

**TOWN OF HOPE MILLS  
BOARD OF COMMISSIONERS RECESSED MEETING  
WEDNESDAY, SEPTEMBER 23, 2009, 6:00 P.M.  
BILL LUTHER BOARD MEETING ROOM**

Mayor Eddie Dees called the recessed meeting of the Hope Mills Board of Commissioners to order on Wednesday, September 23, 2009, at 6:00 p.m.

**GOVERNING BOARD MEMBERS PRESENT**

Mayor Eddie Dees, Mayor Pro Tem Bob Gorman, Commissioners Doris Luther, Eddie Maynor, Jackie Warner, and Tonzie Collins.

**GOVERNING BOARD MEMBERS ABSENT.** None

**STAFF PRESENT**

Town Manager Randy Beeman, Assistant Town Manager/Town Clerk Connie Spell, Finance Director John Ellis.

- 1. Consideration to approve the contract of the Mosher Engineering, Inc. for implementation of the approved monitoring plan for Hope Mills Dam and adopt budget ordinance amendment No. 17 to allocate funding.**

Attorney Jackson said he had reviewed the contract submitted by Mosher Engineering and he said the contract was legally sufficient as to form and content.

At 6:05 p.m. the board took a break to look over the contract.

In response to a question from Commissioner Collins, Mr. Beeman said when looking for an engineering firm he looked at those firms that had dam or monitoring experience.

Commissioner Collins said after reading the report he noticed that Mr. LaBounty was also an engineer in North Carolina, South Carolina, Florida, Virginia and several other places. He said he had a major problem with the proposal because Mr. LaBounty worked on part of the construction of the dam for a period of time.

In response to a question from Commissioner Collins, Mr. Beeman said when he contacted Dam Safety on Friday they were very specific that the town would need to meet the September 30<sup>th</sup> deadline.

Commissioner Collins recommended the Town Manager draft a letter to Dam Safety requesting a 30 day extension and asked that Mr. LaBounty be excused from participating in any part of the project due to a conflict of interest.

Town Attorney John Jackson said the contract was with the engineering firm and not Mr. LaBounty. Mr. Jackson said he personally did not have a legal problem with the Mosher contract and Mr. LaBounty. He said any action the town takes for construction of the dam would not involve Mosher Engineering. He said McKim & Creed became responsible for any of Mr. LaBounty's actions when he was employed as their license engineer to the project.

Mr. Jackson said at this time he found nothing that would indicate that Mr. LaBounty had done anything wrong and he did not have a problem legally with the Town contracting with Mosher and Mr. LaBounty being the license engineer of record.

Commissioner Warner said according to the information they received from Mosher Engineering they had contacted Dam Safety on September 18<sup>th</sup> and the board received this information at Monday nights meeting. She said if Dam Safety could change the time allowed for an engineering firm she did not understand why Dam Safety would not allow a time change for the town.

Commissioner Collins asked Mayor Pro tem Gorman if he would amend his pervious motion made on September 21, 2009 to accept the proposal from Mosher Engineering.

Mayor Pro tem Gorman declined.

In response to a question from Commissioner Maynor, Mr. Beeman said he had spoken with Dam Safety this past Friday and had several phone conversations with Mr. Simmons and Mr. McEvoy of Dam Safety and in all situations they had been very deliberate in taking the necessary steps if the town did not follow the monitoring plan.

Mr. Beeman said in reference to Mosher Engineering and discussion with Mr. McEvoy and Mr. Simmons they said they had received phone calls from several engineering firms after the RFP's and they were mindful of the concerns of the time constraints. He said he asked for a 30 day extension and was told they would not give the extension. Mr. Beeman said they did recognize there were some things that could be met such as the visual inspection, pedometer readings, pressure gauge readings, and they knew there was not adequate time to do the vibration analysis. He said the vibration analysis would require acquisition and placement of equipment and a storm event. He said to give the firms adequate time to establish equipment and start to record at least weekly was not a part of the September 30<sup>th</sup> deadline.

