



Richland County Council

ADMINISTRATION AND FINANCE COMMITTEE

November 16, 2017 – 6:00 PM

Council Chambers

2020 Hampton Street, Columbia, SC 29204

COMMITTEE MEMBERS PRESENT: Greg Pearce, Chair; Bill Malinowski, Paul Livingston, Jim Manning and Norman Jackson

OTHERS PRESENT: Joyce Dickerson, Dalhi Myers, Brandon Madden, Michelle Onley, Larry Smith, Shane Kitchens, Tracy Hegler, Ismail Ozbek, Jamelle Ellis, Brad Farrar, Quinton Epps, Lillian McBride, and Kimberly Williams-Roberts

1. **CALL TO ORDER** – Mr. Pearce called the meeting to order at approximately 6:00 PM.

2. **APPROVAL OF MINUTES**

a. October 24, 2017 – Mr. N. Jackson moved, seconded by Mr. Manning, to approve the minutes as distributed.

Mr. Manning stated on the top of p. 3 there is a typo. The word “community” needs to be changed to “committee”. The Clerk’s Office will make the necessary correction prior to posting the minutes online.

In Favor: Malinowski, Pearce, N. Jackson, and Livingston

The vote in favor was unanimous.

3. **ADOPTION OF AGENDA** – Mr. N. Jackson moved, seconded by Mr. Malinowski, to adopt the agenda as published.

Mr. Malinowski stated he was provided an amended agenda prior to tonight’s meeting and wanted clarification on which agenda the committee will be working off.

Mr. Pearce stated the committee will be working off of the amended agenda.

In Favor: Malinowski, Pearce, N. Jackson, and Livingston

The vote in favor was unanimous.

4. **ITEMS FOR ACTION**

a. Award of Rivers Station Subdivision Road Repair and Paving Project – Mr. Pearce stated the roads were built substandard and the roads are falling apart. The company that constructed the roads is no longer in business and the developer cannot afford to repair the roads. The County has negotiated a

plan to spend \$200,000 to correct the deficiencies. He stated it was his understanding the developer is going to reimburse the County.

Ms. Hegler stated that was the intention. Several months ago, Council passed the agreement that would do what Mr. Pearce outlined with the developer. This unique opportunity was proposed by the developer to help fund some of the deficient roads. At the last committee meeting it was noted, the developer had not and would not sign the agreement; therefore, the selection of a vendor to do the work was deferred by the committee. She stated there were options she could present to the committee to amend the contract that may be more amenable to the developer.

Mr. Pearce stated for clarification the motion before the committee tonight is to spend the \$200,000 to correct the roads.

Ms. Hegler stated to select the vendor to do so.

Mr. Pearce stated the issue is open for discussion.

Mr. Livingston inquired as to where the money is to come from.

Ms. Hegler stated it was approved by Council during the original contract discussion to pull it from the Roads & Drainage fund balance to cover the cost until we received reimbursement from the developer.

Mr. Malinowski stated the original action item did say we would take it from Roads & Drainage, but we also had a contract. When we voted for that it, it was that we were going to be receiving reimbursement to replenish the fund. Now he is hearing we may not. He inquired if we are back to the original one where we will get the reimbursement.

Ms. Hegler stated we are not. She has reached out to the developer, the subject of the original contract, and suggested amendments to the agreement, which would have been brought back to the committee tonight, to see if he might be more amenable to it and have not heard back from him. The clauses within the original agreement were to pave and/or correct the roads in Rivers Station and a 2nd community Blythecreek. The estimate provided at the time for \$200,000. The developer agreed to repay that over the course of 2 years. When the contract was presented to Council, staff suggested adding a final accounting clause to the agreement should the amounts go over \$200,000. Council agreed to the additional language. When the additional language was presented to the developer that was his contention. The developer did not want the final accounting clause because he knew we could come back and say well it actually cost us \$500,000. What has happened since the last committee meeting, Blythecreek the 2nd community listed in the contract is located in the Town of Blythewood and their current responsibility. She stated she could present the option of removing Blythecreek and the final accounting clause from the contract, keep it at \$200,000 and assume a repayment from the developer. He may be more amenable to doing so.

