

**TOWN OF DUCK
TOWN COUNCIL
MID-MONTH MEETING
August 21, 2023**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 1:00 p.m. on Monday, August 21, 2023.

COUNCIL MEMBERS PRESENT: Mayor Don Kingston; Mayor Pro Tempore Monica Thibodeau; Councilor Sandy Whitman; Councilor Rob Mooney; and Councilor Tony Schiano.

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Drew Havens; Director of Community Development Joseph Heard; Police Chief Jeffrey Ackerman; Fire Chief Donna Black; Town Attorney Robert Hobbs; Finance and Human Resources Administrator Jessica Barnes; Public Information and Events Coordinator Betsy Trimble; Ken Willson of Coastal Protection Engineering; Richard Wiatt of VHB; Brandon McAdams of VHB; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Public Information and Events Director Kristiana Nickens.

Mayor Kingston called the meeting to order at 1:00 p.m.

DISCUSSION/CONSIDERATION OF RESOLUTION 23-10, A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF DUCK, NORTH CAROLINA, IN SUPPORT OF THE NATIONAL FLOOD INSURANCE REAUTHORIZATION AND REFORM ACT OF 2023

Mayor Kingston reminded Council that Donna Creef from the Outer Banks Association of Realtors had given a short presentation at Council's August 2, 2023 meeting where she asked Council to adopt a resolution in support of the National Flood Insurance Reauthorization and Reform Act of 2023.

Mayor Pro Tempore Thibodeau moved to adopt Resolution 23-10 as presented.

Motion carried 5-0.

DISCUSSION/CONSIDERATION OF A CONTRACT WITH COASTAL PROTECTION ENGINEERING FOR A TOWNWIDE BEACH AND STORM VULNERABILITY ANALYSIS

Mayor Kingston pointed out that this item was on Council's Consent Agenda for their August 2, 2023 meeting with Councilor Mooney asking that it be removed for further discussion.

Town Manager Drew Havens was recognized to speak. Town Manager Havens explained that Council had a conversation at their August 2, 2023 meeting and asked if there could be further discussion at this meeting with Ken Willson. He stated that Ken Willson was present via Zoom and would be discussing the two aspects of the contract as well as answering any questions Council may have.

Ken Willson of Coastal Protection Engineering was recognized to speak. Mr. Willson went on to give a short overview of the Town-wide beach and storm vulnerability analysis contract to Council and the audience, touching on the annual monitoring that is completed. He noted that the contract would be for them to look at both the north and south of the beach nourishment project area and the changes that have occurred between 2021 and 2023. He added that the vulnerability analysis was first completed in 2013 and provided a lot of the information needed to determine where the beach nourishment project was warranted. He noted that in 2015 and 2019 the analysis was duplicated with the latest survey data they had in order to track the trends outside of the beach nourishment project.

Ken Willson stated that at Council's Retreat back in February, he asked Council whether they wanted a proposal for this summer to go ahead and take the data to complete the monitoring outside of the beach nourishment area and to update the vulnerability analysis since it was not done since 2019. He stated that they put together a proposal and provided it to Council at their August 2, 2023 meeting.

Mayor Pro Tempore Thibodeau clarified that the s-beach analysis will be completed for the entire Town. Ken Willson stated that she was correct. Mayor Pro Tempore Thibodeau clarified that the survey data would be what CPE would use. Mr. Willson stated she was correct. Mayor Pro Tempore Thibodeau clarified that it was the same analysis across the entire Town to see where the vulnerabilities were. Mr. Willson stated she was correct. He added that since the last time it was completed in 2019, it would most likely show no impacts within the beach nourishment area.

Mayor Kingston asked what the projected timeline was to complete the analysis. Ken Willson stated that it was pretty straightforward and he expected to have the results in 60 days.

