



**TOWN OF HOLDEN BEACH  
BOARD OF COMMISSIONERS  
SPECIAL MEETING  
TUESDAY, AUGUST 6, 2019 – 1:00 P.M.**

The Board of Commissioners of the Town of Holden Beach, North Carolina met for a Special Meeting on Tuesday, August 6, 2019 at 1:00 p.m. in the Town Hall Public Assembly. Present were Mayor J. Alan Holden; Mayor Pro Tem John Fletcher; Commissioners Mike Sullivan, Pat Kwiatkowski, Joe Butler and Peter Freer; Town Manager David W. Hewett; Town Clerk Heather Finnell; and Attorney Noel Fox.

**PUBLIC COMMENT**

No comments were made.

**DISCUSSION AND POSSIBLE SELECTION OF AUDITOR FOR FISCAL YEAR ENDING JUNE 30, 2019**

Town Manager Hewett said we received confirmation from the Local Government Commission (LGC) that the amended contract between the Town and Rives has been approved by the secretary of the LGC. We did target soliciting of beach communities' and local communities' auditors and did a general Request for Proposals that was published in the local paper. We received four responses, Rives & Associates, Martin & Starnes, Bernard Robinson and Preston Douglas & Associates. They range in price from about \$15,000 – \$33,000. Rives has a variable cost component to their proposal, which was not one of our solicitations. He confirmed the audit was approved.

*Motion by Mayor Pro Tem Fletcher that the Board approve the recommendation of the Audit Committee to select Rives for the 2018/2019 audit of financial statements; second by Commissioner Freer.*

Commissioner Kwiatkowski stated she doesn't believe the Board should retain Rives. They did two inappropriate things last year that caused the Town difficulty. She said they did not follow the LGC recommendation that 45 days after a due date if you are not going to have the report in, it is your obligation as the auditor to send a letter to the LGC and explain that the report will not be submitted, give basic reasons and an anticipated date. She stated 45 days after would have been mid-February because the hurricane allowed until the end of December. They should have sent the LGC a letter. Commissioner Kwiatkowski stated procedurally when they knew they were not going to be able to keep within the contract cost they should have notified the Town, not just the chair of the Audit Committee. They should have communicated to the Town that there would be extra work and extra cost. She doesn't understand why the Board would want to bring them in for another year when they had two significant mistakes in how they handled procedure. She finds it disconcerting that the auditor will take a private call, will share information with an individual and then not talk with the town manager, who the contract goes through, to give him the same information. She questioned if there is bias or familiarity that was developed between Audit Committee members and the auditor. In these kinds of

cases it is better, rather than having questions whether there is some bias or some threat to independence, to move to a different firm. That isn't taking into account the fact that their cost is nearly twice as much as a couple of other qualified firms. Last year the Audit Committee said that all three of the bidders were qualified. SPD&A was one of the bidders last year and they would be a good logical choice, as would BRC. Either of those have good credentials.

Mayor Pro Tem Fletcher stated he doesn't argue with positions. He said in terms of the cost they were incurring, they didn't call him. He called them to see how the audit was going. He was told they were incurring significant more costs. Mayor Pro Tem Fletcher said his direction was to go to the town manager and propose what they wanted to do. He stated he only found out the cost when Town Manager Hewett called him and said he received a memo from them asking for additional money and asked his opinion. He said given the nature of the work, he thought it was appropriate and didn't hear another thing until the meeting.

Commissioner Sullivan went to the internet and got the contract that the LGC approved. He read from Section 6 that details information about the timeliness of audits. Section 15 of the contract talks about if an approved contract needs to be modified or amended, the change shall be made in writing and be pre-audited if there is a change in the fee. Commissioner Sullivan stated we knew we were late and they never wrote for an extension. He read the letter from Sharon Edmundson, the Director of Fiscal Management in the Local Government Finance Division, concerning the audit being late. He stated the auditor made material breaches in the contract. As a result of those breaches they were at least part of the reason we were placed on the watch list. One of reasons the Audit Committee voted Rives be retained this year was because they could do the audit in a timely fashion and that would result in the Town being removed from the list. Commissioner Sullivan stated the fact that the Board is voting today will give any firm the ability to do it in a timely fashion. He is not in favor of awarding the contract to the firm that put us in the position we are in. He is in favor of awarding it to a different firm.

