

MINUTES OF THE MEETING OF THE CITY OF SEAFORD MAYOR AND COUNCIL

February 26, 2013

7:00 PM

Mayor William G. Bennett called the Regular Meeting to order with the following present: Councilwoman Grace S. Peterson, Councilwoman Pat A. Jones, Councilwoman Leanne Phillips-Lowe, Councilman J. Rhea Shannon and Councilman David Genshaw. Jim Fuqua, City Solicitor, Charles Anderson, Assistant City Manager, and Berley Mears, Director of Public Works, were also present.

Councilman Genshaw offered the opening prayer and Mayor Bennett led those present in the Pledge of Allegiance.

Mayor Bennett solicited changes to the agenda. Assistant City Manager Anderson stated that there were none.

Mayor Bennett called for a motion to approve the Minutes of the Regular Meeting of February 12, 2013. Councilwoman Jones made the motion to approve the minutes of February 12, 2013. Councilwoman Peterson seconded the motion. The motion so passed with all present voting in favor.

Mayor Bennett said that he and the Council members were able to see the new street sweeper prior to the meeting. He thanked Mr. Mears for bringing it up to City Hall. Councilwoman Jones asked if the street sweeper goes out in the rain. Mr. Mears said that it does sometimes, if it isn't raining too hard.

Mayor Bennett asked if there was any correspondence. Assistant City Manager Anderson said that there was none.

Assistant City Manager Anderson presented New Business # 1, bids for Porter Street. He explained that Council had previously agreed that if there were any bond issue funds remaining after completion of the Washington Street Stormwater Project, those funds should be used toward the Porter Street Flood Control Project. Teal Construction was the low bidder for the Porter Street project with a total base bid of \$818,818.00. Assistant City Manager Anderson said that the City has worked with Teal Construction several times in the past, and they are very capable of doing this project. After adding in costs to GMB for construction phase engineering and contingency, there was a shortage in funding of \$354,750.48. City Manager Slatcher was able to work with Senator Venables and Representative Short to obtain \$96,156.19 from the remaining Community Trust Funds from Nylon Boulevard and Locust Street paving; \$175,000 in storm water funds from Senator Venables; and \$30,000 in additional Community Trust Funds from Representative Short. This leaves a balance of \$53,954.29, which will be paid from the storm water impact fee reserve account. Assistant City Manager Anderson explained that this is a much needed project, and that the City was lucky to obtain over \$300,000 in funding to cover the cost. Mayor Bennett agreed that it is a much needed project, and he commended City Manager Slatcher for her hard work in obtaining the funds.

Mayor Bennett solicited any questions. There being none, he called for a motion. Councilwoman Phillips-Lowe made the motion to approve the bid to Teal Construction, Inc., the low bidder, in the amount of

\$818,818.00, and to approve using \$53,594.29 from the storm water impact reserve to fund this project, along with the remaining balance in the Washington Avenue bond issue in the amount of \$529,007.52, and acknowledging the remainder of the funding is provided by the legislative Community Trust Funds and storm water fund. Councilwoman Jones seconded the motion. The motion so passed with all present voting in favor.

Assistant City Manager Anderson presented New Business # 2, present for approval the agreement with George, Miles & Buhr for construction phase engineering services for Porter Street. He explained that this is a standard and necessary agreement for this type of project. He said that GMB will provide a limited scope of services, which means that City staff will interact with the contractor on a daily basis, freeing up the engineers' time and saving the City money. He added that the \$24,000 needed for this agreement is already included in the allocated funds for the Porter Street Project.

Mayor Bennett solicited any questions. There being none, he called for a motion. Councilwoman Jones made the motion to approve the agreement with George, Miles & Buhr for construction phase engineering services for the Porter Street Flood Control project in the amount of \$24,000. Councilman Genshaw seconded the motion. The motion so passed with all present voting in favor.

