



Town of Southern Shores
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Council Workshop Meeting
March 20, 2012
9:00 a.m. - Pitts Center

The following Council Members were present: Mayor Hal Denny, Mayor pro tem Jodi Hess, Council Members George Kowalski, David Sanders and Larry Lawhon. Also present: Town Manager Peter Rascoe and Town Clerk Carrie Gordin.

Mayor Denny called the meeting to order and led the Pledge of Allegiance and held a moment of silence.

APPROVAL OF AGENDA

Mayor pro tem Hess moved to approve the agenda as presented. Council Member Kowalski seconded. The motion passed with Mayor Denny and Council Members Hess, Kowalski, Sanders and Lawhon voting aye.

APPROVAL OF MINUTES-None

CONSENT AGENDA-None

GENERAL PUBLIC COMMENT-None

OLD BUSINESS

Consideration of Bids Received for the Chicahawk Trail Street Improvement Project

The Town Manager stated after a required second bid the Town received two bids on the project: 1) Barnhill Contracting Company, \$621,725 and 2) RPC Contracting, Inc., \$488,900. He also reported additional costs for GET Solutions testing and surveying as part of the project.

Joe Anlauf, Anlauf Engineering, stated based on the bids he recommends that the project be awarded to RPC Contracting, Inc., for the Base Bid figure of \$488,900.00. He stated this bid approximates the low end of the engineering cost estimate and is within the Town's budget for this project of \$734,000.

The Town Manager stated the property owners who will be affected by the project have been continuously kept up to date on the process via the Town's Broadcast News and they have been asked to begin removing personal items placed in the Town's right-of way, i.e. landscaping and irrigation, etc.

Following Council discussion, Mayor pro tem Hess moved to authorize Mayor Denny to execute the Acceptance and Contract document as presented by awarding the contract to RPC, Contracting, Inc. in the amount of \$488,900. Council Member Kowalski seconded. The motion passed with Mayor Denny and Council Members Hess, Kowalski, Sanders and Lawhon voting aye.

[Clerk's Note: A copy of the Acceptance and Contract is hereby submitted as Exhibit A].

NEW BUSINESS

Consideration of Tall Pine Bridge Project Engineering RFPs

The Town Manager reported seventeen RFP's were received for the project. He is meeting with NCDOT over the next two days to review the RFP's. He requests this item be placed on the April 3 agenda. By Council consensus this item will be placed on the April 3 Council meeting agenda.

Recommendation to Amend Employee Personnel Policy

The Town Manager stated he and the Human Resource Officer are recommending this employee benefit option change to the Town's Personnel policy and it has been reviewed by the Town's personnel attorney.

The Human Resource Officer explained the benefits of the proposed changes for full time employees and the Town.

Following Council discussion, Council Member Kowalski moved to approve the amended language to Article VI. Employee Benefits, Section 2. Group Health and Hospitalization Insurance as submitted. Mayor Denny seconded. The motion passed with Mayor Denny and Council Members Hess, Kowalski, Sanders and Lawhon voting aye.

[Clerk's Note: A copy of the amended language to the Town's Personnel Policy Article VI. Employee Benefits, Section 2. Group Health and Hospitalization Insurance is hereby submitted as Exhibit B.]

Consideration of Congressman Jones H.R. 4094 Bill-Preserving Access to Cape Hatteras National Seashore (CHNS) Recreational Area Act

Following discussion from the March 6 Council meeting Council agreed to place this item on this agenda for consideration. Council Member Kowalski noted that in 2008 Council adopted a resolution against closing vehicular access to Cape Hatteras National Seashore and to support efforts negotiating the "Rule Making" Process. He suggested that the 2008 resolution be updated and incorporate some of the language from Congressman Jones' HR 4094 Bill supporting the access to CHNS. By Council consensus staff is directed to submit a newly drafted resolution for consideration at the April 3 Council meeting.

OTHER ITEMS

Town Manager

The Town Manager addressed several issues:

- The Town Manager presented a draft resolution for Council's consideration as a request from the Town of Nags Head supporting Nags Head's efforts to have the NC Supreme Court grant discretionary review of the Court of Appeals ruling that recently issued a decision in the case of Town of Nags Head v. Cherry, Inc. This decision has potentially far-reaching effects for all coastal towns and counties.

Following discussion by Council regarding public trust rights on the beach, Mayor Denny moved to adopt Resolution 2012-03-03 as presented. Mayor pro tem Hess seconded. The motion passed with Mayor Denny and Council Members Hess, Kowalski, Sanders and Lawhon voting aye.

[Clerk's Note: A copy of Resolution 2012-03-03 is hereby attached as Exhibit C].

