

**Town of Fairview
Regular Meeting
November 10, 2014**

The following Council members were present: Mayor Elizabeth Long, Bradley Purser, John Biggers, Jerry Clontz and Arnold Price.

Others present: Joe McCollum, Town Attorney; Darrell Baucom, Financial Officer; and Ed Humphries, Land Use Administrator and Town Clerk.

Agenda Changes

None

Bradley Purser made a motion to approve the agenda. Arnold Price seconded the motion. Councilmen Clontz, Price, Biggers and Purser voted yes (4-0).

Public Comments

- Jerry Smith, 405 Simpson Road, explained his concern for Tannerite which is the brand name of a binary explosive material used primarily for making exploding targets. Mr. Smith explained that people in Fairview were using these, and it was his opinion that Fairview should regulate them. (See Exhibit A)
- Phil Thomas, Unionville Brief Road, brought a copy of “Small Business” magazine with an article about H&H Farm Equipment, explaining it was nice to see a Fairview company doing well.
- Mary Lou Starnes, 7401 Concord Highway, explained how she is concerned about the monies being spent on the town park. She stated that the park would be a money drain on the town for years. She stated that she thought we should be working on other things (town hall, fire department) rather than a park.
- Stan Pierczynski stated he is still disappointed over how the Town handled his complaint on the property at 601 and Brief Road. He also stated he was not in favor of raising taxes to build a fire department. Pierczynski stated the town needs to be spending money on “needs” not “wants”.

Reports

- Darrell Baucom gave the monthly financial report.
- Ed Humphries gave the zoning permit and tax report.
- Fire Department Committee: no report.
- Economic Development: no report.
- Park and Recreation: Jerry Clontz stated the Park and Recreation Committee met last Thursday and passed the committee’s “Rules of Procedure “for their meetings. These procedures will be on the next agenda for approval by the Council. Mr. Clontz explained

plans for the park, stating that infrastructure would be expensive for the park. NCDNER has given the Town an OK to work on the pond dam.

- John Biggers gave a report on the October 17, 2014 CRPTO meeting. Two items were discussed:
 - Toll road and a review of the funds used for roads that feed the road
 - A voting member was added to CRPTO from the MTC (Metropolitan Transit Commission).

Business

- A. **Donald Moye, Emergency Coordinator for Union County**, presented the 2014 EOP (Emergency Operation Plan).

Arnold Price made a motion to adopt the 2014 EOP for Union County, to include the annexes and checklist. Jerry Clontz seconded the motion. Councilmen Clontz, Price, Biggers and Purser voted yes (4-0).

- B. **Public Hearing** on Text Amendment TC-14-054.

Mayor Long opened the Public Hearing. Ed Humphries explained that the Planning Board has recommended adding a Conditional Use Requirement to the HC Zoning for the use of Truck Terminal or Tractor Trailer Truck Transfer Companies / Transfer Lots. The present zoning of HC is permitted by right. This recommendation was done in connection to the recent update of the Land Use Plan.

There was no Public Comment. Mayor Long closed the Public Hearing.

- C. **Decision on TC-14-054** (Article X Section 146, 147)

Jerry Clontz made a motion to approve the Text Amendment TC-14-054 to include the following zoning statement:

The proposed zoning amendment under consideration is found to be reasonable and consistent with the recommendations of the Town's adopted comprehensive plan, the Town of Fairview Land Use Plan (Revised August 11, 2014), and the Town of Fairview Land Use Ordinance (effective July 1, 2005)

Bradley Purser seconded the motion. Councilmen Purser, Biggers, Price and Clontz voted yes (4-0).

- D. **Contract with Site Solutions**

Joe McCollum, Town Attorney, commented on the agreement to include the following areas:

- Awarding of contracts
- Advertising
- Additional services
- Written consent to spend money
- Project manager
- Resolution exempting park design from GS 143-64.31

Mayor asked if the contract would be a part of the PARTF grant.
Jerry Clontz stated it would be a part of our matching funds.

Joe McCollum discussed the raising of the limit to \$50,000 Under GS 143-64.31

Mayor Long asked if the merger of Site Solutions would affect our contract. Jerry Clontz explained that it would not.

