



**TOWN OF HOLDEN BEACH
BOARD OF COMMISSIONERS
RECESSED MEETING
THURSDAY, MARCH 12, 2009**

The Board of Commissioners of the Town of Holden Beach reconvened their Regular meeting of March 10, 2009 at 4:00 p.m. on Thursday, March 12, 2009 in the Training Room of the Emergency Operations Center. Present were Mayor J. Alan Holden; Mayor Pro Tem Sandy Miller; Commissioners Ray Lehr, Don Glander, Ken Kyser and Gary Staley; Town Manager David W. Hewett; Town Clerk Heather Finnell; Police Chief Wally Layne; Public Works Director Chris Clemmons; and Fran Way and Paul Carroll, the Town's engineering consultants from Applied Technology and Management.

Mayor Holden welcomed everyone and called the recessed meeting to order.

DISCUSSION AND POSSIBLE APPROVAL OF ORDINANCE 09-04, AN ORDINANCE AMENDING ORDINANCE 08-08, THE REVENUES AND APPROPRIATIONS ORDINANCE FOR FISCAL YEAR 2008 – 2009 (AMENDMENT NO. 4)

Motion by Commissioner Kyser to approve Ordinance 09-04; second by Mayor Pro Tem Miller; approved by unanimous vote.

DISCUSSION AND POSSIBLE ACTION ON LOW BID AND CONSIDERATION OF AWARDED CONTRACT TO LOW BIDDER FOR THE FEMA BEACH NOURISHMENT PROJECT

Town Manager Hewett introduced Paul Carroll and Fran Way, the Town's consulting engineers for the sand project from Applied Technology and Management (ATM). They have worked with us very closely in the past and are very familiar with our past and current beach nourishment projects. Mr. Way presented information on the project. There is an eastern reach and a western reach. This is due to replacement of sand attributed to Tropical Storm Hanna. He reviewed the project constraints, which include grain size and color, which need to be evaluated when looking at borrow sites. Sediment quality is all driven by endangered species, primarily the loggerhead turtle. Mr. Way reviewed the bid tabulation. The borrow areas were one of the main factors reviewed in their evaluation and they had to meet the regulations laid out in the CAMA and Corps' permits. He went over each sand site that was submitted in the bids. Mr. Way explained that it was their conclusion that Elite had two sites, the First Quality site and Wayne Smith's site. He stated that it came to their attention that Elite didn't have Mr. Smith's permission and the First Quality site didn't have the volume and the sand quality is only marginal. Based on the submitted bids, DRC had insufficient borrow site information. Wayne's Backhoe site was acceptable. LD Weaver had an acceptable borrow site. They would be using the Clemmons site, but it wasn't included in our existing permit, so it would require permit modification. ATM is recommending the bid of Wayne's Backhoe based on the information submitted on March 9th. Mr. Way explained that project permitting with CAMA and the Corps is a big process. It is possible to use another area, but it will take time due to the permit modification that is needed. Wayne's borrow site was already permitted. Town Manager Hewett added that the project was advertised, a pre-bid conference was held a week before the bids were due and they made a plea that if any other sand sources needed to be evaluated they were to contact the engineer so they could get a head start on the qualification of the sand source. Mayor Holden asked the Board if they had any comments and asked if they wanted to recognize people from the