Mr. Pearce stated the options would now be either to approve the \$200,000 and move forward or to defer and allow staff to present the option to the developer.

Ms. Hegler stated if that is the will of the committee.

Mr. Malinowski stated in the agenda it says, "Impact of Action – Operating Budget: Not applicable" and then for the funding it says it is not applicable because we are going to pay it and get it back; therefore, what is in front of the committee is incorrect.

Mr. Malinowski made a motion, seconded by Mr. Manning, to hold this item in committee and direct staff to create a document with the option outlined by Ms. Hegler, present it to the developer and see if he will be willing to sign the agreement and reimburse the County.

Mr. N. Jackson inquired if anything had been done to the roads in the subdivision.

Ms. Hegler stated the County has been paving potholes.

Mr. N. Jackson stated the residents of the community are at the mercy of when this is approved. If the developer chooses not, then it is up to Council to fix it. But that same developer can come and build houses anywhere else he chooses.

Ms. Myers stated the original contract had 2 developments in it and that was a \$200,000 assessment. Obviously, it would be divided between the two. If we are taking out one, is the number going to change?

Ms. Hegler stated what we have now is knowledge of a bid. What is truly before the committee is the solicitation award for a contractor we found to do the work in one of those neighborhoods, Rivers Station. The estimate is \$211,000 and why she feels more comfortable removing the final accounting clause, but also removing the 2nd neighborhood because it would clearly be more than \$200,000.

Ms. Dickerson inquired as to what the future intentions are for the Blythecreek community.

Ms. Hegler stated they realized in their error the community was actually within the Town of Blythewood. They are talking to the Town of Blythewood to address the matter.

Mr. Pearce stated the motion on the floor is to hold this item in committee to give staff time to discuss with the developer an amended agreement and return that to the committee at the December committee meeting.

In Favor: Malinowski, Pearce, N. Jackson, and Livingston

The vote in favor was unanimous.

- b. Request of Board of Voter Registration and Elections: Repeal of Ordinance Section 1-19 of Chapter 1, General Provisions of the Richland County Code of Ordinances – Mr. Pearce stated Council previously voted not to forward payment for legal fees for the Election Commission.

Mr. Smith stated when the committee briefing document flowed through, the legal department became aware the Board of Voter Registration and Elections had requested an Attorney General's opinion. He believes Mr. Madden indicated he had reached out to get a copy of what the Attorney General was asked to address, but he did not get a copy. The ordinance before you is the one Council previously voted on and is currently in place.

Mr. Malinowski stated it was his understanding from previous discussions regarding legal payments for this entity, Board of Voter Registration and Elections, there was a State law that addressed how they were supposed to seek legal advice or counseling to take care of their legal matters. And it was not from this body. He does not believe this is properly before us. In order to get whatever legal remedies they need, they need to review the State law and go to the proper body. He further stated under "Fiscal Impact" it says, "no immediate". Well there is obviously some immediate needs and

some monies owed. If in fact we are going to consider this, we have not been given the benefit of the dollar amounts they are asking for.

Ms. Dickerson stated she agrees. She met with the Director approximately 3 months ago and had a long discussion with him about the Attorney General's opinion. At that time, he stated he would be submitting that opinion within the next week. She stated she is amazed we do not have the opinion and why that opinion was withheld from Council so we can see what the request was and what the Attorney General's opinion is. She further stated we need hear what the Attorney General's opinion is before we even look at amending the ordinance.

Mr. Malinowski stated, based on Ms. Dickerson's comments, rather than make an outright motion for denial and tell them to review the State law, he moved to hold this committee until we obtain the information Ms. Dickerson has requested.

Mr. Livingston stated for clarification that is the legal opinion.

Mr. Manning seconded Mr. Malinowski's motion to hold this item in committee.

Mr. N. Jackson stated for clarification that we are going to get an opinion to see if we can repeal.

Mr. Pearce stated he believes the opinion is where the proper authority is for the Election Commission to receive legal assistance.

