

**ROCKY MOUNT TOWN COUNCIL
SPECIAL COUNCIL MEETING
MARCH 17, 2009**

The March 17, 2009 special Council meeting of the Rocky Mount Town Council was held in the conference room of the Rocky Mount Municipal Building, located at 345 Donald Avenue, Rocky Mount, Virginia, at 5:00 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.

The Deputy Clerk read for the record those present, being: All members of Town Council as noted, Town Manager C. James Ervin, Assistant Town Manager Matthew C. Hankins, Town Attorney John Boitnott, Finance Director Linda Woody, Public Works Director Cecil Mason, 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 Greer, and carried unanimously.

REVIEW AND CONSIDERATION OF BID AWARDS FOR THE EXTENSION OF WEAVER STREET IN REFERENCE TO THE COX PROPERTY PROJECT AND 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 as the Town has worked for the past two years to bring these projects to market, he is both proud and unhappy to say that due to the economy the bids for these projects have come drastically under staff's expectations, so in both cases, the Town has raised or borrowed funds in excess of what is needed. A summary is as follows:

- It is staff's expectation that Paul Shively will construct the Weaver Street Extension into the Cox property for approximately \$635,000. The Town has secured funding of \$955,000. Some of the excess will allow the Town to make

some progress in the rail siding and also potentially leverage against some stimulus money that the Town is currently applying for with the Economic Development Administration (EDA).

- Steve Martin's Trenching has proffered the low bid to extend Old Fort Road and construct the forced main sewer line. The combined project is approximately \$910,000. Staff was expecting \$1.2 million. In the written material there is a breakdown of funding sources and how the Town plans to manage the project.

The Town Manager advised that he is at a point where he would normally issue a notice of intent to award to both of these vendors. This will cause them to incur expense in that they would secure a bond and would go through the process of negotiating a contract. Prior to asking them to secure and bond for these projects, he wishes to seek Council's authorization to award these, and this is what he brings to Council tonight as a first item of business. The Finance Director has submitted a detailed accounting of the bond the Town currently has for the extension of Old Fort Road, and staff is here to answer any questions Council may have regarding these projects or the bids.

The Mayor asked Council for any questions they may have for the Town Manager or Finance Director.

Council Member Greer questioned if these items will be voted on together or separately with the Town Manager confirming it was up to Council's discretion. Council Member Greer advised he would like to look at the Cox Property/Weaver Street project first.

Discussion ensued regarding the Cox Property/Weaver Street project:

- Council Member Greer questioned if he is with the understanding that the bids come in within \$600 of each other. The Town Manager confirmed that the first bid for Weaver Street was \$635,345 and the second bid was \$635,935, which is a difference of \$590.
- Council Member Dillon question if when the bid originally went out it included a trailer for the people overseeing the project. The Town Manager advised that the vendor is required to have a construction office that is accessible. They are not required to provide housing or office space for the inspection. In the more complex project they are required to provide a computer for recording the inspections. To his knowledge, a trailer is not required, but he doesn't claim to know the details as the project specifications are approximately a 400 page document and there are some things included that are standard. Council Member Dillon added that it his understanding that if the trailer is included it will add approximately \$12,000 to the cost of the road, and it seems like this is something that could be done inside a vehicle. The Town Manager confirmed that he can investigate this and have an answer before a contract is negotiated.
- The Town Manager added that the contracts will also have to address the variable cost of asphalt, and potentially a rock clause as well.
- Council Member Greer questioned if a rock clause will be a change order, with the Mayor confirming that usually there is a contingency in the contract that if the

contractor hits rock then the cost is adjusted for the extra expense of dynamiting or rock removal. The Town Manager added that the contractors were asked to bid the contracts without a rock clause. He was just listing it as one of the items that may need to be negotiated. The Town's pricing was based on building it as the ground form occurs and the bidder anticipates that he can build it as is for the price proposed.

