

**MEMORANDUM**

**DATE:** February 25, 2003  
**TO:** Civil Review Committee  
c/o Marsha Abernethy  
**FROM:** John S. McAllister  
Assistant Attorney General  
Education Division  
**RE:** Wasatch School Board  
North School Project  
What to do?

---

You forwarded to me the following information at the request of the Civil Review Committee. I have reviewed the letters of concern, the RFP summary and the Wasatch School Board minutes as supplied to me. I offer my analysis, some answers, and my observations, for whatever they may be worth. We do not monitor school districts or local boards which are supposed to operate on the concept of "local control" and within the law.

**LETTERS OF CONCERN**

- I. Letter of 18 November 2002, to the Attorney General signed by various concerned citizens of Wasatch County, with the following concerns:
- 1) Whether the project to renovate the North School building was approved by the assigned citizens committee of county residents?
  - 2) Why the original cost of the North School renovation has grown from \$300,000 or \$400,000 to \$4,000,000?
  - 3) Is a public accounting of the project justified?
  - 4) Is there consideration for a re-evaluation of the building's use as an administration building?
- II. Letter of 9 December 2002, to the Attorney General Signed by Tracy Taylor from Wasatch County with the following concerns:

- 5) Are there minutes when the School Board voted to appraise the renovation of the North School prior to the fall 2000 demolition?
- 6) Did the citizens committee, in fact, advise the School Board to renovate or to not use district funds for the North School?
- 7) Is there a contract for the North School renovation signed by the Board.
- 8) Is there a performance bond?
- 9) Did the law require registration of the building as a renovation project?
- 10) Can the Board meet in executive session without a public vote?

III. A summary of the RFP process (undated) for the North School Remodel stating that it use the unanimous choice of the RFP committee to award the project to Design West. The committee's recommendation was presented to the Board of Education on December 7, 2000. The Board approved the recommendation to award the design/build project to Design West.

IV. Minutes (unsigned) of Board meetings (including a "special meeting") held in a two year period, January 22, 1998 to December 7, 2000. I presume that other meetings took place but are not related to the concerns raised or they would have been included. I have reviewed the material supplied but have no information beyond that which was supplied to me.

#### ANALYSIS

From the material and information supplied, I offer the following analysis.

The apparent circumstances are that the North School was obsolete and could no longer be used as a public school. I presume that the concerns expressed apply exclusively to the North School renovation project. The following facts appear from the Board minutes supplied.

Central Elementary is considered for remodeling site for the new district office, but was rejected because of the high cost of retrofitting the building to conform to code.  
(Board Minutes, January 22, 1998, p.3.)

Design West is approved as architect for the new middle school.  
(Board Minutes, April 22, 1998, p.2.)

The Board created a "Land and Building Planning Committee" to be composed of private citizens to review possible surplus properties or needs for new properties.  
(Board Minutes, August 13, 1998, p.3.)

The Land and Building Committee consisting of eight members held their initial meeting. (Board Minutes, September 10, 1998, p.2.)

The Land and Building Committee recommendations were presented to the Board by Ralph Lugton, member of committee, (Mr. Lugton also signed the letter of concern dated November 18, 2002). Quoting from the Board Minutes, February 25, 1999, p.4:

The board turned the time over to Mr. Ralph Lugton who represented the district's Land and Building Committee. This committee made the following recommendations:

1. Central School should remain under the control of the district until the Alternative School can be housed elsewhere.
2. The school district should not give away the Central School property but rather the value of the property should remain with the school district.
3. The district may want to investigate trading the Central School property for other land that would be placed in a land bank.
4. The district should not use district school money to refurbish either North or Central Schools.
5. Civic organizations should take the lead of buying and refurbishing North and Central Schools in such a way that the properties can have on-going benefits to the community.
6. If the properties are sold to private buyers, every effort should be made to encourage private entities to use North and Central properties in ways that will benefit the community. This may require restrictions.

The board discussed the future use of the North School and then thanked Mr. Lugton and his committee for their time and efforts. The Superintendent congratulated the committee for their successful completion of their assigned task and complimented them for the consensus they were able to reach. The board asked the Superintendent to write to the committee members and thank them for their work.

(Board Minutes, February 25, 1999, p.4)

The Board invited two county commissioners to discuss the use of the Central School possibility and its possible donation to the county. Also discussed was the status of the North School property. (No vote or action is indicated.)  
(Board Minutes, October 22, 1999, pp. 1 & 2.)

The Board invited the mayor, manager and city council to discuss the city's possible purchase of the Central School property. They were informed that the Board was considering the remodeling of North School so the programs of Central School could possibly be relocated to North School. (Board Minutes, June 16, 2000, p.2.)