John Biggers asked questions about the contract to include fees, payments and a project manager

Joe McCollum suggested that the town approve a resolution exempting the park design from GS 143-64.31.

Jerry Clontz made a motion to approve the resolution exempting the park design from GS 143-64.31(below)

RESOLUTION EXEMPTING PARK DESIGN

FROM G.S. 143-64.31

WHEREAS, the Town of Fairview intends to enter a contract for design services for a public park;

WHEREAS, G.S. 143-64.32 authorizes units of local government to exempt design services from the qualifications of G.S. 143-64.31 as the estimated design fee is less than \$50,000.00; and

WHEREAS; the estimated fee for design purposes for the park project is less than \$50,000.00;

NOW, THEREFORE THE TOWN OF FAIRVIEW BOARD RESOLVES that the design services fee contract is hereby made exempt from the provisions of G.S. 143-64.32.

Approved by Council Nov. 10 2014

John Biggers seconded the motion. Councilmen Clontz, Biggers, Price and Purser voted yes (4-0)

The Council also discussed the need for a project manager with some spending authority (should be \$2,000 or \$3,000).

Jerry Clontz made a motion to approve the contract with Site Solutions to administer the building of the Fairview Park Phase One, which will supersede the approval of the Site Solutions proposal which was passed at the August 5, 2014 meeting. Copy below:

CONTRACT

Fairview Park Phase One

THIS AGREEMENT, entered into this the 19th day of September, 2014 by and Between Fairview, North Carolina, hereinafter referred to as the "Client", and Site Solutions, a Corporation organized and existing under the laws of the State of North Carolina, hereinafter

Referred to as the "Landscape Architect".

Article 1. Project Location

1.1 The undeveloped park site is located at 7216 North Concord Highway (Hwy 601) in the Town limits of Fairview in northwest Union County.

Article 2. Project Purpose

2.1 Provide survey, detailed design, permitting, bidding, and construction administration services for the first phase of the park.

Article 3. Scope of Services

3.1 As described in Attachment A.

Article 4. Additional Services of Landscape Architect

The following services are not considered to be included in the original scope of the Project:

4.1 As described in Attachment A

Article 5. Client's Responsibilities

The Client shall:

5.1 Designate a project manager who will coordinate all communication between the Landscape Architect and the Client and who is authorized to act on behalf of the Client.

5.2 Provide the Landscape Architect with existing data pertinent to the Project.

Article 6. Ownership and Use of Documents

6.1 Digital and hard copies of the plan will be provided as outlined in Attachment A.

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6.2 The Client may utilize information contained in the drawings and specifications to modify or extend the project at a future date.

6.3 Subject to the terms of this contract, the Landscape Architect expressly denies any liability flowing from the misuse of the information contained in the drawings and specifications.

Article 7. Basis of Compensation

7.1 For services provided by the Landscape Architect as described in Article 3, the Landscape Architect will work with the Client on a phased fixed fee basis of **\$50,550**, itemized as follows:

Site Solutions W HN Architects

Schematic Design/Design Development \$ 6,700 \$3,400

Construction Documents \$10,600 \$5,100

Permitting \$ 2,500 \$ 500

Bidding \$ 3,500 \$ 500

Construction Administration \$ 9,700 \$2,000

PARTF As-Built Site Plan \$ 500 \$ 0

Survey Allowance \$ 4,250 \$ 0

Perk Test \$ 1,300 \$ 0

Total Fee Amount \$39,050 \$11,500

7.2 Should any additional services over and above those listed above be required, the Client agrees to compensate the Landscape Architect at the hourly rates as follows:

Site Solutions Hourly Rates

Principal \$175/hour

Senior Civil Engineer Project Manager \$150/hour

Civil Engineer Project Manager I \$100/hour

Senior Landscape Architect Project Manager \$125/hour

Landscape Architect Project Manager II \$100/hour

Landscape Architect Project Manager I \$ 85/hour

Civil Engineer Designer II \$ 80/hour

Civil Engineer Designer I \$ 75/hour

CAD Technician II \$ 70/hour

CAD Technician I \$ 65/hour

Administrative Assistant \$ 45/hour

The Landscape Architect shall not perform any additional services without the prior written authorization of the Client's representative.

