



# Town of Southern Shores

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Emergency Council Meeting

February 6, 2010

3:00 p.m.-Pitts Center

The Southern Shores Town Council held an emergency meeting on February 6, 2010 at the Pitts Center to discuss the canal maintenance dredging project.

The following Council Members were present: Mayor Hal Denny, Mayor pro tem Jodi Hess, Jim Pfizenmayer, and George Kowalski. Kevin Stroud was absent.

Also present were: Police Chief Kole, Interim Town Manager, Ben Gallop, Town Attorney, Tom Bennett, Canal Dredging Project Manager, Carrie Gordin, Town Clerk.

Others present: Joe Anlauf, Town Engineer, George Wood, Environmental Professional Inc. (EPI), Town's canal dredge consultant and Ted Sampson, Contractor, for the dredge project.

Mayor Denny called the meeting to order at 3:00 p.m. and led the Pledge of Allegiance.

Mayor Denny stated the sole purpose of this meeting is Council to be provided with an update on the status of the canal maintenance dredge project.

Tom Bennett, Canal Maintenance Dredge Project Manager, thanked Council for their time. He stated he thinks everyone is aware of the struggles over the past months with the dredge project. He stated most recently there has been little progress in our contractor actually being able to dredge successfully. He stated originally, the reason for this meeting was for Council to consider a recommendation from him (Bennett) to find the Town's contractor in default for failure to perform and the pending moratorium makes this an even more serious concern. He stated however, after a lengthy and open conversation with Mr. Sampson his (Bennett) impression was realized that Mr. Sampson's hopes closely allied with his (Bennett) and the Town's. He thought it appropriate to ask Mr. Sampson to attend this meeting and discuss his plans and concerns directly with the Mayor and Council. He turned the meeting back to the Mayor.

Mayor Denny asked Mr. Sampson to address Council with his concerns.

Ted Sampson, Sampson Contracting Inc., the Town's canal dredging contractor addressed Council on several issues related to the dredge project. He stated it has always been his intention to see the project completed. He stated this is not a standard project and there have been problems. He stated the sub-contractor (Piedroba Marine Construction) felt they could do the job but the NTU level never was achieved as required. He stated it was found the system was under designed and the deltanks were removed to make room for the geo-tubes. He stated as the contractor they began a test project using geo-tubes but additional equipment is needed and it would take 4-5 days and the current site would need to be made bigger. He stated he could not give a written guarantee but he feels he can do the job. He stated he was made aware in order to use the geo-tubes a permit modification would be needed and approved by CAMA. He stated he is waiting for Council to give the go-ahead and now is not the time to lay blame but

to move ahead and get the project done. He stated he has his best people waiting and the dredging can continue past the February 14 deadline.

Mr. Sampson stated the Town can apply for an extension and he has talked to people who have led him to believe the extension would be approved. He stated the equipment is ready mobilization is not the problem the site is not ready. He stated he is distressed that Council is considering calling a default against him for failing to perform. He stated it may be difficult to get anyone to dredge the project. He asked Council to give him a favorable consideration and allow him to continue. He believes CAMA will approve the permit modification.

Council Member Kowalski addressed some technical issues and asked how can we get the NTU's to meet the requirement.

Mr. Sampson provided some technical explanations and stated the site would need additional work before dredging could continue.

Mayor Denny stated it appears there has been difficulty in getting correct information in a timely manner for the permit modification.

Mr. Sampson stated the permit is held by the Town and it is the Town's decision to move ahead. He stated he would do everything he needs to do to obtain the permit application but that it is not the contractor's responsibility. He stated he provided needed information when requested as quickly as possible. He stated the person designing the geo-tube plan became sick and the plan was delayed by 2-3 days but the plan was given to Tom (Bennett) and Joe (Anlauf).

Mr. Sampson stated he was informed by the Town Engineer that he was uncomfortable with the design plan and Mr. Sampson took it to another engineering firm which did it that day and Mr. Bennett was provided with a new plan. He stated a meeting was held with John CeCe the CAMA representative and others and concerns were addressed. He stated revisions to his (Sampson) narrative was completed and mailed to Tom (Bennett). He stated he received new comments yesterday (February 5), some of what had been discussed previously and he immediately responded and he contacted the polymer and geo-tech bag experts.

Council Member Kowalski asked to move ahead at this time what events need to happen from today to February 14.

Mr. Sampson stated he first needs Council to give him the green light and to have the permit approved within the next 2 days but he can start today with some preparations. He stated he wanted to do due process to his sub-contractor and he provided information to his (Sampson) attorney who then told him (Sampson) that the contract was invalid and to stop work so no further monies would be involved.

Mr. Sampson stated he doesn't believe it is the Town's intention to not pay him. He asked for the change order in the contract to use the geo-tubes but he can't keep experts on hold and equipment in place without knowing if the contract is valid.

Mr. Sampson stated he believes if a new contract is approved by Monday dredging could begin on Tuesday and continue up to February 14. He stated with the new contract. No money would be lost on this pilot program and he would give his best effort, compensate for up to now and complete the project.

Council Member Kowalski asked what is the cost of this proposal.

Mr. Sampson stated nothing less than 2.7 million dollars, the cost of going down a blind alley and completing the project. He stated he (Sampson) did the project to the best of his ability and that the Town chose a method that could not work.

Council Member Kowalski asked Mr. Sampson what dredging experience he has. Mr. Sampson stated nothing with hydrocyclonic or geo-tech but he has two master degrees in engineering but he has experts in the field to go to.

Council Member Kowalski stated if the project doesn't succeed the Town gets the blame but the job needs to get done and the Town followed the process and it failed and now you are saying it will cost an additional million dollars to complete the job.

