



**CITY OF SOUTHPORT
BOARD OF ALDERMEN
SPECIAL MEETING**

Indian Trail Meeting Hall; 113 W. Moore St.
October 11, 2023
9:00 AM

Agenda

Please turn off all cell phones

Meetings are open to the public. Face masks and social distancing may be used at the discretion of each individual. The Board of Aldermen reserve the right to make changes to this policy, as needed to help prevent the spread of the Coronavirus.

If you are not able to attend the Board of Aldermen meetings in person, the meeting will be available for you to watch via live-stream on the City of Southport website (<https://cityofsouthport.com/board-of-aldermen-meetings/>), Facebook page, and YouTube channel.

ETHICS STATEMENT:

"If any members know of any conflict of interest or the appearance of a conflict of interest concerning matters on the agenda, please so state at this time."

- A. Call to Order**
- B. Invocation**
- C. Pledge of Allegiance**
- D. Approval of Agenda**
- E. Agenda**
 - 1. Shoreline Stabilization Project
- F. Public Comments and Questions**
- G. Manager's Comments**
- H. Mayor's Comments**
- I. Board Comments**
- J. Closed Session**
 - 1. Closed Session N.C.G.S. 143-318.11 (a) (5). To establish or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount or compensation and other material terms of an employment contract or proposed employment contract.
- K. Adjourn**

DATE: October 11, 2023

DEPARTMENT: City Manager

PRESENTED BY: Bob Jarvis, Engineer and Chris Creed, Olsen Associates

ITEM SPONSORED BY: City Manager

ITEM/TOPIC: Shoreline Stabilization

COST: Unknown

BUDGET LINE ITEM: N/A

JUSTIFICATION: The City is moving forward with the preparation of design and permitting documents for the comprehensive restoration and stabilization project along the Cape Fear River shoreline in Southport. The project is necessary due to several reasons – the effects of storm related wind waves, waves generated from both recreational boat and commercial boat and ship traffic, and the effects of the ongoing increase in sea level rise.

We have been working with our consultant, Olsen Associates, in the preparation of the design and permitting documents as well as the follow-up with the various permitting agencies. Olsen Associates has recently performed hydrographic/topographic and cultural resources surveys of the project area. They are currently developing the scope and fee for the next phase of their work. Before doing that, we thought it would be wise to give you an update on this project and ask for further direction from you.

The City's engineering consultant, Bob Jarvis, will present an update on the work that has been performed thus far. Mr. Jarvis and Mr. Creed from Olsen Associates will also describe their expected work effort and approximate fees and schedule for the next phase of the design and permitting work. Board input regarding design and permitting scope will be requested.

Since the funding for the project is limited, appropriate project phasing will be critical to successfully addressing the priorities of the City. We will seek direction from the Board regarding their preference for the phasing of the project using the current amount of \$5 million we have from the State.

The City Attorney has been consulted regarding the issues that may arise regarding riparian ownership by individuals within the project areas and the impacts that the proposed project may have on those riparian rights. His opinions and the results of his research are attached.

IMPACT IF NOT APPROVED: There will be no stormwater stabilization work completed in the near future.

DEPARTMENT HEAD COMMENTS: Not applicable

CITY MANAGER COMMENTS: The more we are getting into this project, the more we realize that a good percentage of the \$5 million we have on hand will need to be used towards soft costs, such as administrative costs, permitting fees, etc. Because of that, we want to make sure that the amount

of money spent on the stabilization is spent wisely and the City has as much work done as possible until additional funds are found to complete the project. Your input into this is imperative.

Once we have the direction you wish us to take, we will then come back in November with an agenda item to award further work to Olsen to begin design and permitting with an exact dollar amount.

ATTACHMENTS: City Attorney Comments

REQUESTED ACTION: Design, permitting, and construction phasing priorities will be requested.

PROPOSED MOTION: None needed at this time.



ENGINEERING MEMORANDUM

City Attorney, Brady Herman, performed a cursory assessment of impacts to private properties as a result of shoreline stabilization improvements. The assessment is for informational use and may be modified pending additional information and legal opinion. The following is a synopsis of his cursory assessment:

- *The seaward boundary of the mean high-water mark is the public trust area owned by the state for the benefit of the public. (G.S. 77-20). Other indications of the landward boundary of the mean-high water mark will generally be the foot of the most seaward dunes, if dunes are present, the regular natural vegetation line, if natural vegetation is present, or the storm debris line, which indicates the highest regular point on the beach where debris from the ocean is deposited at storm tide.*
- *The placement of any sand infill, structures or improvements made to property landward of the mean high-water mark most likely will require the granting of easements for this purpose (either voluntarily or eminent domain) from all affected shoreline fronting property owners.*
- *The placement of any sand infill, structures, or improvements made seaward of the mean high-water mark would not require private easements from fronting property owners as the beach and/or submerged land lying seaward is the public trust area owned by the state.*
- *Title to land in or immediately along the ocean or inlet raised above the mean high-water mark (i.e. adding “new” beach) by publicly funded projects vests in the State. (G.S. 146-6). In other words, if sand is added to the seaward boundary of the mean high-water mark, the creation of the “new beach” vests in the state as public trust area. The fronting property owner’s property line would be the landward portion of the original mean high-water mark that existed prior to the sand infill project.*
- *Although shoreline front property owners can make reasonable use of adjacent ocean and inlet waters, including access thereto, that right is not absolute for the construction of private piers. This is because the placement of structures seaward of the mean high-water mark is in the state public trust waters and on state-owned public trust submerged lands which requires permission from the state or federal government. There is no current indication of a statute or premise of the law upheld by a court in NC that oceanfront or inlet property owners have an absolute or common law littoral/riparian right to construct and place piers in the ocean waters.*
- *For the presently constructed piers located in the area of the proposed rock-sill improvements, assuming the rock sill will be constructed in the seaward boundary of the mean high-water mark (i.e. public trust area), it is unclear whose responsibility it would be, whether the property owner or the city/state, for any impairment or reconstruction of the piers for the construction of the proposed rock sill. This is because we will need to obtain more information on whether these potential affected property owners have any easement rights granted from the state for these piers to be located in the water; and if not, that right would essential be a license to have the pier, which is a revocable right by the property owner (i.e. the state). The former easement property right may create an argument that compensation or payment for any damage to the pier may be required depending on the easement and other circumstances, while the latter may not create such an obligation.*
- *The existing rock sill located to the west of Bonnets Creek (and to the east of the proposed rock sill) has several piers with the existing rock sill located underneath which is an indication that rock sill can be located beneath a*



ENGINEERING MEMORANDUM

pier. Thus, presumably there may be little or insignificant impacts if the proposed rock sill is constructed beneath the currently constructed piers.