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7.3 Reimbursable Expenses for professional services are included in the phased fixed fees

identified in Section 7.1.

7.4 Times of Payment

7.4.1 Design fees will be billed on a monthly basis for services provided. Fees are due within 30 days of invoice date.

7.4.2 The Client shall process all payments to the Landscape Architect within thirty (30) days of receipt of correct requests for payment.

Article 8. Delay, Discontinuance, or Termination

8.1 Landscape Architect shall not be in default by reason of any failure in performance of this contract if such failure arises out of causes beyond the control and without the fault or negligence of the Landscape Architect. Such causes may include, but are not restricted or limited to, acts of God or natural causes or catastrophes. Notwithstanding the foregoing, it is understood and agreed that such delay does not add more than thirty (30) days delay to any material performance portion of the required work of Landscape Architect.

8.2 The Client may at any time, and for any reason, direct the discontinuance of the services and work contemplated under this contract for a period of time. Such direction shall be in writing and shall specify the period during which the work shall be discontinued. The work shall be resumed on the date specified at such direction or upon such other date as the Client may thereafter specify in writing. The period during which such work shall have been discontinued shall be deemed added to the time for performance. Discontinuance of services and work may result in a “start up” fee if work is continued.

8.3 This contract may be terminated by either party by providing thirty (30) days notice to the other party. Should the Client elect to terminate the contract, the Landscape Architect shall be paid for all work completed up to and through the thirty (30) day period. Should the Landscape Architect elect to terminate the contract, the Client shall pay only for that work completed through the date of termination of agreement.

8.4.1 Any claim, dispute or other matter in question arising out of related to this Agreement shall be subject to mediation as a condition precedent to litigation.

8.4.2 The Client and Landscape Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request shall be made prior to the filing of a complaint or other appropriate demand for litigation, and, in such event, mediation shall proceed in advance of litigation, which shall be stayed pending mediation for a period of 60 days from the date of notification of the other party, unless stayed for a longer period by agreement of the parties or court order.

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8.4.3 The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

8.4.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.4, the method of binding dispute resolution shall be through litigation in a court of competent jurisdiction.

Article 9. Successors and Assigns

9.1 It is the intent of this contract to secure the personal services of the Landscape Architect or a duly authorized and competent representative or representatives of the Landscape Architect acceptable to the Client. Failure of the Landscape Architect for any reason to make the personal services of such a person available to the Client for the purposes described in the contract shall be cause for termination of this contract. The Landscape Architect shall not assign this contract without prior consent of the Client in writing. In the event of death or disability of the principal of the Landscape Architect, any qualified partner or associate of the Landscape Architect may be authorized, at the option of the Client, to continue to perform and complete all of the terms, covenants and provisions contained in this contract.

9.2 This contract when executed shall be construed under the laws of the State of North Carolina and shall bind the parties hereto, their heirs, administrators, executors, successors and assigns.

Article 10. Insurance

10.1 The Landscape Architect shall hold the Client free, clear and harmless from all claims of third persons for damages arising out of negligent acts or omissions of the Landscape Architect and his agents or employees. In furtherance thereof, the Landscape Architect shall take out and maintain during the period of this Contract public liability insurance in the following amounts:

(a) Statutory Worker’s Compensation in accordance with the laws of the state where such compensation would be payable. Employers’ liability (Coverage B) with limits of not less than \$500,000 per accident.

(b) Automobile liability insurance on any owned, non-owned or rented vehicle with limits of at least \$1,000,000 per accident.

(c) Comprehensive general liability, including products liability, completed operations liability, blanket contractual liability, broad form property damage and personal injury liability insurance with limits of at least \$1,000,000 per occurrence combined single limit.

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(d) Professional services liability for a limit of not less than \$1,000,000 per occurrence.

10.2 The Landscape Architect shall comply with all State requirements relative to Workers Compensation Insurance.

10.3 The Landscape Architect shall hold the Client free, clear and harmless from all claims for losses, costs, and damages which the Client may suffer as a result of the defect in any map, plan, drawing, or design or specification prepared, acquired or used by the Architect or as a result of any negligent supervision of the work by the Landscape Architect.