Councilor Schiano asked how often the analysis should be completed. Ken Willson thought the monitoring of the entire shoreline should be completed annually and the storm vulnerability should be every three years. He noted that he did not have an issue with Council wanting to wait on doing this, but one issue would be that the sooner they complete the storm vulnerability analysis and could start planning for it from a financial standpoint, the easier it will be to deal with any issues that may come up. He added that Council could discuss some financial planning at their February 2024 Retreat or move it out a year and discuss it in February 2025 with a renourishment project happening in 2027. He thought that once the storm vulnerability analysis was completed, he didn't

think it would need to be completed again in the cycle before the 2027 project unless he saw something out of the ordinary.

Councilor Whitman asked if the study would help the Town if it had to go back to FEMA for any reimbursement for lost sand in the renourishment area. Ken Willson stated that it would not, adding that it did not have anything to do with the Town's eligibility for FEMA funds.

Councilor Mooney asked when the monitoring was done, if it was in addition to whatever would happen to the area that was currently in the project and expanding it. He further asked if it would change locations to a different area in Town if the necessity presented itself. Ken Willson stated that they have completed the monitoring every year since before the 2017 project and it has always been completed from the southern Town limit to the northern Town limit with erosion rates and shoreline change rates being evaluated throughout the entire Town and not just in the project area. He added that when the storm vulnerability analysis is completed, they do the same thing throughout the entire Town every three to four years. He stated that if the analysis is completed and if they see continued erosion rates and run a storm vulnerability analysis to see that the number of threatened or vulnerable structures has increased since the last analysis, there would be a conversation where it would warrant a beach nourishment project in that threatened area. He stated that the ultimate goal of the project has always been that everyone along the Town of Duck is equally protected.

Councilor Mooney clarified that Ken Willson did not foresee not continuing with the areas that were nourished twice and moving it to other areas. He further clarified that it would just expand instead. Ken Willson stated he was correct. He added that renourishment cycles were a continuous process. He noted that he has seen areas that, over time, the frequency that an area needs to be renourished decreased but had not seen a situation where the need to renourish at some frequency has completely gone away.

Councilor Mooney pointed out that the contract showed \$18,000 plus for the monitoring and analysis with another \$8,500 for using something called s-beach. He asked what that was. Ken Willson explained that s-beach is a numerical model that takes the beach profile data that was collected after the beach project was built and simulates a storm or multiple storms. He stated that it simulates what would happen to that beach profile once a storm impacts it. He stated that from there, he would receive an output file in order to perform an analysis that compares the output file to the initial beach profile in order to determine a vulnerability point on the profile. He noted that on some profiles, the vulnerability point may be sufficiently seaward of any of the developed cones or pools. He added that in other areas it may show that the impact point was in line with a structure or landward of a structure. He stated that that they have used this analysis multiple times since 2013 for the Town in order to determine what is and what is not vulnerable based on the designed storm that they have used, which was Hurricane Isabel. Councilor Mooney clarified that the same analysis was used but was using new data. Mr. Willson stated he was correct.

Mayor Pro Tempore Thibodeau clarified that the analysis or the survey that was built into the project that was expanded for the entire Town included the bathometric information or if it was separate. She asked if the surveying that has been completed outside of this project was any more detailed. She added that she was in favor of using what the Town has now to see where the Town was because one wasn't completed since 2019 in order to see what the changes were. She asked if there would be any reason to wait. Ken Willson explained that the survey specifications given to the contractor were the same as what they would do on annual basis. He stated that he wanted the survey to look very similar to cover the same areas that they would cover from year to year while completing the monitoring. He added that it was not more or less and meets the same standards that they would provide. He noted that in 2019, they did some supplemental bathometric surveys because they had determined that there were some offshore beaches in the Towns of Kitty Hawk and Kill Devil Hills that were impacting some of the erosion rates along the project area. He stated that they wanted to confirm the absence or presence of these types of features off of the Town of Duck. He stated that they ran the survey and the conclusion of it showed that those features did not exist off of the Town of Duck.