Commissioner Butler stated the priority of selecting the auditor is to remove the Town from the high risk list. Changing auditors after receiving a material weakness deficiency and being classified as a high risk is contrary to reasonable logic. He said the classification of being a high risk municipality has negative impacts, to include possible increase in interest rates, additional state monitoring and rating. He said because we are high risk, which is also identified as the unit assistance list, the North Carolina Treasurer's Office must approve Town borrowing. In order to help with the removal of the high risk classification he recommends continuing to use Rives. Commissioner Butler questioned if the other firms had the opportunity to know we are a high risk municipality and if it would have an impact on their estimated amount of hours and the cost. He stated due to the unknowns, let's not put the Town at further risk by using another auditor. The borrowing really concerns him; we know we have a sand search going on. We know we have the ability to retrieve \$25 million from FEMA. In order to accomplish the retrieval, we need to come up with the money. We know we will have to go out and borrow it. He said being on this list, the interest rates will be higher. Commissioner Butler would like to get this quickly behind us. Expeditiously, he would like to continue to use Rives.

Town Manager Hewett stated regarding the need of approval from the LGC, the LGC has to approve all town borrowing so it is not just for a special occasion. There has been an additional oversight by the legislature and now there is a capital facilities board that provides an additional review. The other bidding firms are aware of the Town's circumstances. There were inquiries from the other firms. He

had verbal conversations with them and briefed them on the circumstances that the Town is currently in to include the material weakness, significant deficiency and the lateness of the audit. His impression is they were more concerned with if we received grant monies that would drive a requirement for a federal single audit.

Mayor Pro Tem Fletcher stated the first time a firm does an audit, it takes extra time. He thinks Rives was prepared for that and they only charged the Town a third of their additional time. They had an Audit Committee meeting and a public meeting; there was a focus that one of the delays was that the management discussion and analysis (MD&A) took 60 days to be submitted by the auditor to the LGC. He said it took Lithia Brooks two weeks to put together the MD&A, but it wasn't appropriate; there were mistakes on it and it was in the wrong format. He said as he understands it she was on vacation when the auditor went back to her and it took her another six weeks to get the report put together, which is a two month delay. Mayor Pro Tem Fletcher's view was that at the end of the year, Rives was not responsible for that much of, if any of the delay. He said our books were not as we proposed they were and it took them more time to do that. He is not sure everyone understands the auditor has to do certain work at certain points. If he doesn't do the work, he would not be allowed to issue the opinion on the financial statements. His overall feeling is that all of them are qualified and he is impressed we received four submissions from qualified firms. As the chair of the Audit Committee, with the committee having voted twice, he would stick with their decision. Mayor Pro Tem Fletcher stated he doesn't think at the end of the day they will be much more expensive, if any, than the other firms once the work is worked out. They will charge less if it costs them less. If our books come in clean he thinks we will see a significant reduction in the cost. He recommends staying with them.

Commissioner Kwiatkowski stated she understands what Mayor Pro Tem Fletcher is saying, but she feels there is a chance there is bias and is still concerned with the lack of following protocol. The LGC lays out how they are supposed to do things. She is not arguing that they had more work. She talked about the lack of communication and the fact that they are in Raleigh and are not available to make additional sit downs. She said these reasons makes them her least favorite of the three that are saying they can get it done on time.

Commissioner Freer said all of the proposals are good, but he thinks we should stick with what we have for at least another year. He said there are several reasons that were already mentioned. He doesn't want to opinion shop or shoot the messenger. He wants to get started as quickly as possible to get off the assistance list. Commissioner Freer said the hourly rates are all about the same, but he thinks Rives understands what is in front of them more than the others.