Assistant City Manager Anderson presented New Business # 3, bids for paving on Locust Street and Nylon Boulevard. He explained that five bids were received for this project; Chesapeake Paving was the low bidder with a total base bid of \$121,883.81. He said that the City has worked with Chesapeake Paving in the past, but has never contracted them directly. They were a subcontractor for A.P. Croll for paving done as part of the Washington Street Project, and their work was acceptable. He said that the City has obtained funding for this project from the Community Trust Fund. This project will finish the paving of both lanes of Nylon Boulevard from Locust Street to Stein Highway, and Locust Street from Nylon Boulevard to Sussex Avenue. Assistant City Manager Anderson explained that as the new homes have been built on Locust Street, there has been a lot of cutting and patch work done, and the roadway is in need of repaving. He said that the cost of this project will include milling and paving, as well as the installation of several handicap ramps in existing sidewalks.

Mayor Bennett solicited any questions. Councilman Genshaw asked when work would begin on this project. Assistant City Manager Anderson said that he estimated that the work would probably start in 4 to 6 weeks. He explained that the hot mix plants are currently closed for the season, so it is a good time to get on the schedule for paving work. Councilwoman Jones asked if the paving will cause any traffic problems. Assistant City Manager Anderson said that traffic will have to be re-routed, and that there will be no street parking on the areas under construction. He added that there weren't many complaints during the paving of the other sections of Nylon Boulevard, and that they don't expect any lengthy road closures. Mayor Bennett then called for a motion. Councilman Shannon made the motion to award the paving bids for Locust Street (Sussex Avenue east to Nylon Boulevard) and Nylon Boulevard (Locust Street north to Stein Highway) to the low bidder, Chesapeake Paving, in the amount of \$121,883.81, with payment from the legislative Community Trust Fund. Councilwoman Phillips-Lowe seconded the motion. The motion so passed with all present voting in favor.

Assistant City Manager Anderson presented New Business # 4, proposal from NCM for the Seaford Power Plant Generator Equipment removal. He said that Mr. Lance Fisher was present on behalf of NCM to

answer any questions that Mayor and Council may have. He said that the City has worked with Mr. Fisher on several projects in the past dealing with asbestos removal. When the City contacted Mr. Fisher about asbestos removal as part of the decommissioning of the Power Plant, he said that NCM would be interested in removing the engines, equipment, metal, and wiring in the building as well. Assistant City Manager Anderson explained that if the City works with NCM on this project, there will be no out of pocket expenses; salvage of the equipment will pay for the cost of the project. In addition, NCM will place the ABB medium voltage switch gear for sale on their website at \$85,000.00. Should it sell, NCM will retain a 5% fee for sale and the remainder will be given to the City of Seaford. He said that the City had reached out to some other vendors, but they were not up to the task for a project of this size. Mr. Fisher added that NCM will remove the diesel engines and dispose of asbestos and oils. He said that NCM has done several large projects, including work at the World Trade Center.

Councilman Genshaw asked if this project will affect the Parks Department employees. Assistant City Manager Anderson said that it may, as far as the staging of NCM equipment, and that would have to be coordinated with the Parks Department. He said that the City would have to develop a plan as to what they want left in the Power Plant, such as light fixtures, as well as removing some memorabilia that is currently being stored in the building. He estimated that the project would take 4 to 6 months to complete. Councilwoman Peterson asked when the work would begin. Mr. Fisher explained that there is a mandatory 10 day notification that must be given to DNREC and EPA before work can start. Councilwoman Phillips-Lowe asked what the odds were that the equipment would sell on NCM's website. Mr. Fisher said that the odds are 50/50. He said that it is a niche item that is geared toward smaller power plants, such as those in third world countries.

Mayor Bennett solicited any further questions. There being none, he called for a motion. Councilman Shannon made the motion to approve the proposal from NCM Demolition & Remediation, LP to remove all items as identified in their proposal dated February 14, 2013 as presented. Councilwoman Peterson seconded the motion. The motion so passed with all present voting in favor.