- Council Member Lester questioned if any pre-drilling was done, with the Town Manager confirming that ample geotechnical work was done at the Cox/Weaver Street site, and a modest amount was done at the Old Fort Road site. The Cox Project had to go through a different environmental approval process and the Town wants to be able to guarantee that the road will hold a certain weight and the soil will compact to a certain level. The Town paid to have a Phase I Environmental study done at this site so that it can be lobbied as a potential business site. The Old Fort Road site is a simple road extension into a residential neighborhood. Three cores were taken and this data was made available.
- Council Member Dillon questioned if the majority of the money has been arranged outside of what the Town has set aside, with the Town Manager confirming that for the Weaver Street extension this is the case. \$421,000 was obtained from the Tobacco Indemnification Commission (TIC) and the Town has received a pledge from VDOT for \$334,000 as well as a pledge from the County of Franklin for \$100,000. The Town has agreed to pledge \$100,000 of its own money and that still stands.
- Council Member Greer stated that he doesn't have a problem with building the road at \$635,000 but he doesn't want to see change orders and the price increase another \$200,000. He then questioned if he can make a motion, with the Mayor confirming to go ahead.
- Motion was made by Council Member Greer to approve building the road for \$635,000 with no change orders. The Mayor questioned the Town Attorney if such a motion could be made with a caveat as stated, adding that any change orders would have to come before the Council for approval or disapproval. The Town Attorney added that most contracts are going to contemplate provisions for change; for example, if the Town wants to change something and do something different than what is contracted for, the contractor is going to want the opportunity to price that change out. By accepting this bid now, Council will be authorizing the Town Manager to notify the contractor of the acceptance and then the contractor and Town Manager can enter into discussions to finalize the contract. Once the contract is in final form, it will come back to Council for final approval. The Town Manager added that it *can* come back for final approval; however, if it is principally the same amount, he has asked for permission to go ahead and approve the contract. The Town Attorney added that change orders are used when something that was contracted for changes. If the contractor bids on it, then he has to build it. Council Member Strickler questioned if the contractor normally includes contingency funds in the bidding, with the Town Manager confirming this to be

true. In this case the bidding was based upon quantities. The Town provided quantities of certain materials and is agreeing to pay certain rates for certain things. However, if it appears that the engineering is off, the contractor may come back and say additional quantities are needed. The Mayor and Town Manager advised Council Member Greer that the proper motion should be to accept the bid of \$635,345, reserving to Town Council the right to approve or disapprove any changes. Discussion continued. Council Member Lester questioned statements listed at the bottom of the letter from Thompson & Litton (T&L) dated March 9, 2009, which read:

Upon conducting a review and evaluation of the bids, Paul R. Shively, Inc. submitted the lowest bid in the amount of \$635,345.00. It is T&L's opinion that Paul R. Shively, Inc., has the necessary equipment and experience to satisfactorily construct this project.

The bid submitted by Alleghany Construction contained math errors; both in the addition of the extended amounts and in the determination of the extended amounts themselves. The amount shown as the total bid on their Bid Form was \$635,935.00. The correct amount should have been \$631,935.00, based on the sum of extended costs shown. Two errors were made in determining the extended amounts (quantity multiplied by unit price). The total bid based on the correct extended amounts and the sum of those line items should have been \$632,435.00.

The Town Manager confirmed this stating that the consensus was, for the sake of legality, that the Town had to go with the total amount submitted and not reverse engineer the submitted bids. The Town's options were to declare irregularities or take the amount submitted, and staff elected to take the amount submitted. This was also T&L's recommendation. Council Member Lester noted that this was a difference of almost \$3,000 and asked for the Town Attorney's opinion. The Town Attorney advised that his opinion is that Alleghany Construction's bid was \$635,935, which is the amount they entered on the bid form. The Mayor questioned if Council Member Greer still wanted to make the motion. Motion was made by Council Member Greer to accept the bid of \$635,345, with motion on the floor being seconded by Council Member Walker. There being no further discussion, let the record show that the motion on the floor passed unanimously.

Next, the Mayor opened the floor to discussion regarding 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 the Town had originally expected this project to total out between \$1 and \$1.1 million; however the total bids that came in for the project were \$910,940. This project was bid in two phases. One was for the road

and the other was for the forced main sewer, with the expectation that the Town might attract more competition this way. As it turned out, one vendor provided the lowest bid for both of the projects. The Town's engineering firm, Thompson & Litton, is satisfied with this firm's ability to do the work and it is T&L's recommendation that this project be awarded to Steve Martin's Trenching for the amount specified. He also confirmed to the Mayor that this vendor is located in Bassett, Virginia.

The Mayor confirmed with the Town Manager that the total for the two projects together is \$910,940, and that they were bid separately with Steve Martin's Trenching having the lowest bid on both projects. The Town Manager added that this firm was approximately \$100,000 less than the next lowest bidder.

The Mayor opened the floor for questions. Discussion ensued:

