Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2014-052**

1. Requested Motion:

Meeting Date: May 19, 2014

A motion to (postpone construction activities until after turtle season, rescind the award of bid ITB 13-13-PW and re-bid the project) OR (pursue a permit amendment to allow for construction to take place during turtle season).

Why the action is necessary:

Town Council authorization is required due to circumstances that affect the previously awarded bid.

What the action accomplishes:

Provides direction to staff as to how to proceed with the project.

2. Agenda:
_ Consent
√ Administrative

3. Requirement/Purpose:
_ Resolution
_ Ordinance
√ Other

4. Submitter of Information:
_ Council
√ Town Staff - Public Works
_ Town Attorney

5. Background:

The project consists of replacing the seawall along the length of the Newton property and the Strandview beach access and replacing the two access ways in proximity to the seawall. Bid submittals for the replacement of the Newton Park seawall were opened on February 27, 2014, with Town Council awarding the contract on April 7, 2014. The Town's Florida Department of Environmental Protection (FDEP) permit was subsequently issued with a condition that, without additional approval from FDEP, no construction may take place during turtle season (May 1 – October 1).

The local FDEP office has stated that they do not support any construction activities commencing during turtle season. The Town's Environmental Sciences Coordinator is also recommending that the project be postponed, as stated in the attached memorandum. The Town's consultant has provided a description of what will be necessary to pursue an amendment to the permit.

Town staff has asked the successful bidder, Marine Contracting Group, if they would be willing to hold their bid price until work activities can begin after October 1, 2014. Marine Contracting Group responded that they are not willing to hold to their bid price for the duration of turtle season.

Although the bid was awarded, a formal contract has not been executed, and, given the successful bidder's unwillingness to hold their bid price, staff believes it is in the Town's best interest to rescind the award and rebid the project later this year.

6. Alternative Action: Take no action

7. Management Recommendations: Rescind the bid award and rebid the project at a later date.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
			C Ruis			

9. Council Action:

_ Approved _ Denied _Deferred _Other

Town of Fort Myers Beach

Memo

To: Cathie Lewis, Public Works Director

Cc: Don Stilwell, Town Manager

From: Keith Laakkonen, Environmental Sciences Coordinator

Date: May 8, 2014

Re: Timing of construction for Newton Park seawall repairs

The seawall at Newton Park is important to protect the property from waves and erosion and it has likely passed its lifespan. The seawall is in need of rehabilitation to increase its resiliency from waves that can impact the property during storm events. Rehabilitation of the seawall is a priority for the Town, however proactive steps must be taken to ensure the construction will not impact natural resources, particularly sea turtle nesting.

The Town of Fort Myers Beach being a barrier island serves as critical nesting habitat for nests sea turtles, especially the loggerhead sea turtle (*Caretta caretta*). The loggerhead is federally listed as a Threatened Species due to loss of beach nesting habitat among other factors. Every summer from May through October, beaches all along the Florida coastline serve as nesting habitat for sea turtles. Sea turtles dig a nest 12-36" below the sand and cover the nest with sand. The eggs incubate between 55-60 days depending on weather and biological factors but this time can vary and nests on Fort Myers Beach have been documented to take as long as 65 days to hatch. Any activity on the beaches during sea turtle nesting season has the potential to impact sea turtle nesting. The seawall rehabilitation at Newton Park during sea turtle nesting season has the potential to create the following issues:

1. Direct interference with sea turtle nesting. Any equipment or materials on the beach have the ability to obstruct a nesting female or trap her. Sea turtles are not very mobile on land and cannot crawl backwards, therefore if they are trapped or wedged under any object, the female may not be able to escape and may exhaust herself or die.

2. Interference with sea turtle nest incubation. If a nest were to be laid near the seawall, any activities such as ground disturbance may affect the embryos. Ground disturbance activities may also affect sand moisture of the egg chamber which is critical to osmotic balance of

the eggs and oxygen exchange for the embryos. Sand temperature which affects sex determination of the eggs may also be impacted by ground disturbance.

3. Potential vulnerability of Newton Park due to a nest. If a nest were to be laid during the construction project, all construction activities should be halted to avoid impacts to the nest as described above. If this were to happen during a critical phase of construction such as wall panel replacement or while replacing the anchors, it could leave Newton Park vulnerable to storm surges while the eggs are incubating. It should be noted that sea turtle nesting season coincides with hurricane season.

4. Inability to relocate a nest. The FWC Marine Turtle Permit Holder, Turtle Time Inc., has very tight restrictions from the state regarding how and when a nest may be relocated. The Permit does not allow Turtle Time to relocate a nest for this particular project or any project that is not part of a beach nourishment project.

5. Project timeframe. Requesting a modification to the DEP CCCL permit for the seawall rehabilitation would require a permit modification. This would require resubmittal of the plans to the DEP and a minimum 30 day review time for DEP. The DEP would submit the modification request to the FWC. FWC reviews permits for activities involving marine turtles in Florida under authority granted to the state through a Cooperative Agreement with the U.S. Fish and Wildlife Service (USFWS) under Section 6 of the U.S. Endangered Species Act (ESA). All activities relating to marine turtles must be authorized under subsection 379.2431(1), Florida Statutes. Based upon my experience, I would anticipate that the DEP would request additional information and the Town would have to respond.

While I recognize the need for rehabilitation of the Newton Park seawall, I encourage delaying the project until sea turtle nesting season ends in November.

Cathie Lewis

From: Mark Kincaid [mkincaid@cecifl.com]
Sent: Thursday, May 08, 2014 4:52 PM
To: Cathie Lewis
Cc: Mike Poff; Kris Thoemke
Subject: Newton Park Seawall Replacement - Turtle Nesting Season

Hi Cathie,

In order to replace the Newton Park seawall during turtle nesting season the current permit needs to be modified as it contains a specific condition that does not allow for work to be conducted during the May 1 to October 31. For DEP to consider allowing work during the nesting season, we would need to prepare and submit a permit modification request. The request would include sea turtle nesting data for the area seaward of the seawall for DEP and FWC to review, a proposed sea turtle motioning plan and a $300 permit modification fee.

There is a reasonable chance DEP will issue a permit mod to work during nesting season. Numerous projects have been previously allowed to work during season by DEP. When they do this DEP usually requires daily sea turtle monitoring. If nesting occurs, the nest areas will be identified and either the eggs will be relocated or the nest site must not be disturbed by the construction until after the eggs have hatched and this is verified by the sea turtle monitors.

Based on our experience, the time required to obtain this permit modification could be between two to four months.

Please let us know if you have any questions.

Thanks,

Mark