Ms. Dickerson stated when this was presented to her, they gave her an approximate figure on how much they were requesting and outlined the legal bills they have. She was in agreement with Mr. Malinowski that the bills have not been presented notating the amount. That is one of the reasons she requested they get a legal opinion and if we were in violation or that was something we needed to do then that's what we would do, based on State law and the AG's opinion. Without having that information, she believes the Director did not give this Council the respect to say this is what our request was and this is what the Attorney General's opinion was.

Mr. N. Jackson stated he knows staff will give us an opinion also. What he saw last time with members of a board, who volunteer services for the County, was they were sued and they had come out of their own pockets. He does not feel that is fair. Anything we can do to prevent something happening like that again. He stated he would do anything to help that. In the budget, the Election Commission had a budget for "X" amount of money to handle legal fees, but we struck it down from \$140,000 to \$5,000. If they had that line item, enough money in their budget, they would not have to come to us. He is not sure if we cannot do it this way, in the future they can access an amount that may be needed for legal fees and if not used can be carried over.

POINT OF CLARIFICATION – Ms. Dickerson stated the request was twofold. It was like our attorney was responsible for handling their legal matters. Our attorney is the Council's attorney and it was one of her questions to the Director and he was not able to answer that.

Mr. Pearce stated the Director of the Voter Registration is in the audience and was invited to briefly assess the committee of his position.

Mr. Suleman stated they have requested the Attorney General's opinion. He spoke with the Attorney General's Office today and they are expecting the opinion to be completed by next Wednesday. They have been working on it for the last 3 weeks. Part of the delay with submitting it was because he had to write the request for opinion himself. Since his arrival in Richland County, he has not been able to have legal counsel for the Board. He has inherited 3 lawsuits and have had

another lawsuit to the Board. The Board has entered into settlement agreements on 2 of the lawsuits that they feel the settlements benefit the citizens of Richland County. They were also in mediation for a 3rd lawsuit where he had to go into mediation by himself because they do not have legal counsel to appear with us because they cannot pay anyone. The request is to rescind the ordinance because he has already submitted legal bills and has a potential settlement figure, which cannot be released publicly. The hope is to pay these settlement fees out of the \$300,000 Council gave them back in their budget from the money that should have received in FY17. He stated he may have misspoke on the agenda, but the fiscal impact is that it is going to be coming out of the monies already been appropriated to our agency, which are not Council funds but reimbursement funds that were due back to our agency. They know they are able to cover the costs of the current attorney's fee and the settlements with the \$300,000. They are hoping to cover the settlement fee of the lawsuit currently in mediation, as well. He stated he could forward copies of the 4 questions asked of the Attorney's General's Office.

Mr. Livingston stated he shared some of Mr. N. Jackson's concerns. If we have a Voter Registration Office and people are serving and there are reasons for legal issues. We have to figure out a way to resolve that. It has to be paid. How we do that, he does not know. We cannot simply say go figure it out and not provide them with money. It is our Voter Registration Board, whether we are directly responsible for it or not. It is in Richland County and it is going to affect our constituents.

Mr. Malinowski inquired if Mr. Suleman was an attorney.

Mr. Suleman responded he was not.

Mr. Malinowski stated Mr. Suleman indicated he did not have funds for legal assistance, yet he indicated he entered into a good settlement agreement. He inquired how Mr. Suleman would know it was a good settlement agreement not being attorney or not having any representation.

Mr. Suleman stated, in that case, they did have representation because they had an attorney working that had not been paid for over a year. She was continuing to represent them in the case to get settlement. Her firm will not represent them in further legal actions because they have not been paid for over a year of legal fees. In that instance, he is confident they have a good settlement in hand and they can pay that. They are under a court imposed deadline of January 2nd to pay that settlement or it will go back to active docket. In the current case, they have put a pause on the mediation until he could confer with an attorney. He is supposed to speak to the mediator tomorrow to discuss settlement options and see if they are going to be able to reach and move forward with a settlement.