- Vice Mayor Dillon stated for confirmation that this project has already been delayed for approximately two years at no fault of the Town. The Town Manager confirmed that the project was delayed due problems regarding easements in order to build the road. This required litigation. There was also lost time for a variety of other factors.
- Vice Mayor Dillon questioned if the time limits specified to the developer in the beginning are still firm. The Town Manager advised that the mutual consensus thus far is that the time limits are triggers based upon when certain preceding things occur. For example, the expectation that there will be so many units in the first year and so many units in the second year is based upon the current interpretation that the twelve months after the Town completes the road represents the first year. The Town has not met its time requirement but all parties realize that the litigation set this back. He added that he has assurances from the developer that the developer is committed to the time frame for build out from the point at which the Town completes its project.
- Vice Mayor Dillon questioned given the current economic conditions and the number of houses that are available for sale, not only in our area, but across the nation, as well as the number that are being foreclosed on, if this developer builds five or ten units and then decides that it is not feasible to continue, what is the Town's legal rights as far as compensation for what it has expended for this project? The Town Attorney advised that it would go back to its original rezoning and to the conditions that were proffered in at the time the conditional rezoning was approved. The Mayor clarified that this was ten units in the first year and ten units in the second year at a minimum. The Town Manager added that the public improvements for the entire development will be bonded or secured with some irrevocable instrument, and that it is unlikely that someone would make that level of investment from a grading, streets, sanitary sewer, water, and streetlight standpoint and then walk away with only twenty houses. If they did, it's likely that whoever followed on would then be very profitable at developing the subdivision because they would not have the cost of all the infrastructure items. The risk involved is very high from the developer's standpoint because of the need to bond out those types of improvements.

- Vice Mayor Dillon asked if the Town would be able to recover through the bond the developer is required to have. The Town Manager clarified that he thinks the Town could force the development of a serviceable subdivision based upon the current Virginia code which requires these improvements to be bonded up, so that the Town could see that the improvements are finished and that it becomes a net asset to the Town of Rocky Mount. It would require a great deal of effort on the part of the Town.
- Council Member Lester questioned what type of bond will be used. The Town Attorney advised that this is unknown until the subdivision plat is submitted for final approval. It could be a cash bond or a letter of credit, both of which are allowed in Town Code.
- Vice Mayor Dillon stated that there was considerable opposition to this project in the beginning and he thinks it passed by a majority of Council, not a super majority but a simple majority. During that time, the majority of the people were opposed to it, and he thinks one of the reasons why there are new faces on Council is that people weren't satisfied with what happened with it before. It's hard to obligate the citizens of the Town of Rocky Mount into a subdivision of this nature. He'd like for this body to have a dialogue with the developer to see if there could be a variation from some of the specifications that are presently laid out, that will make this development more acceptable to Council and also to the citizens that are located within this area. He also added that now may be the only time to address these issues.
- Council Member Lester questioned what legal avenues are available, with the Town Attorney stating that he would be very reluctant to discuss legal options during open session. However, based on Council's direction, he and the Town Manager met with Mr. Fralin and his legal counsel to discuss the concerns that Council Member Dillon has articulated. Through this meeting, he learned the developer's position, which is that the developer believes that he is targeting a specific market of homebuyers based on affordable housing, and that the size of the lots and homes fit within that target range, and to consider a lesser density type of development with larger homes and larger lots, misplaces his market. This affects his ability to fund and develop the project and is not feasible for him to give that practical consideration. His intention is to proceed with the development according to the site information that was originally submitted as part of the proffered conditions at the rezoning.
- The Mayor stated that there was substantial opposition, there was a public hearing held, the public had the chance for input, and there was a lot of it. However, at that time, the Council voted in majority four to two to rezone the property. He and Council Member Greer were in the minority and he did vote against the rezoning. However, it has been rezoned and with that rezoning the Town gave the developer the go ahead to proceed with his plans, and it comes down right now to a matter of integrity on the Town's part. The Town needs to do what it told the developer it was going to do in the beginning. Vice Mayor Dillon agreed that would have held true in the beginning, but the two-year lag in obtaining the necessary right-of-ways has put this further down the road. The Mayor followed that nothing has changed on the part of the developer, except the time frame, and he reiterated that he voted

against the rezoning, but it passed and at this time the Town needs to do what is right, which is to approve the bid, and move on with it.

- Vice Mayor Dillon questioned how long the bids are good for. The Town Manager advised that pricing is good for 120 days, but his larger fear of waiting is that the number of stimulus projects that are starting to get in the pipeline may diminish the attractive environment the Town has, which includes great prices and funding. The bonding agent has asked the Town to liquidate and use the funds as the interest the Town is making is more than the interest being paid.
 - Council Member Lester asked the other members of Council to please consider the legal liability of the issue in their thoughts, no matter how palatable the decision may be.
- Motion was made by Council Member Seale to approve the bid of Steve Martin's Trenching of \$910,940 for construction of a forced sewer main, pump station, and road extension, with motion on the floor being seconded by Council Member Lester. There being no discussion, a roll call vote was taken. Voting in favor of the motion on the floor were Council Members Lester, and Seale. Voting in opposition to the motion on the floor were Council Members Greer, Strickler, Walker, and Vice Mayor Dillon. Let the record show that the motion on the floor failed with a vote of two to four.

Following the vote, the Mayor addressed Council asking where the Town goes from here and stating that he thinks this is wrong, as the Town has held public hearings, the Town has done what it needs to do, it is a matter of integrity for this Town, and he hates to see the Town going back on something it has told an individual.

