

## TOWNSHIP COMMITTEE SPECIAL MEETING – SEPTEMBER 21, 2015

Deputy Mayor McMillan called the meeting to order at 6:00 p.m. and requested the Clerk to call the roll. The following members were present: J. Randy Bishop, Eric J. Houghtaling, and Kevin B. McMillan. (Dr. Michael Brantley arrived during the Public Comments on Resolutions portion of the meeting) Absent: Mayor Mary Beth Jahn.

Also present at the dais were Richard J. Cuttrell, Municipal Clerk; Vito D. Gadaleta, Business Administrator; Michael J. Bascom, Chief Financial Officer; and Gene Anthony, Township Attorney.

After a moment of Silent Prayer and the Flag Salute, the Deputy Mayor asked the Clerk to indicate the fire exits.

The Clerk stated, "Fire exits are located in the rear of the room and to my right. In case of fire you will be notified by bell and or public address system, then proceed to the nearest smoke-free exit"

Deputy Mayor McMillan announced that the notice requirements of R.S. 10:4-18 have been satisfied by the required public notice to the Asbury Park Press and The Coaster on September 17, 2015, posting the notice on the Board in the Municipal Complex, and filing a copy of said notice with the Municipal Clerk.

### PUBLIC COMMENTS ON RESOLUTIONS

Dr. Brantley arrived.

Joan Venezia, 107 Mt. Hermon Way, asked which contractor did the first phase of the boardwalk replacement in the spring. Mr. McMillan replied that Epic did the work. Ms. Venezia asked if there was a lawsuit filed on the current bid. Mr. Anthony responded there is now lawsuit; however, a protest was received from Bird Construction which claims that the bid proposal submitted by Epic contains a fatal error that cannot be corrected. The vote by the Township Committee tonight will be to either rescind the August 24<sup>th</sup> award to Epic and award the project to Bird, or to allow the prior award to Epic to stand.

### AUTHORIZE AN EXECUTIVE SESSION AS AUTHORIZED BY THE OPEN PUBLIC MEETINGS ACT

Dr. Brantley offered the following resolution, moved and seconded by Mr. Bishop, that it be adopted:

WHEREAS, Section 8 of the Open Public Meetings Act, Chapter 231, P.L. 1975, permits the exclusion of the public from a meeting in certain circumstances; and,

WHEREAS, this public body is of the opinion that such circumstances presently exist,

THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Neptune, County of Monmouth, as follows:

1. The Public shall be excluded from discussion of and action upon the hereinafter specified subject matters.

2. The general nature of the subject matter to be discussed is as follows:

Potential Litigation – Bid for replacement of Ocean Grove boardwalk

3. It is anticipated at this time that the above stated subject matters will be made public when matters are resolved.

4. This Resolution shall take effect immediately.

The resolution was adopted on the following vote: Bishop, aye; Brantley, aye; Houghtaling, aye; and McMillan, aye.

The Committee entered executive session for discussion on closed session matters.

Mr. Anthony provided a history of the bids received for Phase I of the boardwalk project and the phase of the project in question this evening. Both Epic and Bird submitted bids in April for the first phase and both bids were rejected because information on sub-contractors was not provided. The project was rebid and Epis was the successful bidder and was awarded the project. For this

phase of the project, the bids specifications were clear that subcontractors need to comply with the provisions of the responsible contractor ordinance. Bird submitted a protest because Epic did not submit certifications for its subcontractors and the ordinance states that this deficiency is non-curable. Mr. Gadaleta stated that he explained this to the owner of Epic after the protest letter was received and the deficiency was discovered. The owner stated that he would not challenge the Township awarding the contract to Bird. Mr. Anthony stated that if the Township were to not rescind its award to Epic, Bird would file an action in court to obtain a stay, would probably receive the award plus damages, and the process would take 30 to 60 days.

Mr. Bishop offered a motion, seconded by Dr. Brantley, to return to open session. All were in favor.

**RESCIND RESOLUTION #15-358 AND AWARD BID TO BIRD CONSTRUCTION FOR THE RECONSTRUCTION OF THE OCEAN GROVE BOARDWALK – NORTH END**

Mr. Bishop offered the following resolution, moved and seconded by Dr. Brantley, that it be adopted:

WHEREAS, on August 12, 2015, the Township Consulting Engineer received bids for the award of a contract for the Reconstruction of the Ocean Grove Boardwalk – North End; and,

WHEREAS, said bids were advertised, received and awarded in a “fair and open” competitive bidding process in accordance with the Open Public Contracts Law; and,

WHEREAS, on August 24, 2015, the Township Committee adopted Resolution #15-358 which awarded the bid to Epic Management, Inc. on their base bid of \$609,200.00; and,

WHEREAS, on August 25, 2015, a Bid Protest Letter was received by Bird Construction, the next lowest bidder, which stated that Epic Management, Inc. was non-responsive to the bid specifications due to a failure to submit Responsible Contractor Certifications for its subcontractors as required by the Township’s Responsible Contractor Ordinance; and,

WHEREAS, the Township Attorney has concluded that the bid submitted by Epic Management, Inc. failed to include Responsible Contractor’s Certifications for two subcontractors and is therefore non-responsive to the bid specifications; and,

WHEREAS, the next lowest bid submitted by Bird Construction is deemed to be the lowest responsible bid; and,

WHEREAS, funds for this purpose will be provided in Ordinance No. 14-09, as amended by Ordinance No. 14-43, and the Chief Financial Officer has so certified in writing,

THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Neptune that Resolution #15-358 which awarded a bid to Epic Management, Inc. for Reconstruction of the Ocean Grove Boardwalk – North End be and is hereby rescinded for the reasons stated herein; and,

BE IT FURTHER RESOLVED, that a contract be awarded to Bird Construction on their lowest responsible base bid of \$622,739.00 for Reconstruction of the Ocean Grove Boardwalk – North End; and,

BE IT FURTHER RESOLVED, that a certified copy of this resolution be forwarded to the Business Administrator, Chief Financial Officer, Assistant C.F.O., Leon S. Avakian, Inc. and Township Engineer.

The resolution was adopted on the following vote: Bishop, aye; Brantley, aye; Houghtaling, aye, adding that he wanted the contractor that performed Phase I of the project, but the requirements of the Responsible Contractor Ordinance were not met in that contractor’s bid proposal; and McMillan, aye.

Dr. Brantley offered a motion, seconded by Mr. Bishop, to adjourn. All were in favor.

Richard J. Cuttrell,  
Municipal Clerk