Minutes of the July 2000, Board Meeting reflect an in-depth discussion of the North School property and a possible phased conversion to new district offices. Quoting from Board Minutes, July 13, 2000, pp.2 and 3 as follows:

The Superintendent reviewed with the board the history of the North School Renovation project. The district has explored various options regarding the refurbishment or disposition of the North School property for over two years. A citizens committee was commissioned to determine the best use for the property. This committee recommended that the school be saved as an historical site and converting the block into much needed green space. The private developers who expressed interest in acquiring the block proposed demolition of the building and construction of high density housing. In view of the fact that the district has outgrown it's present district office, a feasibility study has been conducted to consider the conversion of the building into new district offices and community arts center, with the eventual conversion of the 1950s wing into space for the Alternative School. Preliminary estimates place the cost of this renovation at \$115/sq. ft. The project could easily be completed in phases, allowing the district to complete the project as it has the funds available to do so, thus making it unnecessary to go to the public for a new bond election at this time. The district would like to use Architectural Design West, who has won numerous awards for its work in remodeling buildings similar to North School. A motion was made by Ron Davis, seconded by Claudia Bradshaw, to authorize the Superintendent to continue working with Design West in the remodeling of the North School Property. Motion carried unanimously. (Board Minutes, July 13, 2000, p.2 and 3)

**Comment:** It is unclear from the foregoing whether Design West has been awarded the actual remodeling contract or is to function as a consultant for the project. Can the Board produce a contract? If the committee mentioned is the Land and Building Committee, it is unclear from the minutes when the committee recommended that the North School be saved for an historical site, and whether district funds should be used to accomplish this. If the minutes suggest that the committee's recommendation is for the district to "save" the historic North School site with district funds, that suggestion appears to be inconsistent with recommendations No. 4 and 5 of the committee's report to the Board on February 25, 1999. (end comment)

The Board heard that the North School ought to be preserved according to the Heritage Foundation and the district continues to receive possible feedback on its plans to remodel the North School property. (Board Minutes, August 10, 2000 pp 3 and 4.)

**Comment:** At this point, in the fall of 2000, the demolition of the North School interior was

completed. The district then went forward with the "remodel project" and sent out a Request For Proposals with a deadline of November 14, 2000. The superintendent, business manager and maintenance supervisor reviewed the response. This committee's choice was that the design/build project go to Design West over 11 other RFP's submitted (the summary mentions that a summary of Design West's proposal is attached but the Design West summary was not found in the materials supplied to me). (End comment)

The Board then awarded the "bid" to Design West on December 7, 2002 as follows:

Keith then presented to the board the results of the Request for Proposal to furnish design/construction management services for the remodel of North School. This RFP was published in the local papers for three weeks, as well as in the papers on the Wasatch Front and in the Intermountain Contractor. The district received thirteen responses to the RFP, and a committee graded the responses, based on the criteria published in the RFP. This grading was done independently, and the results were a unanimous decision to recommend to the board that Architectural Design West be awarded the bid to remodel North School. After some discussion, a motion was made by Richard Bonner, seconded by Kevin DiStefano, to award the bid to provide design and construction management services for the remodel of North School to Architectural Design West. Motion carried unanimously.

(Board Minutes, December 7, 2000, p.2.)

#### ANSWERS

After reviewing the information and Board Minutes supplied, the apparent answers to the initial 10 questions appear to be:

#### November 18, 2002, Letter

- 1) Was the project to renovate the North School building approved by the committee of county residents?

Answer: No. The committee clearly recommended that the "District should not use district school money to refurbish either North or Central Schools" and that civic organizations should take the lead for refurbishing North and Central Schools to have ongoing benefits to the community. The July 13, 2000, Board Minutes at page 3 are consistent in that the committee recommended preserving the properties for the community, but without using district money for renovation. There is no mention in the material supplied of the citizens committee ever approving a remodeling project for North School.

- 2) Why the original budget for the North School renovation has grown from \$300,000

or \$400,000 to nearly \$4,000,000?

**Answer:** No answer can be derived from the material and information supplied. The minutes are devoid of any discussion of money, expenses, or cost. The "Summary of Design West Proposal" cited in the "Summary of RFP Process" (fall of 2000) was missing. The only dollar figure in the minutes is the \$115/sq. ft. preliminary estimate from the July 13, 2000, minutes. This might be the basis for a preliminary estimate if the square footage of the project is known and whether the figure includes the cost of demolition or not. Otherwise, no exact bid, proposal, estimate or figure can be found in the material supplied.

3) **Is a public accounting justified?**

**Answer:** Yes. Absent further information or documentation reflected in Design West documents or other Board Minutes or plans not supplied, in my judgment there is insufficient information for the Board to make a considered decision. In other words there appears to be insufficient information for a sound judgment by the Board. I trust there are other documents which will form the basis for a reasonable decision, or a project cost detail, estimate or a contract of some kind. Anyone reviewing this material will reasonably expect more detail to be forthcoming on a project of this magnitude.