Assistant City Manager Anderson presented New Business # 5, Utility Dedication Agreement and George, Miles & Buhr letter of recommendation for the acceptance of specified water and sewer systems by Hampton Circle to the City of Seaford. He explained that Hampton Circle construction is complete and Certificates of Occupancy have been issued. The water and sewer lines that were installed have been tested and inspected, reviewed by the engineer, and it is recommended that those systems now be dedicated back to the City of Seaford. He said that this is advantageous to the City as these would become public mains that can be extended to service other areas. The advantage to Hampton Circle is that they are no longer responsible for long-term maintenance. He added that this is a standard Utility Dedication Agreement, and staff is recommending approval by Council.

Mayor Bennett then called for a motion. Councilman Genshaw made the motion to approve the Utility Dedication Agreement between Hampton Circle and the City of Seaford as per George, Miles & Buhr recommendation dated February 6, 2013. Councilwoman Peterson seconded the motion. The motion so passed with all present voting in favor.

Assistant City Manager Anderson presented New Business # 6, request to set tax appeal for March 12, 2013 from 7 p.m. to 8 p.m. He added that all members of Council must be present for Tax Appeal.

Mayor Bennett then called for a motion. Councilwoman Jones made the motion to set Real Estate Property Tax Appeal for March 12, 2013 between the hours of 7 p.m. and 8 p.m. Councilman Genshaw seconded the motion. The motion so passed with all present voting in favor.

Assistant City Manager Anderson presented New Business # 7, request from Mr. Frank Daniel Cannon, Jr. for changes in right-of-way encroachment enforcement. He asked Mr. Cannon to come forward. Mr. Cannon thanked Mayor and Council, and introduced himself to City Solicitor Fuqua. He said that he was going to touch on a few points from the letter he sent to Mayor and Council on February 19th, would answer any questions Mayor and Council may have, and then offer some closing comments. Mr. Cannon said that he feels that the City's Code Department is not customer friendly and is too unskilled for ongoing productive enforcement. He said that this pattern has been going on for some time and seems to be endorsed by some members of City management. He feels that City codes are being enforced selectively, unfairly and inequitably. He said that there is currently no guaranteed appeal for decisions made by the Code Department. Mr. Cannon said that it should be City policy that people can appeal Code violations they feel are unfair. He added that some of the City codes may be so inflexible that they don't allow for provisions or exceptions, as are found in other municipalities. Mr. Cannon then solicited any questions.

City Solicitor Fuqua explained that the right-of-way encroachment is not a code violation; it is a matter of someone exceeding their property line. He said that if a person crossed their property line onto their neighbor's property, it would be considered a civil trespass. In the case of someone exceeding their property line onto a City right-of-way, it is considered a right-of-way encroachment. Because it is not a code violation, it is not addressed specifically as far as an appeal process. City Solicitor Fuqua said that there are probably right-of-way encroachments that have been in existence for decades. He said that if a new encroachment were to pop up, that would probably be enforced immediately, whereas encroachments that have existed for a long time would most likely be enforced only if they are a nuisance, a safety hazard, or a hindrance to traffic. Mr. Cannon said that he did not agree that this was how right-of-way encroachments are being enforced. City Solicitor Fuqua said that the City is not out to locate all right-of-way encroachments and enforce them; rather, situations where such encroachment occurs would be dealt with on a case to case basis using judgment as to whether the encroachment poses a nuisance or threat to safety. Mr. Cannon then reiterated that he feels that current enforcement is selective, unfair and inequitable.