- FEMA Funds-The Town will receive the final 25% reimbursement funds (\$80,000) for Hurricane Irene upon FEMA doing a final inspection.
- Town submitted a \$20,000 grant application to the Government Access Channel to upgrade the audio/visual equipment in the Pitts Center. (Councilwoman Hess reported the grant had been awarded.)
- Staff and Planning Board have been working on the draft stormwater ordinance and will submit a consolidated version to Council at the April 3 Council meeting.
- Provided a copy of the County and Municipality Property Tax estimates for 2013's tax distribution in which he said it appears the Town's share will be reduced approximately \$135,000 instead of the \$185,000 as originally expected. The reduction is due to the distribution formula's accounting for the significant increase in the Town of Nags Head's levy due to the tax rate increase for its beach nourishment project.
- A few things need to be done to the Juniper/Trinitie Trail Bridge before it is completed.
- Reported the Town welcome sign lighting is completed with the solar panel post placed near the wooded area.

Mayor-None

Council

Council Member Sanders inquired when the County would begin spraying for mosquitoes. Also if there is any stormwater plans for the area at 13th Ave.

The Town Manager stated he would contact the County about mosquitoes. There was general discussion about stormwater along NC 12 and that the Town had not opted to initiate a project.

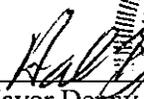
Council Member Kowalski asked if the Town received a response from NCDOT on the intersection of Hwy. 158 and NC 12. The Town Manager stated NCDOT is performing surveying and environmental work only at the current time for the intersection realignment project contained in the DOT's Ten-Year Improvement Plan (TIP).

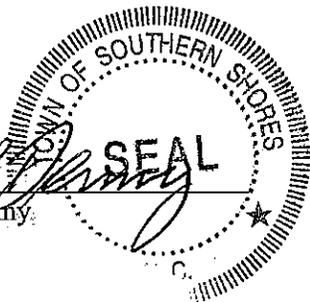
Council Member Kowalski also commented that while recently in Hawaii a seal landed on the beach, was marked with surrounding flags, and that everyone just went about their business - and the seal left on its own with no beaches being shut down.

Mayor pro tem Hess stated she will present the Government Access Channel Budget for the April 3 agenda.

Hearing no other business Mayor pro tem Hess moved to adjourn the meeting at 10:20 a.m. Mayor Denny seconded. The motion passed with Mayor Denny and Council Members Hess, Kowalski, Sanders and Lawhon voting aye.

ATTEST:


Mayor Denny



Respectfully submitted:


Carrie Gordin, Town Clerk

ACCEPTANCE and CONTRACT

WHEREAS the Town of Southern Shores issued a "Notice of Bid Opportunity" for the complete re-build, with stormwater management improvements, of a certain portion of the public street and right-of-way known as "Chicahauk Trail" in accordance with North Carolina General Statute 143-129; and

WHEREAS a lowest responsible bidder has been determined and the Bid, considered an Offer, is attached herein and is a part of this Contract.

NOW THEREFORE the Town of Southern Shores, a municipal government by and through its Mayor as authorized by action of its Town Council does hereby accept the Bid as an Offer, and declare, this (1) Acceptance, and (2) the Bid (Offer) with all supporting and required documents, and all attached documents as follows:

- (3) Plans (Sheets 1-22 of 22)
- (4) Technical Specifications Manual dated February 8, 2012
- (5) Contract Proposal dated February 9, 2012
- (6) Addendums No. 1-5 (five total) to the February 9, 2012 Contract Proposal
- (7) Southern Shores Civic Association easement recorded January 17, 2012
- (8) Chicahauk Property Owners Association easement recorded January 13, 2012
- (9) Dorothy J. Thompson easement recorded January 9, 2012, and
- (10)CAMA Minor Development Permit 01252012A dated January 25, 2012

As a CONTRACT, supported by all consideration cited throughout.

By execution below, the parties acknowledge this Contract, which incorporates the Offer, Acceptance, all attached documents heretofore cited as a Contract.

IN WITNESS WHEREOF, the Contractor has caused this Contract to be signed in its corporate name by its authorized representative and the Town has caused this Contract to be signed in its legal corporate name by the person authorized to execute said Contract effective as of this the 20th day of March, 2012.

RPC CONTRACTING, INC.

TOWN OF SOUTHEN SHORES:

By: _____

By: _____

Title: PRESIDENT

Title: MAYOR

ATTEST:

ATTEST:

Title:

Title: Town Clerk

Exhibit B

The proposed option is proposed by adding an additional paragraph to *Article VI Employee Benefits, Section 2. Group Health and Hospitalization Insurance*, as follows:

“Full-time employees who elect to be covered by a Medicare plan provided under the Social Security Act instead of the Town’s standard group health insurance plan will be reimbursed by the Town for the employee’s actual cost of such Medicare coverage. The Town will also reimburse the employee for the employee’s actual cost of any supplemental plan in which the employee enrolls. In no event, however, will the total amount reimbursed by the Town for Medicare coverage and any supplemental plan exceed the Town’s cost of covering the employee under the Town’s group health insurance plan with coverage at the same level as provided to other full-time employees; nor will such reimbursement be provided for the costs of covering any person other than the employee.”