Councilor Mooney suggested that the contract be put off for at least a year due to the increased cost of the BRIC project. He pointed out that it wasn't a lot of money, but every little bit will help with the BRIC project. He thought there wasn't a pressing need for the information that CPE will discover with the vulnerability analysis. He felt that this was something that the Town could wait a year on rather than compound what was currently happening.

Mayor Pro Tempore Thibodeau understood Councilor Mooney's concern regarding saving money. She pointed out that the survey is completed each year, adding that she was interested in seeing the erosion rates in the other parts of Town. She stated that they had to presume that things were fine in the project area since it was just nourished, but the changes in the rest of the Town were what she was interested in seeing. She reiterated that she understood Councilor Mooney's concern with regard to the cost, but pointed out that it gives the Town a window into the entire Town and she felt the residents and property owners would be interested in seeing how things have changed over the last four years.

Mayor Kingston agreed with Mayor Pro Tempore Thibodeau's comments. He thought Council needed to stay on the schedule, adding that the money was budgeted for the coming year. He pointed out that there may be other opportunities if Council wanted to look at cost savings as the year went on. He thought Council needed to understand what was happening on the beach and stay on the schedule. He stated that he was in favor of moving forward with the contract as presented.

Councilor Schiano stated that he was in favor of moving forward with the contract. He pointed out that the Town's most important asset was the beach, adding that it was incumbent upon Council to stay on top of what was happening. He stated that it was important to help the Town's residents stay comfortable as to what was happening. He added that it also protects the Town's tax revenue. He understood Councilor Mooney's

concern with regard to the cost but did not think this was an item that needed to be put off. He reiterated that he was in favor of moving forward with the contract.

Councilor Whitman stated that he was in favor of moving forward with the contract. He agreed with the rest of Council that this was something that should be done and continue to be done.

Mayor Pro Tempore Thibodeau moved to approve the contract as presented.

Motion carried 4-1 with Councilor Mooney dissenting.

Mayor Kingston thanked Ken Willson for his time.

DISCUSSION/CONSIDERATION OF A CONTRACT WITH FRED SMITH COMPANY CONSTRUCTION FOR THE NC 12/LIVING SHORELINE PROJECT

Town Manager Havens stated he has the final bid numbers from Fred Smith Company Construction and thought it was worth having a discussion between Council and VHB about the contract. He stated that the question was whether or not Council wanted to approve a contract with Fred Smith Company, adding that part of the approval would include a budget amendment in order to fund the project.

Ricky Wiatt of VHB was recognized to speak. Mr. Wiatt stated that he has been the Project Manager with Chris Dewitt on previous phases of the sidewalk project, adding that this was more of a roadway project. He explained that they put the project out for bid and in the first round no bids were received. He pointed out that North Carolina Procurement requires them to have three bids, which the contractors also were aware. He stated that they immediately put it back out to bid and received two bids with Fred Smith Company Construction being the low bidder. He stated that they evaluated the bid and looked at their qualifications, noting that they were a very large, reputable company out of Raleigh, North Carolina. He stated that they went back to Fred Smith to let them know that the bid was above the available funds and asked if they could look at value engineering alternatives. He stated that since that time, they have met with them and had telephone conversations with them. He noted that some of the value engineering were means and methods type of value engineering, which was not a change in the product. He added that they were, as engineers, speculating on the best way to build it and were not contractors, so they have to work with a contractor to evaluate what they were thinking.

Ricky Wiatt stated that one of the ideas was demolition which was the largest savings that they were able to get from Fred Smith. He explained that instead of taking the full asphalt section of roadway out, hauling it away and bringing in new material, Fred Smith was proposing a full depth reclamation which was where they take the existing asphalt and grind it up to become more like an aggregate material which was porous. He stated that during the design, they looked at just leaving the road there. He stated that they had

meetings with the utility companies, adding that this would have saved money, noting that if they had left the old road in place and brought up the new elevation three feet higher in some locations, it would have been much more difficult if there was an issue with a major Dominion Power line that runs under the road or an issue with the water line. He stated that utility companies in the future would have to cut through the new pavement, going through three feet of fill, and cutting through the old pavement. He pointed out that was one of the reasons why they elected not to go that route.