City Solicitor Fuqua asked Mr. Cannon if he thinks that the City should enforce all right-of-way encroachments. Mr. Cannon said that he thinks the encroachments should be dealt with using common sense. City Solicitor Fuqua agreed. He again stated that the encroachments would most likely be enforced and/or removed if they were a nuisance or threat to safety. Mr. Cannon asked who would make that judgment. City Solicitor Fuqua said that City administration would make the judgment. Mr. Cannon said that it would be necessary and proper to have an appeal process in place if a person felt that the judgment of City staff was insufficient. City Solicitor Fuqua stated that because the right-of-way encroachment is not a code violation, there is not a provision for appeals. He said that the City Council has always been open to citizens who are aggrieved; those citizens have the right to request to be put on the agenda for a Council Meeting, however they don't have the right to be put on the agenda. If it is deemed appropriate, those citizens would then be given the opportunity to present their grievance before Council. City Solicitor Fuqua explained that a right-of-way encroachment is a resident using the City's right-of-way without permission.

He said that he is not aware of this being a frequent problem in the last 25 years. He said that there should be common sense used in enforcement, and that there should be a mechanism for any citizen who is dissatisfied with a decision. Mr. Cannon agreed.

City Solicitor Fuqua then referenced Mr. Cannon's letter, in which he stated that he didn't feel encroachments should be enforced unless there is a change of title on the property. He said that he doesn't think that the enforcement can be that iron-clad. He said that if an encroachment becomes a safety hazard or nuisance, the City cannot wait for that property to change hands before enforcing the issue, so there must be some judgment involved. He added that it would be unfair to new property owners to be forced to correct encroachments that had been in existence for years. Mr. Cannon asked if the benign neglect on the part of the City would then persist. City Solicitor Fuqua again stated that unless there was some type of problem, the right-of-way encroachment would most likely not be enforced. Mr. Cannon gave an example of a man moving into a house, where next door there was a railing in place for a handicapped woman to be able to get into the house. The man doesn't like the railing, thinks it's ugly, and knows that it is encroaching on the right-of-way, so he files a complaint. Mr. Cannon asked if this situation would be dealt with in a regular and reasonable way, or that because a complaint was filed the encroachment would be enforced. City Solicitor Fuqua said that just because a complaint was filed, doesn't mean the right-of-way encroachment would be removed. Mr. Cannon said that it has in the past. City Solicitor Fuqua stated that the matter could come before City Council, and a license agreement could be issued, which is permission from the Council for the encroachment to exist. It is not a right to encroach, but rather permission for as long as Council sees fit. He explained that a similar situation could occur between two property owners. If a person's shed was partially sticking onto his neighbor's property, the neighbor may put into a place a license agreement, allowing it as long as the shed is standing, but if the shed gets knocked down or destroyed, it cannot be rebuilt in the same place.

Mr. Cannon went on to say that he feels that the Code Department has a lot of important things to take care of, and he doesn't feel like the trivial things they have been taking care of should occupy their time. He asked that Mayor and Council take this into consideration. He said that there is work to be done, and the Code enforcement officers should not be nitpicking. Mr. Cannon stated that he has had some productive discussions with City Manager Slatcher about these issues. He said that City Manager Slatcher endorses the professional behavior of Code enforcement officers, and recognizes that there are problems with inequitable enforcement. He feels that current code enforcement practices are giving the City of Seaford a bad reputation. He said that we don't need to read newspaper articles about the City in a Wilmington newspaper. Mr. Cannon said that he is worried that if the City continues to get a "black eye" over these kinds of issues, people will not want to move to Seaford. He said that he doesn't think the City can afford to continue to tolerate unfriendly and unproductive code enforcement; nor can it afford to tolerate selective and inequitable enforcement, especially without appeal. He added that some parts of the City Code may need to be reexamined. He said that there are municipalities who do allow for exceptions, such as wildlife habitats.

Mr. Cannon finished by saying that he thinks it is time for a change, and he is no longer willing to pay the cost, monetarily or otherwise, for unfriendly, counterproductive, inequitable enforcement practices. He thanked Mayor, Council and City Solicitor Fuqua. Mayor Bennett then thanked Mr. Cannon.