Mr. Sampson stated he feels he can get the job done but the project has been doomed from the start. He asked Council to allow his sub-contractor to speak to them who is present at this time.

Mr. Harper addressed Council by saying he is the best in the business and he can get the job done. He stated he will get the needed permit extension and put the geo-membrane down but he will need dry weather to lay the tubes and start pumping by Monday. He stated he has dropped all of his other projects to work with Sampson. He stated he can provide references and this job is a piece of cake. He stated he can call whomever is needed everyone knows him and he can get the job done just give him the word.

Mayor Denny stated Council would go into closed session following all discussion.

Mayor Denny stated the Town Attorney has left the meeting temporarily to consult with Sampson's attorney.

George Wood addressed the modification method to the dredging process and stated CAMA has been notified. He stated there are three permits germane to the project: Coastal Area Management Act (CAMA), Division of Water Quality (DWQ) and Soil and Sediment Erosion. He stated Sampson did provide refinement information to the narrative but it is the responsibility of the Town to have correct information before sending it to the permit agencies and it needs to be acted upon quickly. He stated he and the Town engineer have relied upon the contractor to provide accurate information and they aren't comfortable with all the numbers provided. He stated the common goal between the Contractor and the Town is to complete the project. He stated approval of an extension of the moratorium will need to be given by CAMA, DWQ and Wildlife Resources with the Town demonstrating a substantial completion and how much more time is needed.

Council Member Kowalski stated it is a possibility that all the resource agencies may not approve the extension. He stated Mr. Sampson stated previously that it is the Town's fault due to the method selected for the dredge. He asked Mr. Wood is that is true.

Mr. Wood stated he could not answer that.

Joe Anlauf, Town Engineer, responded by saying the contract document spelled out the process and the hydrocyclone method was addressed as well as other methods that could be used. He stated polymers were discussed at a meeting held in Washington, NC with the sub-contractor and the contractor present. He stated the base bid with the use of the geo-bags were an option if the Stone property was to be used which was the basis for the approval of the dredge permits. He stated once the Town learned of the other method the contract was amended and bids were submitted for the hydrocyclone method.

Council Member Kowalski asked did those who bid feel they could use the hydrocyclone process. The Town Engineer said yes, the contractor and the sub-contractor felt they could do the project under whatever method they proposed.

Council Member Hess asked George Wood is it possible that the Town could receive the permit approval by Tuesday.

George (Wood) stated accurate information needs to be given to the field representative and then he submits to the agency heads for review. He stated there is a question on the difference in the spoil calculation and it has not been determined if the current site is big enough to handle the geo-tubes and what would happen if a bag should fail.

Council Member Hess asked George if there is still enough time to dredge.

George (Wood) said it is feasible but unlikely. He stated the agencies do have a sense of commitment to the project but the Town needs to show production before they can ask for an extension.

Mayor Denny stated there are some errors in the application and what is needed to fix them.

George (Wood) stated the information needs to be correct and there is a discrepancy of the volume production proposed from 17, 500 cu.yds. to 8500 cu. yds.

Mr. Sampson stated when he met with John CeCe, CAMA, Tom, Joe, and George questions were answered. He stated there is enough room to channel or go over the berm to use the geo-tubes. He stated if there was any question he wouldn't have submitted it the way he did. He stated the site plan showed accommodations for a greater volume without taking out any more trees but he was told by Tom (Bennett) additional trees could be removed. Mr. Sampson stated he asked John CeCe what more is needed and Mr. CeCe could not provide anything. Mr. Sampson stated there is no standard to be designed to but that the site plan could be redone. He stated he explained in his narrative the difference in the calculations. He stated twelve or thirteen samples were taken for using polymers and were sent to the polymer expert who came up with the different amount.

Mayor Denny asked if all bidders took samples before bidding. Mr. Sampson stated yes through the sub-contractor.

Council Member Kowalski asked if the software key is still crucial to the project. Mr. Sampson said yes and that they have it.

Mr. Harper stated the 17,500 cu. yds. of spoil could be dewatered by 50%. He stated the polymers used would not work. He stated he is in the emergency business and he can get all the agencies on the phone and get the job done.

George Wood stated the Town needs one person to be the point of contact and Doug Huggett (DCM) is ready to work with the Town. He stated correct numbers are needed for the permit modification by Monday.

Mayor Denny moved to go into closed session pursuant to NCGS 143.318.11 (a) 3. to consult with the Town Attorney to preserve the attorney-client privilege and he asked that Tom Bennett, Joe Anlauf and George Wood attend. Council Member Hess seconded. The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer and Kowalski voting aye; no Council Member voting no; Council Member Stroud absent.

Upon returning to open session Mayor Denny moved that the Town declare Sampson Contracting, Inc. in default of the contract between the Town and Sampson Contracting, Inc. which was awarded by the Town at its November 4, 2009 meeting and later amended by the Town and the Contractor at the Town's December 9, 2009 meeting.

Pursuant to the provisions of that contract as amended, the Town Engineer shall provide the notice required by Section 108-9 (c) of the Standard Specifications referenced in the contract outlining the breaches of the contract and the sanctions available to the Town and providing the Contractor with no less than seven (7) days to cure the default.

The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer and Kowalski voting aye; no Council Member voting no; Council Member Stroud absent.

Hearing no other business Council Member Hess moved to adjourn the meeting at 6:20 p.m. Council Member Kowalski seconded. The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer and Kowalski voting aye; no Council Member voting no; Council Member Stroud absent.

ATTEST:

  
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Hal Denny, Mayor



Respectfully submitted:

  
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Carrie Gordin, Town Clerk