Ricky Wiatt stated that the other reason was because of the stormwater. He explained that there is some water that goes underground and moves underneath the surface. He stated that the contractor suggested filling it up because they were thinking about ease and speed, but it would have created a three-to-four-foot layer that was impervious and would not let the ground water release.

Ricky Wiatt stated that they accepted the option of doing a full depth reclamation which would be a \$102,814 savings. He stated that they looked at other minor savings and worked with NCDOT with Brandon McAdams of VHB speaking with representatives from NCDOT regarding using asphalt millings as the base material versus bringing in an aggregate. He explained that it was readily used and becoming much more popular with the Department of Transportation, but they still do not accept it, so they found that it could be used on side streets which have less traffic volume. He stated that NCDOT would not accept that alternative in the NC 12 paving section. He noted that it would have given them a larger savings to use the recycled asphalt product there, but NCDOT would not allow it.

Ricky Wiatt stated that, overall, they were able to save approximately \$150,000 through the value engineering, but due to inflation, rising costs, and the complexity of the project, the longest discussion was about maintenance of traffic. He stated that they met in person with Public Safety and Town officials present to talk through the options that may have sped the project up in the construction world. He noted that instead of a three-to-four-month asphalt period where they would be tearing the road up, they may have been able to shave a month off. He pointed out that in order to do that, it would have required longer one-lane periods. He stated that after the discussions, it would have been a larger opportunity for an issue to arise. He stated that after weighing the options with Fred Smith Company, they decided not to make any changes to the maintenance of traffic plan and kept with the design plans. He stated that they permitted five closures of up to 12 hours, explaining that those five closures would be planned with Public Safety throughout the project.

Ricky Wiatt stated that Fred Smith did not want traffic backups in Town because they could not get the product in or out of the work zone. He stated that they were a reputable company and would work with VHB during the construction process. He thought all parties agreed that they had the best plan moving forward. He noted that if Fred Smith Company Construction was awarded the project, their plan would be to move in and start mobilizing near the end of September/early October with their first part of construction comprising of building the stone revetment and then the subcontractors would be working

on the offshore sills. He stated that that work would not impede traffic as much, adding that they may shift the driving lanes and utilize the shoulder but still keep two lanes open while they work. He stated that a full lane closure was not a possibility until October 28, 2023 due to the shoulder season of tourist traffic.

Mayor Kingston asked about pedestrian traffic on the east side of Duck Road. Ricky Wiatt stated that the contractor was required to maintain access for pedestrians. He stated that it was a discussion item that came up and the current contract requires the contractor to maintain access for pedestrians. He stated that it may be a gravel path or if they build on the west side with the revetment, they would have a protected shoulder there. He added that as part of the contractor's plan, they have to present the phasing and how that shift will work. He stated that they began looking at limiting pedestrian access but the contractor did not think the savings were not worth the risk or concern to the general public.

Mayor Kingston asked if the utilities would be relocated and moved up or left at the current depth but having an easier access. Ricky Wiatt explained that they would be left at the current depth because there is nothing wrong with them there. He stated that they met with the utility companies, and there were some minor pedestals involved along the edges that were required to be relocated. He stated that water meters will have to be raised and would be coordinated with the Dare County Water Department.

Councilor Whitman asked if the reclaimed material could be used underneath the sidewalk. Ricky Wiatt stated that NCDOT gave them a small credit for using it on the sidewalk, but it wasn't a lot. He added that they were proposing it under the sidewalk, on the side street tie-in in lieu of ABC.

