

**ROCKY MOUNT TOWN COUNCIL
SPECIAL COUNCIL MEETING
MARCH 26, 2009**

The March 26, 2009 special Council meeting of the Rocky Mount Town Council was held in the Council Chambers of the Rocky Mount Municipal Building, located at 345 Donald Avenue, Rocky Mount, Virginia, at 4:00 p.m., with Mayor Steven C. Angle presiding. The following members of Council were present:

Vice Mayor Posey W. Dillon and Council Members Jerry W. Greer, Sr., John H. Lester, Roger M. Seale, Robert W. Strickler, and Gregory B. Walker.

The meeting was called to order by Mayor Angle.

Present for the meeting were all members of Town Council as noted, Town Manager C. James Ervin, Assistant Town Manager Matthew C. Hankins, Finance Director Linda Woody, Town Attorney John Boitnott, and Deputy Clerk Stacey B. Sink.

APPROVAL OF AGENDA

Prior to the meeting, Council received the agenda for review and consideration of approval.

- Motion was made by Council Member Lester to approve the agenda as presented, seconded by Council Member Seale, and carried unanimously.

REVIEW AND CONSIDERATION OF BIDS FOR THE EXTENSION OF OLD FORT ROAD AND CONSTRUCTION OF A FORCED MAIN SEWER LINE AND PUMP STATION IN REFERENCE TO THE OAKS AT RAKES TAVERN PROJECT

The Town Manager addressed Council stating that it was the consensus of Council to place this item on the agenda for further consideration. It is his intention to award Steve Martin's Trenching the contract for the construction of the extension of Old Fort Road and forced main sewer line based on the total bid of \$910,940 for both of the projects. This represents an out-of-pocket on the Town's behalf of about \$663,000, if the Town is able to secure the Virginia Department of Transportation (VDOT) funding that staff is trying to get. He has given a breakdown of the bids received and there is one additional item that he would like to point out. This road is already a Town of Rocky Mount road. It has already been dedicated to the Town and a plat put to record. The Town is currently maintaining the area because it is a Town street and he asks Council to go ahead with allowing the street to be built to state standards.

The Mayor read for the record a summary of key dates of the project as follows:

- In April 2006 the original application was received for rezoning.
- On June 6, 2006 Planning Commission held a public hearing and recommended the rezoning to Town Council.
- On June 20, 2006 Town Council held a public hearing and voted to rezone the property to Residential Planned Unit Development (RPUD).
- In August 2006 the Public Utilities Committee began working with Thompson & Litton to prepare a Preliminary Engineering Report.
- In November 2006 Town Council passed a resolution applying for financing.
- In January 2007 the Town hired Thompson & Litton for engineering work.
- In February 2007 bond funds became available.
- In February 2008 Town Council passed a resolution applying for VDOT sharing funds.
- In March 2008 Mr. Fralin reached a settlement with the Philpotts and the Town began in earnest to design the road and accelerate plans.
- In February 2009 the road and forced-main sewer was put out to bid.

The Mayor added that there have been discussions about this and what it boils down to now is should the Town forgo the construction and take a chance in court with a lawsuit not knowing the outcome. From consultation with counsel this could mean legal costs of several thousand dollars with no guarantee of a result in favor of the Town. Also, there is possibly a \$10 million dollar lawsuit pending and the Town doesn't have a reserve to do something like that, so the Town is at a point now where it either needs to accept the bid and move forward or face the litigation.

Council Member Strickler addressed the comments of the Mayor, stating that he is very concerned about the litigation of this matter and the potential \$10 million lawsuit and the potential half million dollars or more of expenses that may be incurred in addition to building the road and the utilities. He feels that the risk factors are too great and he is not a gambler. There are also subjective risks: he doesn't want the Town to be labeled as an anti-development community; the ethical implications of backing out of an agreement once significant funds have been spent; the future economic activity of the new homes compounded into the economy; the loss of the positive impact of investing \$1 million locally in building the road and utilities coupled with the impact of the initial build-out of the subdivision as seen as a local economic stimulus. In looking at the current economic times and at the actions Council has already been involved in and approved, he offered the following motion:

- Motion was made by Council Member Strickler to accept the low bid of \$910,940, with motion on floor being seconded by Council Member Lester. The Mayor reiterated the motion, clarified that the bid would be awarded to Steve Martin's Trenching, and opened the floor for discussion. Vice Mayor Dillon stated that he wanted to reinforce what he has stated previously, which is that he believes the development will place an undue burden on the citizens of Rocky Mount who will have to pay increased utility fees in order to subsidize the development. The Town should not be in the business of constructing roads for private developers. He thinks this is a mistake that the Town has made. There are serious concerns that remain regarding the lawful and proper zoning of the property with reference to the contractual agreement. He also believes that the density of the construction of portions of this development coupled with the absence of a standard road and sidewalk poses a public safety problem that will lead to children to playing in the street and near parked vehicles. He has real concern about this. He also believes that the supposed payback for the Town will not occur at all and that the dates used were nothing more than cosmetic to gain prior approval. Lastly, he thinks that the argument of saving face validates the weakness of Council to do the right thing for its citizens. Council Member Lester stated that he disagrees. [With a} \$10 million lawsuit against the Town [when it] doesn't have anywhere and can't build a music venue, he doesn't think it is wrong. In this case, he was against the subdivision, but at this point the Town needs to bite the bullet and move on. Council Member Strickler stated that it is his understanding that this has nothing to do with the subdivision. The property has already been rezoned and the subdivision is going to happen. This is strictly a bidding process at this time. Vice Mayor Dillon added that the road itself creates a bill for the Town. There being no further discussion, a roll call vote was taken. Voting in favor of the motion on the floor were Council Members Strickler, Lester, Seale and Mayor Angle. Voting in opposition to the motion on the floor were Council Members Greer, Walker and Vice Mayor Dillon. Let the record show that the motion on the floor passed with a vote of four to three.

REVIEW AND CONSIDERATION OF CONSTRUCTION AND ADMINISTRATION CONTRACTS FOR THE OLD FORT ROAD EXTENSION PROJECT

The Town Manager addressed Council stating that at the last meeting Council awarded construction administration for the extension of the road into the Cox property, separating out the portions of the contracts pertaining to Old Fort Road. Therefore, submitted for Council's consideration as a second item, and if it is Council's intent to continue with the Old Fort Road construction project, he would like to enter into a contract for the management of the construction phase of the project. Submitted for Council's review are two pricepoints which are the same as those presented Monday, and he asks for Council's permission to enter into the contracts.

Council Member Seale confirmed with the Town Manager that acceptance of the bid essentially puts the Town back into the same efficiency that the Town would have had when the original proposal for the administration and inspection services was adjoined for both the Cox property and Old Fort Road projects. The Town Manager confirmed that the proposals can be combined again.

- Motion was made by Council Member Lester to award the construction administration contracts for the Old Fort Road extension project, with motion on the floor being seconded by Council Member Seale. There being no further discussion, let the record show that the motion on the floor passed unanimously.

Following the vote, Council Member Lester asked to address comments to Mr. Fralin. He stated that the Town would definitely appreciate any consideration that he can give local contractors, businessmen and suppliers in creating his project. The Mayor commented that Mr. Fralin has already committed to doing this as much as possible. Council Member Strickler commented that the economic stimulus of this project is important.

There being no further discussion, the Mayor entertained a motion to adjourn.

ADJOURNMENT

At 4:23 p.m. motion was made by Council Member Walker to adjourn, seconded by Council Member Lester and carried unanimously.

Steven C. Angle, Mayor

ATTEST:

Stacey B. Sink/Deputy Clerk

/sbs