

One of the biggest agenda items during the January 10 City Council meeting was also one of the most misunderstood.

There was the recommendation to approve the mayoral appointment of Town & Country Engineering, Inc. as city engineer. There were questions about the need to even consider proposals to change city engineer. There were questions about the process used in interviewing and recommending Town & Country. There was misunderstanding about the vote itself. And, afterwards, there was confusion about a vote that was not really a vote.

Request for Proposals

Around six or seven years ago, the city reviewed its professional consultants. We sought proposals for and hired a new city attorney, city assessor, independent auditor, and city planner. At the time we had major improvements scheduled for Highway 14, followed by Main Street, County Road M, and the Wastewater Treatment Plant, so it was not a good time to even think about changing city engineers.

Last fall the Finance Committee discussed the engineer contract and decided that we still had too much infrastructure in process to consider a change: completion of the wastewater treatment plant, Main Street bridge, and finally the stormwater drainage on South Sixth Street. But a pause between projects was within view, so the City Council extended the engineer contract for a single year instead of the typical two years.

In the last six years, we have spent over \$2.4 million in engineering fees. The infrastructure projects were necessary and done well; I am not questioning the expense. But the simple magnitude of the dollars underscores the importance of the City Council's due diligence in reviewing the city engineer position and contract.

This September the City Council approved issuing a request for proposals (RFP) for city engineer. This was not an easy decision as evidenced by the Council's 5-2 vote, and having a strong professional relationship has benefitted the city. But the Council felt it appropriate to perform due diligence similar to what it had done with other contracts a few years ago. And having a window between major projects provided a certain degree of convenience to do it now.

Selection Process

The City Code does not specify the process for appointments; it simply says mayoral appointment with Council confirmation. From a practical standpoint, it would be unrealistic to have the entire City Council review all applicants and attend all the interviews. A selection panel has proven effective to manage prior appointments.

With past appointments we've tried to bring in expertise to help. For example, Evansville resident Eugene Miller worked for the Wisconsin Department of Revenue and was a trainer for local Boards of Review. He helped develop the request for proposals that we used to solicit a new city assessor.

Similarly, for the city engineer we used City Council representation from the committees most directly involved with the position. The selection panel consisted of the mayor, chair of Public Works Committee, chair of Water & Light Committee, and city administrator.

During the ensuing months, I gave brief updates to the City Council about the number of RFP's mailed, the number of firms applied, and the firms selected as finalists for interviews. But the updates were as brief as that. In hindsight, it would have helped the City Council to have a more detailed or in-depth analysis during the process.

Misunderstanding

At the January 10 meeting, the City Council was given an overview memo of the recommendation and a copy of Town & Country's proposal. It contained statements to their qualifications, but the City Council said it would have preferred more explanation of the comparisons and differences from the other applicants and our present engineering firm Cedar Corporation.

And this one-sided approach to the recommendation added to the misunderstanding. The City Council expected that the recommendation was an either/or choice between Town & Country and Cedar. Legally, however, it was a yes-or-no decision whether to confirm Town & Country. And a denial would have meant the selection panel reconvening and later bringing forward a new recommendation, who may or may not have been Cedar.

Nullity

At the end of the discussion, the City Council voted this way: one for the appointment, four against the appointment, two abstained from the vote wanting additional information, and one was absent.

As city attorney Mark Kopp explained afterward, "Five Council members does not constitute a quorum, six does....[W]here a quorum has not voted, no vote is declared. Additionally, it provides that even though a quorum was present (here, seven members were present), that is immaterial if a quorum did not vote on the matter."

So we had a no decision – no approval, no denial – call it a nullity. At the time, we did not realize it was a nullity. But in reconvening to figure out our next steps, we learned the opportunity to represent the recommendation with additional information.

Confirmation

We scheduled a special meeting of the City Council on February 2. Recognizing it as a chance to do the appointment over again, one of the City Council members referred to the meeting as a mulligan.

We spent some time reviewing the process used for this and past appointments. We reviewed the legal issues around the nullity. We discussed the justifications for conducting the RFP in the first place. Gene Laschinger and Brian Berquist of Town &

Country gave an overview of the firm's experience and qualifications with similar municipalities. They answered questions from the City Council.

And the City Council approved Town & Country's appointment as city engineer unanimously with a 6-0 vote (two members were absent). To keep the attorneys pleased with the legal technicalities, the City Council will follow up with a resolution for the appointment at its regular February meeting.

Next Steps

The immediate next steps involve the transition to a new city engineer. Town & Country is a good appointment and will benefit the City of Evansville. There will be introductions with other city staff and bringing them into our team. We will transfer records and files. Current projects, such as the wastewater treatment plant, will be finalized by Cedar. And Town & Country will begin work on projects as Evansville goes forward.

Other steps going forward involve our appointment process itself. I think we've used a good, common sense approach with past appointments. But this last one showed that we can and should do better with appointments in the future.

There were a number of new members on the City Council who had not been through an appointment before. We should have taken more time on the front end to explain the process and the selection panel. Also on the front end, we should be clear about the criteria in the selection process. We also should have given more detailed updates and solicited feedback during the process. And we should have been clear about the vote being one of confirmation rather than an either/or decision.