Councilor Whitman pointed out that this was a three-year-old project. He asked how much the concrete and asphalt prices had risen. Brandon McAdams of VHB was recognized to speak. Mr. McAdams explained that it depended on geography as well as other factors such as hauling, inflation in gas prices, and the overall price increase of the product. He didn't think it rose by half but thought it was about 30-50% in growth. He added that concrete prices have fluctuated in a similar manner. Ricky Wiatt stated that he looked at the 2019 unit costs for the wood retaining wall, adding that the projects were typically bid in a lump sum and they normally receive extras in case more items are added in so they could get unit prices. He stated that in 2019, he looked at the three to four foot retaining wall which was \$140 per linear foot, adding that today it costs \$300 per linear foot. He noted that they had the same detail in all four phases and were around the same price but then saw a significant increase.

Councilor Whitman noted that all of the costs were not covered by grants. He stated that there were the sidewalks, the retaining wall, the sills in the water as well as the roadway, adding that it was three separate projects grouped into one. He asked where it fit in and how much of the increase was above the initial estimate. Ricky Wiatt thought it was across the board. Councilor Whitman pointed out that it was not just in the roadway work but was where the majority of the money was. He added that there were increases

in sill prices, the sidewalk prices, and the road prices, which were all one group. Ricky Wiatt agreed, adding that shoreline improvements included the revetment. He stated that they were always going to rebuild the revetment but were not going to bring it up three feet higher, so that cost grew because they were elevating the road to get it from elevation two to elevation five in the lowest point. He agreed that the stone cost, with just the hauling and fuel prices, was one of the places the contractor offered to use a smaller stone, but the savings was approximately \$85,000. He stated that they evaluated that cost and it did not seem like a good decision to switch to a smaller stone.

Councilor Whitman asked how much the turning lane would add to the cost. Ricky Wiatt stated he had viewed the Council meeting from the Fall of 2022, adding that he thought they were at \$100,000 at that time. He pointed out that two retaining walls have since been added and knew they cost \$300 per foot. He stated that he didn't have the exact figure but thought it was approximately \$150,000.

Councilor Whitman pointed out that it was really not \$1 million over because everything was not completely covered in the grants, adding that the Town would have to come up with some of the funding and a turning lane has been added. He thought the Town was only \$500,000 short based upon estimates from a year ago. Ricky Wiatt stated that they enjoy designing and engineering projects, but they do not enjoy trying to guess what the costs will be. He noted that they go by local data, adding that this was not a normal job for the contractor due to the constraining nature. He explained that the difference in grade where a contractor has to build one lane three feet higher while keeping traffic moving as well as a lane that is three feet lower and moving traffic off of the side streets, it was very different from what they were doing elsewhere. He stated that the project was extremely vital to the Town as well as Currituck County. Councilor Whitman agreed.

Councilor Schiano asked for an explanation on the substitute non NCDOT concrete mix. Ricky Wiatt explained it was one less certification, adding that when a concrete plant has to have a mix certified by NCDOT, the mix is sent to their lab to be evaluated and certified by NCDOT. He stated that a non-certified was not certified by NCDOT. He noted that they still require all of the testing so the project includes testing by a contractor, where on every concrete pour the contractor will collect cylinders and do a 7-day, 14-day and a 28-day break to verify that they were getting those strengths. He noted that they will still get the strength, but it was not going to have the stamp from NCDOT on it.

Councilor Schiano asked about future maintenance issues. Ricky Wiatt stated that the strength was what they were looking for, adding that the concrete testing will still be required. Councilor Schiano asked about the change on the way the curbing would be completed. Mr. Wiatt stated that it was a good idea by the contractor. He added that VHB wanted a vertical barrier up against the rock since the rock was not a perfect shape and they wanted something clean that would not be sticking out partially into the sidewalk. He stated that they proposed an 8x12 curb to run along the edge. He added that the contractor stated that they would still construct the 8x12 curb, but they wanted to do it with the sidewalk all in one pour. He noted that the Town would still be receiving

the same amount of concrete, but that it would be a continuous pour which was a savings in their labor of the form work versus having to complete two separate pours.