10.4 The Landscape Architect shall at all times, upon demand of the Client, furnish proof that the insurance policies required herein are being maintained by it in force and effect. The policies mentioned in this article shall name the Client as co-insured, shall be issued by an insurance carrier satisfactory to the Client and shall be delivered to the Client at the time of the delivery of the Contract.

Article 11. Miscellaneous

11.1 Nondiscrimination. The Landscape Architect agrees not to discriminate by reason of age, race, religion, color, sex, national origin, or handicap unrelated to the duties of position, of applicants for employment or employees as to terms of employment, promotion, demotion or transfer, recruitment, layoff or termination, compensation, selection for training, or participation in recreational and educational activities.

11.2 Findings Confidential. Any reports, data, or other information given to, prepared or assembled by the Landscape Architect under the Contract shall, if requested by the Client be kept confidential and shall not be published or made available to any individual or organization by the Landscape Architect without prior written approval of the Client.

11.3 Subcontract. Unless stated otherwise in this Contract, the Landscape Architect may not subcontract any part of the work unless with the written approval of the Client. The terms "Landscape Architect" and "subcontractor" shall mean one and the same and any obligations imposed hereunder upon one shall also be imposed upon the other.

11.4 The Landscape Architect accepts the relationship of trust and confidence established between it and the Client by this contract. Landscape Architect consents to furnish their best skill and judgment, and cooperate with all third parties associated with this project to further the interest of the Client. Landscape Architect further agrees to furnish efficient business administration and superintendents to use their best efforts to furnish at all times an adequate supply of workmen and materials to perform its work in the best way and in the most expeditious and economical manner consistent within the interests of the Client.

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ARTICLE 12: IN WITNESS WHEREOF

The parties hereto have executed this Agreement as of the day and year written below:

LANDSCAPE ARCHITECT: CLIENT:

Site Solutions Town of Fairview

Arnold Price seconded the motion. Councilmen Price, Biggers, Clontz and Purser voted yes (4-0).

After additional discussion on the project manager for the park, John Biggers made the suggestion that the Park and Recreation Committee recommend that person with a dollar authority. This will be put on the December agenda.

E. Planning Board Member (3 year term)

Bradley Purser made the comment that he had spoken to Greg Morgan, who has applied for the Planning Board and stated he did not want to replace a present board member. Jerry Clontz stated that he did support new blood on boards, but felt that reappointing John Crowell gives the board a perspective of a long time resident and the farming community.

Arnold Price stated he supported John Crowell.

Bradley Purser made a motion to **reappoint** John Crowell to a three year term on the Planning Board.

Arnold Price seconded the motion. Councilmen Price, Clontz, Biggers and Purser voted yes (4-0).

F. Lease agreement between Town and Fire Department.

The lease for office space with the fire department has expired. Joe McCollum suggested that a few changes be made and sent to the Fire Department Board of Directors for their approval and place this on the December agenda for Town approval.

G. Discussion of hiring a part time employee was scheduled for the December 8th, 2014 agenda.

Minutes

John Biggers made a motion to approve the minutes of October 13 2014, as corrected. Bradley Purser seconded the motion. Councilmen Price, Purser, Biggers and Clontz voted yes (4-0).

It was decided that for the minutes of this meeting (November 10, 2014) each Council member would receive a draft to review before the next meeting. This would provide the Council corrected minutes to approve. These corrected minutes would be returned to the clerk before the meeting so that corrected minutes could be approved.

Council Comments

Mayor Long explained all the work that went into replacing the 218 Bridge. Mayor Long thanked all for their effort(s).

Bradley Purser stated that the Town had the concrete “corner stone” of the 218 Bridge when it was built in 1950.

Jerry Clontz commented on the National Park Conference that he attended in Charlotte. While a lot of the conference was for larger communities, information received would help in developing our park activities. Mr. Clontz discussed partnering with organizations and the Extension Agent in Union County.

Bradley Purser stated he did not think the Council should address Public Comments.

Arnold Price made a motion to adjourn. Bradley Purser seconded the motion. Councilmen Clontz, Biggers, Price and Purser voted yes (4-0).

Respectfully submitted,

Ed Humphries
Town Clerk

Elizabeth Long
Mayor

Approved this _____ day of _____, 2013.