Assistant City Manager Anderson presented Old Business # 1, second reading and adoption of Chapter 17 of the Municipal Code – Cable Television Rate Regulation. He said that the first reading took place at the last Council Meeting on February 12, 2013.

Mayor Bennett then called for a motion. Councilwoman Peterson made the motion to adopt the ordinance to amend Chapter 17 of the Municipal Code of Seaford, Delaware relating to “Cable Television Rate Regulation” as presented. Councilwoman Jones seconded the motion. The motion so passed with all present voting in favor.

REMINDER OF MEETINGS & SETTING NEW MEETINGS

- March 1st – Luncheon at Heritage Shores – Senator Carper will be in attendance

ANNUAL MUNICIPAL ELECTION INFORMATION

Election date is Saturday, April 20, 2013 from 10:00 a.m. until 6:00 p.m.
Candidate filing deadline and Voter Registration deadline is March 22, 2013 by 5:00 p.m.
All interested candidates must file with the City Manager before the filing deadline.
Only one Council Member’s position is up for election. The position is currently held by Councilwoman Leanne Phillips-Lowe.
To date only Councilwoman Phillips-Lowe has filed.

COMMITTEE REPORTS

Councilwoman Peterson reported that the Electric Department has been busy with routine maintenance, as well as working on the final phase of the underground cable replacement at Seaford Meadows. She said that there have been no electric blips or outages in the last two weeks, though there were two residents that were without power for approximately three hours for service upgrades.

Councilwoman Jones reported that the Administration Department has been working on the 2014 budget writing process. She said that June Merritt has been busy assisting retirees with health insurance and pension questions, and has also been preparing requests for project reimbursements, personnel paperwork, and routine business. June recently attended a meeting with Travelers Insurance for their annual claims review, as well as a meeting with Buck Consultants in regards to pensions. Councilwoman Jones reported that the WIPP online payment software implementation is complete. She said that the bills for January consumption were sent out on February 13th. The Public Works Department will be reading meters February 25th – 27th and the Electric Department will be reading meters February 28th – March 1st. Disconnect notices were sent out on February 25th, and water and electric disconnects will be done on March 6th.

Councilwoman Phillips-Lowe reported that Trisha Newcomer has attended several meetings recently for Economic Development, the Chamber of Commerce, Riverfest and Hooper's Landing, as well as making some updates to the City's website. She reported that WWTF has been busy with routine maintenance. She reported that paving bids are in, and that Public Works employee training is complete for the new street sweeper. The fencing project at Hooper's Landing is underway. She reported that interviews took place for two open positions, one in Public Works and one in WWTF, and that there are potential candidates for both positions. She said that steel construction is ongoing for the FedEx site, and steel construction is scheduled to begin this week at the High School. The Code Department has issued 7 building permits, and the work on the Stein Highway entrance to 7-11 is 90% complete.

Councilman Shannon had nothing new to report for the Fire and Police Departments.

Councilman Genshaw reported that the new lawn mower for the Parks Department should be delivered this week. He said that the Hispanic soccer league will be kicking off their season on March 5th. The Easter Egg Hunt at the Ross Mansion will be held at 10 a.m. on Saturday, March 23rd; the rain date is Sunday, March 24th. He reported that Scott Coulbourn has been working on the Walking Club, which is scheduled to begin sometime in April. Men's and women's softball seasons will be starting soon. The first Movie Night at the Ross Mansion is scheduled for Friday, May 3rd; the movie being shown is The Lorax. He said that the Recreation Department has been checking into a way for people to complete applications online for Recreation programs.

Mayor Bennett added that the fence is looking really nice at Hooper's Landing, and he has received a lot of positive comments about it.

With no further comments, Mayor Bennett called for a motion to close the Regular Meeting of Mayor and Council. Councilwoman Phillips-Lowe so moved. Councilwoman Peterson seconded the motion and the motion so carried with all present voting in favor. Mayor Bennett closed the meeting at 7:44 p.m.

Charles Anderson, Assistant City Manager

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