Councilor Schiano asked if the \$1.222 million was entirely due to inflation or if there were project additions. Town Manager Havens stated that the only addition was the center turn lane, which included building retaining walls and some additional design work. Councilor Schiano asked how much the turning lane would cost. Ricky Wiatt thought it was approximately \$150,000. Councilor Schiano pointed out that none of the places he's been involved with business-wise have indicated that prices were decreasing, adding that the only thing decreasing was transportation. He stated that diesel fuel is decreasing and he suspected it will not be cheaper to wait another year or two. He stated that it was disappointing that more funds could not be found because this project was not only beneficial to the Town of Duck, but also to the State and Currituck County since they pass through the Town. He reiterated that it was disappointing that the other agencies cannot be convinced to contribute more. He asked if Currituck County was asked to contribute. Town Manager Havens stated that he did not ask Currituck or Dare County to contribute. Councilor Schiano thought they would say no. Town Manager Havens agreed, adding that they were not in the road business nor could they be in North Carolina.

Mayor Pro Tempore Thibodeau appreciated the overview, adding that she was thinking about the pain the Town was about to inflict on the citizens of Duck once the project started. She stated that communication will be needed and questions will need to be answered as to what the Town is doing and why. She added that there were a lot of moving parts to the project and the genesis of it was that the road was not supposed to be part of it, instead it was supposed to be the sidewalk and the shoreline stabilization. She stated that the Town did receive generous funding opportunities where it would not cost a lot. She stated that it was disconcerting that NCDOT will not help the Town with the funding of the construction. She clarified that NCDOT supported the project, wanted it and would be responsible for maintaining it. Town Manager Havens stated that it was NCDOT's roadway and the Town's sidewalk, so they would be responsible for maintaining the roadway.

Mayor Pro Tempore Thibodeau stated that she will be looking for some creative communication from Public Information and Events Director Kristiana Nickens regarding the project. Town Manager Havens stated that Director Nickens will be involved in the preconstruction meetings as well as the ongoing meetings to be sure that the Town is communicating. Mayor Pro Tempore Thibodeau thought things had to be broken down so the general public understood the project.

Mayor Pro Tempore Thibodeau asked if everyone was comfortable with the timetable of three to four months for the project. Ricky Wiatt explained that Fred Smith Company was required to be finished in 270 days. He pointed out that some of that was up front mobilization, adding that there will not be any roadwork started until November through February/March. He stated that the sills could take two months and if they start those in October, then the roadway may not start until December. He stated that it was discussed

regarding having the need to have more frequent meetings with the Town, Public Safety, and the contractor on a biweekly basis to look ahead and make sure that the information gets out to the public. He thought there were some creative ways to remind the public why the project was being done.

Mayor Pro Tempore Thibodeau clarified that the utilities would go first with the revetment. She asked if the contractor gets penalized if the utility companies delayed work. She further asked if there would be a case where it would take longer than 270 days due to an outside factor that gave the contractor a longer period of time to complete the work. Ricky Wiatt stated that there could be a potential delay. He stated that a few years back there was a delay due to a utility issue. He added that the contractor and the utility company do not want to be working in April or May. He felt that the communication will be there with the contractor notifying the utility company as they are getting to certain areas. He stated that there was a lot of working hand in hand because the utility company cannot come and move their pedestal up before the contractor starts filling. He stated that it was a lot of coordination.

Councilor Mooney clarified that there will be five 12-hour total closures. Ricky Wiatt stated that that was what was presently permitted. He stated that there will be one lane closed for 12 hours five times over the course of the project. Councilor Mooney clarified that there will always be one lane of traffic open. Mr. Wiatt stated he was correct, adding that they weren't sure if the contractor will utilize that option. He stated that there will be some instances where, at the end of the workday if there is not a working surface, both lanes of traffic will not be opened. He noted that most days they will try to make sure both lanes will be opened, adding that they did permit the contractor five times that they could have one lane closed for a 12-hour period. Brandon McAdams noted that there will be one lane alternating traffic during the workday with flaggers in place while the construction crews are working.