Exhibit C

Resolution 2012-03-03

A RESOLUTION THAT THERE EXISTS SIGNIFICANT PUBLIC INTEREST IN THE NATURE AND EXTENT OF PUBLIC TRUST RIGHTS UNDER NORTH CAROLINA LAW AND THE NATURE AND EXTENT OF LOCAL GOVERNMENT REGULATION OF OCEAN BEACHES WITHIN THEIR JURISDICTIONS

WHEREAS, the Town of Southern Shores has areas of ocean beach or other public trust land and waters located within or adjacent to its jurisdiction; and

WHEREAS, the economy of the Town of Southern Shores is driven by tourism; and

WHEREAS, a safe, clean, unobstructed ocean beach is essential to attract tourists and others to the beaches within the Town of Southern Shores; and

WHEREAS, historically the citizens and visitors of the Town of Southern Shores have used the full breadth of the ocean beach from the dune/vegetation line to the ocean waters for access to, travel along and general use of the beach for recreational and commercial endeavors; and

WHEREAS, the Town of Southern Shores has historically taken action to maintain a safe, clean and unobstructed ocean beach within its jurisdiction; and

WHEREAS, the Town of Southern Shores has historically used the full breadth of the ocean beach within its jurisdiction for the purposes of providing life saving, emergency and other public works services; and

WHEREAS, the Town of Southern Shores has taken these actions of its own accord often without the assistance of North Carolina state agencies that have historically not had the budget, manpower or interest in taking these actions; and

WHEREAS, the Town of Southern Shores agrees with the following findings of the North Carolina General Assembly [Sec. 13.9.(a) of Session Law 2000-67], regarding the importance of the State's ocean beaches and the uses thereof, which include the following:

- (1) North Carolina has 320 miles of ocean beach, including some of the most pristine and attractive beaches in the country.
- (2) The balance between economic development and quality of life in North Carolina has made our coast one of the most desirable along the Atlantic Seaboard.
- (3) North Carolina's beaches are vital to the State's tourism industry.
- (4) North Carolina's beaches belong to all the State's citizens and provide recreational and economic benefits to our residents statewide.
- (5) Beach erosion can threaten the economic viability of coastal communities and can significantly affect State tax revenues.
- (6) The Atlantic Seaboard is vulnerable to hurricanes and other storms, and it is prudent to take precautions such as beach nourishment that protect and conserve the State's beaches and reduce property damage and flooding.
- (7) Federal policy previously favored and assisted voluntary movement of structures threatened by erosion, but this assistance is no longer available.

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threatened by erosion is sometimes the best available remedy for the property owner and is in the public interest.

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- (13) Because local beach communities derive the primary benefits from the presence of adequate beaches, a program of beach management and restoration should not be accomplished without a commitment of local funds to combat the problem of beach erosion.
 - (14) The State of North Carolina prohibits seawalls and hardening the shoreline to prevent destroying the public's beaches.
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- (17) It is declared to be a necessary governmental responsibility to properly manage and protect North Carolina's beaches from erosion and that good planning is needed to assure a cost-effective and equitable approach to beach management and restoration, and that as part of a comprehensive response to beach erosion, sound policies are needed to facilitate the ability of landowners to move threatened structures and to allow public acquisition of appropriate parcels of land for public beach access.

WHEREAS, over time inconsistency has developed between the actual use of the ocean beach for public trust purposes and the terms often used to describe various areas of the ocean beach; and

WHEREAS, in 1998 the General Assembly enacted N.C.G.S. §77-20(d) and (e) which clarified that the geographical extent of the ocean beaches which are subject to public trust rights reaches landward to the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line; and

WHEREAS, N.C. Const., Art. XIV, Sec. 5 provides that “it shall be a proper function of the State of North Carolina and its political subdivisions to . . . to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty,” and

WHEREAS, N.C.G.S. §160A-174 and §153A-121(a) have delegated broad authority to local legislative bodies to enact local ordinances to define and abate nuisances within their jurisdictions; and

WHEREAS, the recent North Carolina Court of Appeals decision in *Town of Nags Head v. Cherry, Inc.* is inconsistent with the authority granted to local governments under the North Carolina Constitution, the North Carolina General Statutes, and existing State agency regulations and is also inconsistent with the historical use and management of the ocean beaches by the general public and local governments; and

WHEREAS, the public has a significant interest in having the Supreme Court address the issues raised in the *Town of Nags Head v. Cherry, Inc.* action and providing local governments, the general public and private landowners with definitive legal analysis regarding the scope and existence of public trust rights in the State’s ocean beaches and local government authority to regulate, protect and manage the State’s ocean beaches within their jurisdiction.

NOW THEREFORE BE IT RESOLVED that the Town Council of the Town of Southern Shores supports the North Carolina Supreme Court’s review and consideration of the *Town of Nags Head v. Cherry, Inc.* action because of the significant public interest in the Supreme Court providing definitive legal analysis regarding the scope and existence of public trust rights in the State’s ocean beaches and local government authority to regulate, protect and manage the State’s ocean beaches within their jurisdiction.

This 20th day of March 2012.

Mayor

ATTEST:

Town Clerk