Commissioner Sullivan stated two of the Audit Committee members wrote the Board and mentioned that one of the reason they voted to retain Rives was that at the time they didn't have an understanding that it would be within the Town's capabilities to put this out to bid and to have other qualified auditors respond in such a short period of time. The two members wrote the Board to say they couldn't be here, but they wished the Board to consider the other auditors, not that they chose one over the other. He wished Woody Tyner from the Audit Committee was here. He had a chronological listing of communications between staff and Rives. Commissioner Sullivan stated it didn't seem to him that based on the findings Mr. Tyner had and the documents that went between the two that it was a two month delay on the part of the Town. There was a lot of delay on the part of the auditor. We are relying on somebody that completely ignored the contract provisions and they did that to our detriment. He

said if they put those notices in, we would have been able to get an extension in time to submit the audit report. He thinks that they materially contributed to the delay in our filing and in no way tried to modify that by submitting the reports. He stated maybe we would not have been on the watch list if they did what they were required to do by contract.

Town Manager Hewett stated the bid from Rives is about twice what is in the existing budget. The Board's selection of Rives today will be subject to a contract that needs to go to LGC for approval. The contract needs a pre-audit statement. The Board will need to amend the budget in order to allow him to pre-audit the contract. We cannot start work with them until the contract is approved by LGC. The audit is under Professional Services. We did not budget \$32,000 for the audit firm. There is \$60,000 in that line item, which is mostly legal fees and some other services. He can't certify that sufficient monies exist in the budget. Commissioner Sullivan asked if they would still need to go through the process if they select someone with a lower bid. Town Manager Hewett answered they would still need to get the contract approved by the LGC, but you would have sufficient funds for the two lower priced ones. They are in keeping with the historical precedent that we have budgeted for in the past.

Commissioner Kwiatkowski stated she doesn't understand why the Board would want to retain someone who has essentially ignored a previous contract and ignored LGC guidance. Town Manager Hewett stated we seem to have received assurances from Rives at the last Board meeting that if we got our audit in on time, we would be removed from the unit assistance list. He has not been privy to any opinions that the secretary of the LGC, nor the director of Fiscal Management has rendered regarding that. In fact, the recent legislation appears to be contrary to that. There may be other issues regarding specific internal controls that will preclude the Town from doing that. In the letter of transmittal back to the Town where it says your audit has been approved, there was a qualifier that says further analysis will be performed and any issues that are subsequent to the review will be communicated in a separate letter.

*The motion passed by a 3 – 2 vote with Mayor Pro Tem Fletcher and Commissioners Butler and Freer voting for the motion and Commissioners Sullivan and Kwiatkowski in the negative.*

**EXECUTIVE SESSION PURSUANT TO NORTH CAROLINA GENERAL STATUTE 143-318.11(A)1), APPROVAL OF MINUTES AND EXECUTIVE SESSION PURSUANT TO NORTH CAROLINA GENERAL STATUTE 143-318.11(A)6) TO DISCUSS A PERSONNEL MATTER**

*Motion by Commissioners Kwiatkowski to go into Executive Session at 1:29 p.m.; second by Mayor Pro Tem Fletcher; approved by unanimous vote.*

Town Clerk Finnell read the reason to enter into Executive Session.

**OPEN SESSION**

*Motion by Mayor Pro Tem Fletcher to go back into Open Session at 3:45 p.m.; second by Commissioner Freer; approved by unanimous vote.*

The Board agreed to hold a Special Meeting on Monday, August 12<sup>th</sup> at 1:00 p.m. to consider the audit contract.

**ADJOURNMENT**

*Motion by Mayor Pro Tem Fletcher to adjourn at 3:47 p.m.; second by Commissioner Butler; approved by unanimous vote.*

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J. Alan Holden, Mayor

ATTEST:

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Heather Finnell, Town Clerk