4) **Is there consideration for a re-evaluation of the North building's intended use as an administration building, before interior renovations are begun?**

**Answer:** Yes, a re-evaluation appears to be justified. A reasonable person might find that a re-evaluation including the detail of the proposal with contract, estimates, and cost will justify the completion of the project.

**December 9, 2002, Letter from Tracy Taylor**

5) **Are there minutes where the school board voted to approve renovation of the North School? Was it done in executive session or publicly?**

**Answer:** My examination of the minutes supplied did not reveal any express approval of the renovation prior to fall of 2000. If the decision to approve was made in executive session, it violated the open meetings law and is possibly subject to be overturned by a court of law because a building project is not one of the designated exceptions for which a meeting can be closed, let alone a decision made. Perhaps there are further minutes which show the Board's vote, approval or affirmation of the project or contract.

6) **Did the citizens committee want the renovation or did they advise the Board not to use district funds?**

**Answer:** The Land and Building Committee's recommendation was clearly not to spend any more district money on the North building, but that civic organizations should provide for refurbishing North and Central Schools. See committee recommendations 4 and 5, Board Minutes, February 25, 1999, p.4. If the committee ever recommended that the school be saved as an historic site, such recommendation is not reasonably tantamount to an approval of a renovation project at district expense. (Board Minutes, July 13, 2000, p.3.) Otherwise, from the material supplied there is no reasonable inference of the Building and Land Committee's approval.

- 7) **Is there a contract for the North School renovation signed by a member of the Board?**

**Answer:** There likely is a contract. It is unreasonable to believe that either the Board or Design West would proceed with a project without a contract. A court would likely uphold a contract as ratified by the Board. I would be surprised if there is not a valid contract available as a public document.

- 8) **Is there a performance bond?**

**Answer:** Usually a performance bond is required of a general contractor. U.C.A. § 53A-20-101(5), U.C.A. § 63-56-38. Sometimes a school district will do a project itself and hire a developer, engineer/architect to supervise and monitor the construction project. Whether there is a general contractor in this instance is not clear from the material supplied or the circumstances and will take an examination of the contract itself. If there is no performance bond, then there is no one accountable but the Board itself for parts of the project which are not performed or for parts performed only at excess costs.

- 9) **Did the school district register the building as a renovation as required by law?**

**Answer:** This is a vague reference and the question is unclear. This may be a reference to the law on historic sites and the State register of historic buildings. U.C.A. § 9-8-401, or to the Historic Preservation Act U.C.A. § 9-8-501. A former law now repealed (2002) required projects of over \$100,000 to be approved by the State Superintendent of Public Instruction. U.C.A. § 53A-20-102 (repealed 2002).

- 10) **Can the Board meet in executive session?**

**Answer:** Yes. The Board of Education is subject to the open meetings law U.C.A. § 52-4-1 et. seq. and can have a closed meeting or executive session, provided (among other requirements) 1) the purpose for closure is authorized, 2) there is a vote of two-thirds of the members which are present (at least a quorum) at an open meeting for which notice was given, and 3) a contract cannot be approved at a closed meeting. While a purchase or sale of real estate may be discussed as an exception under the conditions

stated, the construction or renovation of a building is not exempted from the open meeting requirement. A recording or minutes of a closed session must be made but is protected from disclosure unless disclosure is ordered by a court.

### OBSERVATIONS

Based on my review of the material supplied, I offer the following comments.

1. Our office is not equipped to monitor or oversee local boards of education or school districts. We would not undertake an investigation of the circumstances underlying the citizens' concerns. The ultimate recourse is a private suit against the district to determine the questions raised. The ultimate question is whether the Board's decision to renovate was within its sound discretion.
2. There is much information lacking about the people, the estimates, cost and a contract to do the renovation, etc. If such information, documents, contracts exist they are probably public documents and should be available. Whether adequate information was before the Board to adequately appraise the project and the extent of the project as approved on December 7, 2000, is not apparent. Without knowing the Board's understanding and intent it is impossible to guess at the extent of its approval. The information and documents available to the Board ought to be available for public review.
3. The enquiring citizens are concerned about use of closed meetings and a lack of information and explanations to the public. I do not draw any negative inferences from the material supplied and I trust the concerns about decisions behind closed doors are unfounded. Nevertheless, the Board should be very careful to avoid using the expediency of using closed meetings for unapproved purposes. In the long run more questions may be raised than solved. Also, the absence of facts and figures and response that "they don't want to talk about it" doesn't do much to dispel the concerns. Public officers dealing with public funds and tax monies would do well to keep the public well informed.
4. The reasonable solution is for the district to disclose all information in the context of an expedited re-evaluation of the renovation of the building. Then the details of the estimates, costs and total project can be understood and the citizens hopefully will be reasonable in their understanding of a complex and difficult project. I trust that with a complete disclosure and understanding of the circumstances any questions about the project will be resolved in favor of the sound discretion of the school board and school district.

F:\USER\MABERNET\DABC\CivilReview\Civil R1.wpd