Councilor Mooney clarified that there was no plan for the workers to work overnight. Brandon McAdams stated that the workers could perform midnight work but it would be considered work hours. He explained that the way the contract was written was that the contractor has to have two lanes of traffic open at the end of every shift. He stated that they could not leave with only one lane of traffic open.

Councilor Schiano clarified that the workers were not required to work 24 hours. Ricky Wiatt stated he was correct. He stated that the big issue with working at night is that asphalt cannot be brought in at night. He added that the other issue was that there wasn't a large stockpile area, so the contractor could not bring in a lot of material so they could work all night long.

Councilor Mooney asked if there could be a discussion with Resort Realty to use an area of their property to stockpile material. Ricky Wiatt stated that they identified four sites for staging and it was usually up to a contractor to negotiate with private owners to use their property. He noted that they have not gotten to that point in the discussions regarding which sites Fred Smith decided. He added that Resort Realty seemed like a

logical spot and the owners were open to discussion, but he wasn't sure what was worked out with the contractor. He pointed out that there were a few spots along the roadway such as Sea Colony, which has two parking areas that were in the work zone. He stated that the problem was handling the materials twice as it drives up the cost.

Mayor Kingston stated that, to the best of his knowledge, every time there was an issue with water and rocks on the road, NCDOT does not help so it has been a Town expense. He asked if there has been any communication with Currituck County regarding the project. Town Manager Havens stated that they were aware of the project but he did not have a timeline to give them yet. Ricky Wiatt stated that it was step one, assuming once the contract is signed with Fred Smith, they will give a schedule that lays out all of the critical paths which will be relayed to all stakeholders.

Mayor Kingston thanked Ricky Wiatt and Brandon McAdams for their presentation.

BUDGET AMENDMENT

Town Manager Havens explained that the budget amendment would adjust the Fiscal Year 2024 budget to include increased costs for the NC12 Living Shoreline and Resiliency Project, which included increasing the FEMA Grants revenue account by \$155,444 for the additional anticipated funds from the grant as well as increasing the Fund Balance by \$1,222,650 and increasing the Streets and Highway expenditures by \$1,378,094. He noted that the unassigned Fund Balance will be impacted, adding that if the Town added approximately \$450,000 to the Fund Balance in Fiscal Year 2023 and drew down on the \$1,222,650, it would bring the Fund Balance down to \$6.6 million. He pointed out that that was where the Town ended at the end of Fiscal Year 2021.

Town Manager Havens noted that the Town policy talks of percentage and the unassigned Fund Balance is a total of the Town's expenditures. He stated that the Town has had some really good financial years and has been able to add significantly to the Fund Balance, getting it above the 75% target. He thought the Town would finish Fiscal Year 2023 at 77% for the unassigned Fund Balance. He added that taking the \$1.2 million out will drop the Fund Balance down. He explained that the way the policy was written was that if it drops below 50%, the year following the discovery of this occurrence, which will be Fiscal Year 2025, Council will have to budget for a replenishment over four years in order to get it back to the 50%. He didn't believe that the Town would have to do a direct appropriation into the Fund Balance. He recommended that Council approve the contract with Fred Smith Construction Company as well as the budget amendment.

Councilor Schiano clarified that everything will happen in Fiscal Year 2024. Town Manager Havens stated he was correct. Councilor Schiano clarified that it will not extend into another year. Town Manager Havens stated he was correct.

Councilor Whitman asked what happens to the FEMA money if Council decided to award the contract. He asked if it would still be in limbo. Town Manager Havens stated

that it will not affect the FEMA grant. He explained that the rule was that the construction activity could not begin on the BRIC funded portion of the project until the Town had an award letter in hand. He stated that Senators Tillis and Murphy were both reaching out to FEMA with Senator Hanig reaching out to North Carolina DEM as this was a pass-through with the money going from FEMA to the State to the Town. He noted that it was the same way the award letter would travel. He added that Drew Pearson of Dare County Emergency Management has been constantly contacting the representatives at FEMA as well as reaching out to the Interim Administrator for the southeast region of FEMA to ask for a letter to be generated. He pointed out that the Town was waiting on this letter and no one could tell him why it hadn't been received.

