred so I am concerned that we pay almost \$200,000 for nothing. Darrell said in 2007 we did over

coat the tank which was probably a \$250,000 project. He said we did not live up to the contract from 2007 to the current date, so that is a fact. Darrell said but we know that tank was over coated in 2007 so that more than spent money you paid in on the front end. He said it doesn't make it alright but you can't say you didn't get anything and we actually went in the hole for that one because we got no money from Phoenix. Boerio said he appreciates Darrell being here tonight and it is unfortunate he is the only guy. Gary said he will say in Darrell's defense, even though he is representing the company we have issue with, he is the only representative from his company I feel I can trust. Gary said Bruce agrees that you can't enforce this contract with the new company and have this company paint the tank. Bruce asked if Phoenix is still in business and was told they are. Boerio asked about D102 and that he looked it up and it appears to refer to coating systems and he didn't see too much that referred to a process. Darrell said the D102 standard refers to the storage tanks and includes the materials, the coating systems, surface preparation, the application, the inspection and the testing process of the tank itself. Boerio said D102-78 refers to inside system #1. Boerio asked if inside system #1 still exists and Darrell said system #1 has been modified and is not the same today. Boerio asked if it is a different coating or different process and Darrell said a different process and Boerio asked what is different about it. Darrell said you can't go back and hand sand, or what they call lightly sanding off any loose items. He said current standards are to blast everything down to raw metal. Boerio asked if anybody mandates, AWWA is an industry organization correct, and Darrell said yes, Boerio asked if anybody mandates like EPA or OSHA, that a certain standard like D102-12 has to be used on the inside of these tanks. Darrell said to his knowledge there is no governing group that comes back and says if you don't follow this best practice standard that you will be fined. He said it is a best practice standard created over time with experience. Darrell said yes someone can drift away from those standards and Boerio asked if anybody drifts away from those standards and Darrell said they have been called to fix issues when someone has drifted away from those standards but they do not. Darrell said that is why they are here today, to say they do not want to drift away from the standards. He said he is embarrassed to be here with the questions you are asking and he wishes he had better answers. Darrell described different issues that he has seen, where the standards were not followed and the problems that occurred from that. Bruce asked about the contracts and the fact that Darrell said most of them have no term, Darrell said majority of those would have no expiration date. Bruce asked if any of their contracts have provisions where they would automatically be amended when the industry standard is amended and Darrell said what they would say is they would refer to standard of D102 but would not specify they year. He said it would say the current year standard or D102 and in parenthesis say current standard but would not specify a year because we know those change all the time. Bruce said if you have an endless contract and the standard in the industry changes then what you are saying to us is

you honor that contract and you comply with that standard even though it may cost you more to do so, like the circumstance you described here and Darrell stated that is correct. Bruce asked why they would do that, it makes no sense, if it is going to change so drastically and the cost may be so exorbitant, why wouldn't you have a contract with annual, bi-annual terms and then review the standard. Darrell said he does not have a good answer. He said we have tanks in the system that have been part of the program since the early eighty's and have been through standard changes many times. Bruce said he would recommend, assuming he is correct, that it is exempt from bidding, that we do a RFP for quotes and find out who is willing to offer what in form of a contract. Bruce said you want to make sure you are comparing apples to apples. Darrell said we participate in RFQ's, RFP's all the time. Gary said the first step is to get a cost of painting the inside of that tank by today's standards. Atkins asked if the EPA follows the AWWA rules and Darrell said yes. Atkins said, so you said no one follows up to make sure you do what AWWA says and you said EPA does not regulate and say you have to do it? Darrell said they are in it as an advisory group but there is not a mandate and no penalty attached. It was decided that an RFP will be put together and bid out the painting of the tank. Smith asked that the report be corrected where the cost is wrong. Bruce stated the bid needs to be broken down painting, verses maintenance, verses cleaning so we can get itemization in the responses. Gary said he was only going to bid out the painting because there are some companies that only paint and some do it all. He said painting is the most critical. Darrell said if you bid out only the painting you won't get a long term warranty, you will probably get a nine month to a year warranty. He said that is the difference in being in the program, we warranty everything through the program, period. Bruce said we should do an alternate and get unit pricing and if they want to bid the alternate that has all those components they can elect to do that. Darrell explained how they handle everything concerning reporting etc. and that is why they can offer the warranties. Smith said with the bad winter we just had, with the freezing in the tank and the ice, is there any process, have seen some with floatation devices to keep the ice broken up. Darrell said there are tank mixing systems, which he actually had in the proposal.

4. Administrator Vidmar reviewed his memo. He said IRG will fund the overlay on St. Rt. 48. He reviewed the new construction in Rivers Crossing. Gary said the punch list is being completed for Homestead. He said there are major issues with the developer of Woodknoll and we have been addressing those. Discussed the issues. He said Speedway would like to get that building up this year. Gary said we are working on the amendment to the TIF to allow the extension of Corwin Nixon. Gary said the remaining lots in Frederick's and Grant's have been purchased and have a building agreement in place. Smith asked if they are building according to the original plan of the development

and Gary said they are asking to have the flexibility to build duplex or single family. Gary said the planning commission will be looking at that. Discussion held on the Cochran Road extension and the fact that it is probably two years out.

Atkins asked about the FEMA Hazard Mitigation Grant and that it says we need to look for a place to build a building and are we not looking at the school building. Gary stated that is one of the options. Atkins asked did it still come back to council to be accepted or rejected and Gary said once we are notified that the grant is awarded, it will come back to council to determine if we want to accept it or not.

5. Mayor Lawhorn stated the property that we wanted to purchase that was the the junk yard, we are not going to be able to purchase it. He stated Alvin is out of it and they have accepted someone else on land contract. He said it is supposed to be Alvin's partner. Mayor not audible because of paper shuffling and conversation. Atkins asked what are they going to be doing there and he was told we don't know yet. Smith said he believes that property has went beyond the statutes and RFP would regulate and it would be reverted back to residential flood plain and no business could go in there. Gary said they have been notified they can't operate without a zoning permit and in the permit we will stipulate that. Mayor Lawhorn said she stated we will eventually get it. Allen stated that this guy, Andy, is the one that pays all of Alvin's bail when he gets in jail. She said his name is Andy and he is his partner and he has these cars he buys at auctions. Allen said according to her understanding he is supposed to be running his car business out of there. She said so that could be an issue but that is the guy that keeps bailing Alvin out of jail.
6. A motion to adjourn the meeting was made at 8:20 p.m. by Boerio, seconded by Atkins, all yeas.

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Sharon Louallen, Fiscal Officer

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Lionel Lawhorn, Mayor