Council Member Lester stated that he agrees with the Mayor, referencing a similar situation that happened between the Town and County, and stating that he didn't like it then and he doesn't like it now.

Vice Mayor Dillon stated that he thinks the Town needs to look at some of its processes, and when an obligation of this nature comes before the board that will obligate all the citizens of the Town of Rocky Mount to pay for something for many years in the future for a private developer, he thinks it needs to be something more than a simple majority from Council in order to pass and he hopes Council will address this at some point in the future.

Council Member Lester stated that this would have to be addressed from a legislative standpoint, adding that he too was against this project, and he was not on Town Council at the time. He did every thing that he had the authority to do to discourage it. He voted against the bonds. But, at the point the decision was made by this Town Council, the integrity of this Town Council and its authority was put in place.

The Town Attorney suggested that the Mayor convene a closed session to discuss this matter with legal counsel, with the Mayor confirming that there is already a closed session item on the agenda for prospective business and industry.

The Mayor called for any additional motions while this item was on the table. There being none, he moved on to the next item.

REVIEW AND CONSIDERATION OF CONSTRUCTION AND ADMINISTRATION CONTRACTS FOR THE WEAVER STREET AND OLD FORT ROAD EXTENSION PROJECTS

The Mayor clarified that the review and consideration would only be for Weaver Street at this point since the Old Fort Road extension is off the table.

The Town Manager addressed Council, stating that the item can be considered even though ultimately the two projects were priced in total, and it is probably something that needs to be looked at in more detail. However, in constructing these projects the Town will need engineering services to do the construction administration process. As was discussed at the last meeting, he obtained a price from Thompson & Litton that he was not satisfied with and he asked T&L to partner with Earth Environmental to do some of the local field work. They have given prices that are outlined in his briefing, and at a minimum tonight, he requests that Council authorizes the construction supervision expenses for the Weaver Street project, based upon the fact that the ultimate amount may change because the Town may not be doing these two projects simultaneously.

Council Member Lester questioned if there would be any legal liability because of this, with the Town Manager confirming that he doesn't see any exposure on this but counsel will advise as need be.

The Mayor asked for a motion.

- Motion was made by Vice Mayor Dillon to approve the construction administration contract for Weaver Street, with motion on the floor being seconded by Council Member Strickler. There being no discussion, let the record show that the motion on the floor passed unanimously.

The Mayor questioned the Town Attorney regarding the fact that the agenda was not amended at the start of the meeting to include a closed session item relating to litigation. He asked if the amendment could be done at this point or would it be necessary to call another meeting for closed session under litigation. The Town Attorney recommended that another special meeting be called.

CLOSED MEETING

At approximately 5:41 p.m., motion was made by Council Member Lester to go into *Closed Meeting*, seconded Council Member Strickler, and carried unanimously to discuss the following:

- Section 2.2-3711(A).5 – Discussion concerning a prospective business or industry, or the extension of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

At 6:20 p.m. motion was made by Council Member Lester to come out of *Closed Meeting* and to reconvene the meeting back into open session, with motion on the floor being seconded by Council Member Strickler and carried unanimously.

CERTIFICATE OF CLOSED MEETING

Whereas, the Town of Rocky Mount Council has convened a *Closed Meeting* on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

Whereas, Section 2.2-3712 of the Code of Virginia required certification by this council that such *Closed Meeting* was conducted in conformity with Virginia Law;

Now, Therefore, Be It Resolved that the Rocky Mount Town Council hereby certifies that, to the best of each members' knowledge: (1) only public business matters lawfully exempted from open meeting requirements under this chapter and (2) only such public business matters as were identified in the motion by which the *Closed Meeting* was convened were heard, discussed, or considered in the meeting of the public body.

Steven C. Angle, Mayor

- Motion was made by Council Member Walker certifying that: (1) only public business matters lawfully exempted from open meeting requirements under this chapter was discussed; and (2) only such public business matters as were identified in the motion by which the *Closed Meeting* was convened were heard, discussed, or considered in the meeting of the public body. Motion was seconded by Greer. The Mayor swore to adopt the motion on the floor by Council Member Walker that this was all that was discussed as defined in Section 2.2-3412 Code of Virginia. Voting yes were Vice Mayor Posey W. Dillon, Council Members Jerry W. Greer, Sr., John H. Lester, Roger M. Seale, Robert W. Strickler, and Gregory B. Walker.

The Mayor reported that no action was taken.

ADJOURNMENT

At 6:25 p.m. motion was made by Council Member Lester to adjourn, seconded by Strickler and carried unanimously.

Steven C. Angle, Mayor

ATTEST:

Stacey B. Sink/Deputy Clerk