audience. Commissioner Kyser confirmed with ATM that if we let people modify their information at this point, the project would basically have to be rebid. The Board agreed to give the companies three minutes each to talk. Jim Walker from Elite Construction asked for 10 minutes. Mr. Walker introduced the people with him. Mr. Walker stated that the engineer's report is saying they are trying to change their bid, they are not trying to do that. Mr. Walker said his company attempted to purchase sand from Mr. Smith, but Mr. Smith indicated that he was interested in selling his land, not his dirt. Mr. Walker stated the bid documents do not require suppliers be listed in the bid, but they did list First Quality Sand and Wayne Smith's pit. He stated he is honoring the bid price he submitted and it is his responsibility to get the material. He stated the bid documents show that other site's besides Wayne Smith's can be used and they received a letter from Mr. Carroll today saying the sand from the Clemmons' site was satisfactory. Mr. Way explained that there are permitting issues that the Town needs to follow. Mr. Walker urged the Town not to go with the engineer's recommendation. Dave Tripp, owner of the Clemmons pit, stated he did his best to get his dirt approved. Mr. Carroll stated that the bid that came from Elite didn't include the Clemmons' site and it wasn't until the 11th that he received a mining permit for that site. Keith Ludlum from DRC stated they have all the permits, the dirt, testing has been done and his dirt is approved by his engineer. He would like to know why ATM won't approve it. Mr. Ludlum stated that the past few years the tilling has been done by him and asked the specifications on the tilling for this project. Mr. Carroll explained that the data on Mr. Ludlum's sand source was received after the bids were opened and they were not entertaining any more sites at the time it was received. Mr. Carroll stated that tilling specifications listed in Section 4.9 should be completed according to the requirements of state and federal permits (which do vary) or to a depth of 36". Mr. Way added that they received grab samples, but what they needed was to get borings so they could see each layer. The Corps and CAMA will visit the site before they will allow us to use the sand. Wayne Smith from Wayne's Backhoe Service stated that Elite did call to ask for a price, but at that time he didn't have it set. ESJ and Bamco met with him and received a price. He stated he probably had 100 people call him about the sand and he didn't call everyone back. Mayor Holden stated that the floor is closed because everyone had a chance to speak. Commissioner Glander, with the Board in agreement, requested that Elite be able to ask their question again. Mr. Walker wanted to know what about Elite's bid changed materially and stated it is not standard procedure to ask for suppliers. Mr. Carroll stated that what they are allowed to negotiate with the low bidder is just the terms of the contract. He explained that Elite submitted data on a site they cannot accept, so they now want to change the site. He stated that every sand site is different and they have to be able to approve it, but a mining permit was not submitted when the bids were opened. Mr. Carroll stated that this is the same process the Town used when we bid in 2002. Mr. Way explained that the Town is on an expedited schedule. The turtle window starts May 1st, so sand cannot be placed after that date and there are constraints from government agencies.

Mayor Holden stated we do not yet have the FEMA money we have been told we were going to get. He also explained that the Town has 18 months to do the project. He stated that hurricane season follows the summer and the Town would like to have as much beach as possible, but we do not have the funds in hand. It could put the Town in the position that we need to borrow money if a contract is signed. Mayor Holden stated the Town does have the right to break this bid up. Mr. Way stated the Town is trying to get the sand on the beach by May 1st, but the permits go to December 31st. The turtle window ends November 15th. Town Manager Hewett explained that even though we have a press release from Congressman McIntyre's office and a verbal okay from the State Emergency Management Office, the Town does not have a written okay from the executive branch of the Federal Emergency Management Administration. He stated we have been trying to get the project completed by hurricane season. The Board heard final comments from anyone who wished to speak in the audience.

Commissioner Lehr stated that appreciates everything that has been said, but during the last two major projects we had a hard time because the supplier couldn't deliver the goods. He stated the Town needs to make sure we meet all the requirements and that's why the Town brought engineers in. Commissioner Staley asked if there is any feel for when the Town will get the approval for the money. Town Manager Hewett stated the State Emergency Management Department told him to expect the obligation within a week. Commissioner Glander asked if it would be prudent to not sign a contract until we have the money in hand. Mayor Holden stated that the paperwork stated that the start date would be March 16th, so it would be up to the person awarded the bid. Town Manager Hewett explained this works on a reimbursement basis and we are waiting for the assurance that we will receive the money. Mr. Way showed a slide with 2008 mean high water line and a 1993 aerial and 2006 aerial. It shows where houses were lost. He stated that the nourishment activities have been very beneficial. He stated that at this time we probably have approximately 50 -100 feet of a storm buffer. Mr. Way stated that if the Town really wanted to delay this, the project would probably have to be rebid. Commissioner Glander asked if based on what was heard if the engineers' opinion was changed. Mr. Way explained that if it was a private entity they may be able to take the lowest bidder and change the borrow sites, but they are basing all of their information on the submitted bids. They feel that changing at this time would be setting a precedent where the due date wouldn't matter. Mr. Carroll added it is ATM's position that this is a modification of the bids.

Mayor Pro Tem Miller said the Town retained experts to give their opinion and they have heard it. Commissioner Kyser stated that if changing the borrow site is a modification of the permit; we would have to let everyone rebid.

Motion by Mayor Pro Tem Miller to accept the recommendation from Applied Technology and Management; second by Commissioner Staley; approved by unanimous vote.

ADJOURNMENT

Motion to adjourn at 5:16 by Mayor Pro Tem Miller; second by Commissioner Kyser; approved by unanimous vote.