Town Manager Havens stated that Council could award the contract, staff could sign the contract with Fred Smith, and as long as they don't go out and start construction, the funding will not be in jeopardy.

Councilor Whitman thought Chris Dewitt and Ricky Wiatt had come before Council previously and stated that the project had to be completed by July 1, 2020. Town Manager Havens stated that there have been a lot of promises on the project and the grant funding. He pointed out that the other funding partners with the Town have been accommodating in extending their grants; however, the extensions have ended.

Councilor Schiano asked if in the process of the project it was feasible for the Town to schedule fund distributions so that the Town's funds get put in last in order to earn interest for a longer period of time. Town Manager Havens stated that it was all reimbursable so it needed to be spent to be reimbursed with draws done as the project moves along. Councilor Schiano clarified that the money the Town would have to put in was from its fund. Town Manager Havens stated that it was all from the Town's funding and then it gets reimbursed. Councilor Schiano clarified that the funds would not be given to the Town up front. Town Manager Havens stated he was correct.

Mayor Kingston thought FEMA did not give the Town the funds up front. Town Manager Havens stated he was correct. He explained that it was very similar to the beach nourishment project where money comes back from FEMA.

Mayor Pro Tempore Thibodeau clarified that the letter was a letter of intent solidifying the actual grant since the Town has not received anything in writing. Town Manager Havens stated she was correct, adding that this is the final award notice. Mayor Pro Tempore Thibodeau asked if there were any other BRIC projects that have been awarded in North Carolina or any other state. Town Manager Havens stated that there were, adding that there were other BRIC projects announced in the same timeframe that Duck's was and were also waiting for the funding because FEMA does one award at a time.

Mayor Kingston asked if two motions were needed. Town Manager Havens stated that there should be a motion to approve the budget amendment and a motion to award the contract to Fred Smith Company Construction and authorize Town staff to work out the details of the contract language. He asked Town Attorney Hobbs if the contract should

come back to Council for final approval. Town Attorney Hobbs thought Council had the option to delegate the responsibility to Town Manager Havens to finalize and approve the signing of the contract.

Councilor Whitman moved to approve the budget amendment as presented.

Motion carried 5-0.

Councilor Schiano moved to award the contract to Fred Smith Company Construction and authorize the Town Manager to negotiate the final terms and sign the contract as presented.

Motion carried 5-0.

CLOSED SESSION

Mayor Pro Tempore Thibodeau moved to enter closed session in accordance with Section 143-318.11(a)(3) to consult with the Town Attorney regarding matters protected by the attorney/client privilege and to preserve that privilege and pursuant to Section 143-318.11(5) to establish or instruct the public body's staff or negotiating the price and other material terms of a contact or proposed contract for the lease of real property.

Motion carried 5-0.

The time was 2:24 p.m.

Upon return from closed session, Town Attorney Hobbs stated that Council received information on three legal matters and he provided legal advice on those three matters. He stated that for the fourth matter dealing with the potential for a lease agreement that was considered by the Town as a tenant, Council gave direction to the Town Manager to see if that could potentially be negotiated. He noted that no action needed to be taken in open session on any of the matters.


Mayor Kingston noted that the next meeting would be the Regular Meeting on Wednesday, September 6, 2023 at 6:00 p.m.

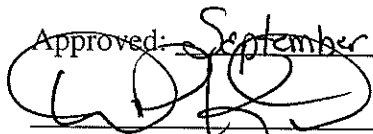
ADJOURNMENT

Councilor Schiano moved to adjourn the meeting.

Motion carried 5-0.

The time was 3:40 p.m.


Lori A. Ackerman, Town Clerk

Approved: September 6, 2023


Don Kingston, Mayor