Mr. Beeman said they assured him that if they thought the dam was unsafe they would not have allowed impounding of water. He said the dam is classified as a high hazard dam, therefore monitoring is required. It is not being monitored due to the construction, but what damage or impact it would have if it were to have issues, and how it would impact the region or the area.

In response to a question from Commissioner Maynor, Mr. Beeman said if the September 30<sup>th</sup> deadline was not met and the conditional impoundment permit is withdrawn the lake would be drained.

In response to a question from Commissioner Maynor, Attorney Jackson said if the requirements are not met the town would be back at square one and would have to reapply for permits and permission to re-impound the water. He said this was a safety issue and Dam Safety required it be done.

Following board discussion concerning Mosher employing Mr. LaBounty and having him serve as engineer of record, Mayor Dees said the board had already committed to the monitoring plan. He said we had already committed to another engineering firm that had the same similar conflict of interest and it was not an issue and the only reason we are here tonight was because that firm backed out. Mayor Dees said he wanted the board to be perfectly clear and he hopes the board will see this project through by complying with the monitoring requirements mandated by the State. He said the deadlines were given and for whatever reason we have not had an easy road to get to the end, but the commitment has been made. He said the State had given us a lot of money and for us to go against the directive of a State agency (Dam Safety) would be a big mistake. We were not the first town to have to monitor a dam and we will not be the last. Above all, this was a safety issue and we can not lose site of that.

Mayor Dees said safety is the single most important job of Dam Safety. He said if there is a problem with the dam we need to know it, and only through the monitoring process and the investment of the outside firm will we be able to find that out. Mayor Dees said we could come up with all the excuses in the world not to comply, but in his opinion he did not think the town wanted to see the lake drained and the board should not allow it to happen.

Mayor Dees said the board had talked at lengths about letting the Town Manager do his job and we should follow his advice and guidance. He said the Manager's recommendation to the board is to use this firm and contract. Mayor Dees said he knew this was not an easy decision, and the lake restoration had not been a mistake free process, but the old mill pond has more historical, recreational, and environmental value to the community than any amount of money that could ever be spent. He said in his opinion it was worth every cent and every sleepless night and you can not put a price tag on the quality of life issues that it brings to the current and future generations, and you certainly can not put a dollar amount on the impact it has had on this communities past.

Mayor Dees encouraged all the members of the board to vote their convictions and vote in the best interest of the citizens of this town to see this project through to the end.

Commissioner Gorman said the board should take the advice of the Town Manager and the Town Attorney as well.

In response to a question from Commissioner Gorman, Attorney Jackson said the previous work done by Mr. LaBounty was on behalf of McKim & Creed and that would be a separate legal scenario if McKim & Creed provided negligent services. He said if Mr. LaBounty was the wrong doer, then McKim & Creed would be responsible for his actions. Attorney Jackson said this was a separate new contract that has a different scope of work and performance and if something was wrong with the monitoring and Mr. LaBounty was engineer of record then Mosher would be responsible for their engineer and his actions.

The total proposed cost for the four-year monitoring program as submitted by Mosher Engineering is \$221,500 plus \$25,000 contingency for each year.

*Mayor Pro Tem Gorman made a motion to approve the contract from Mosher Engineering Inc. for implementation of the approved monitoring plan for Hope Mills Dam and adopt the Budget Ordinance Amendment No. 17 to allocate funding. Commissioner Luther seconded the motion.*

*After further discussion the vote on the motion was as followed:*

*AYES: Commissioner Luther, Commissioner Gorman, Commissioner Maynor*

*NOES: Commissioner Collins, Commissioner Warner*

*A copy of the contract for Mosher Engineering, Inc. for implementation of the approved monitoring plan for Hope Mills Dam is filed in the Book of Contracts in the Town Clerks office.*

*A copy of Budget Ordinance Amendment No. 17 to allocate funding is filed in the Ordinance Book in the Town Clerks office.*

## **11. ADJOURNMENT.**

*At 7:08 p.m., upon a motion by Commissioner Luther, seconded by Commissioner Collins and carried unanimously the meeting was adjourned.*

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EDDIE DEES, MAYOR

ATTEST:

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Connie F. Spell, MMC, Town Clerk