Mr. Malinowski stated the other problem with rescinding the ordinance is he believes we are opening the door for others to come forward because there no longer something in place to prevent others from coming to Council asking for payment of their legal fees. He cannot say the citizens are or are not being affected in this case. We do not have any information or specifics on it. He believes once Council starts paying fees, regardless of what they are, for entities that State laws or other laws say we are not responsible for we are going to get a lot more tear shedding coming in here requesting funds.

Mr. Pearce stated he was not aware of what the proposal was. There would be some consideration to let them settle these cases with this money without repealing the ordinance. Let them get this behind them, with this money they already have, without repealing the ordinance. So that would be an option for consideration.

Mr. Malinowski inquired about where the money is coming from.

Mr. Suleman stated this is the money that Council had three readings for the ordinance a few months ago for a budget amendment in the amount of \$308,000. It was originally approximately \$400,000. It was reimbursement money they were due from elections that were held and they were supposed to get monies back in. The money went to the General Fund and was supposed to be returned to their budget. It was never returned to their budget, so their budget was shorted those monies.

Mr. N. Jackson stated, apart from that, we have to have a mechanism for the Election Commission, or any other board, to pay legal fees if they are a standalone or independent board.

Mr. Suleman stated they are hoping the Attorney General's opinion will assist them with moving down the road to a solution that everyone can agree on.

Mr. N. Jackson made a substitute motion, seconded by Mr. Livingston, to forward to Council with a recommendation to allow the Board of Voter Registration to use the funds they have in their budget to pay their legal fees.

Mr. Pearce stated for these specific cases.

Ms. Dickerson stated we were talking about how we help others, but the money we paid earlier for Board members that were appointed. We were helping Board members and not staff, so that is a very distinct difference between the two.

Mr. Pearce stated that would not repeal the ordinance.

Mr. Malinowski stated while we are going to give them the authority to spend these funds they have been reimbursed from the County. He wanted to ensure that 2 or 3 months from now Council does not hear, "well we used these funds for legal funds and now we need you to give us another \$300,000".

Mr. Suleman stated they are presently working on their budget. The November 7th election was just held and they are working on the reimbursement from the cities and towns that had that election. They are going to be putting together their budget for the June primaries. They are going to be working diligently to work within the budget they have. They may not have some of the amenities that Council members are used to seeing in some of the elections, but they are going to have the elections and will do the best they can with the caveat they believe they were underfunded to begin with.

Mr. N. Jackson inquired if the Election Commission has a board appointed by the Legislative Delegation, and they have a budget, does Council have a right to tell them how to spend their money or what to do with the money they have.

Mr. Pearce stated Council is not recommending that, they are.

Mr. N. Jackson stated in the past the board recommended or needed something done, but Council said no. He stated if you have a board appointed by the delegation and they made decisions for the agency, does Council have a right to tell them what they can and cannot do with their board's decision.

Mr. Smith stated there have been several different issues that has come before the Council related to Voter Registration and Elections. He stated perhaps what Mr. N. Jackson is referring to was a situation that came before Council where there was not a line item in their budget for legal fees.

Obviously they could not pay something out of their budget when there was no line item for that in their budget. At that time, there was a request to pay some legal fees; however, there was not a line item in their budget for legal fees. At point, it was determined that was not something they could do because Council had not supplied any funds for that purpose. He further stated that was based on the premise there was a State law which basically said it was the Attorney General's responsibility to deal with these kinds of issues. Or at least that is our interpretation of what State law says.

Mr. Manning inquired about Mr. Suleman's comment, in regards to the June elections, that Council would not see the amenities they are accustomed to.

Mr. Suleman stated one of the things they are looking at cutting would be absentee satellites available for absentee voting in the primaries. If they do not have the money to open them, they will not be opening them. They will only have absentee voting here at the Voter Registration and Elections office.

Mr. Pearce stated the motion on the floor is to permit Voter Registration and Elections to spend the money they recently received to settle the 3 lawsuits and would not result in the repeal of the current ordinance.

In Favor: Malinowski, N. Jackson and Livingston

The vote in favor was unanimous.

Mr. Smith stated Mr. Suleman indicated there was something that had to be done tomorrow. He wanted to make certain there is an understanding this committee makes a recommendation to Council.

Mr. Suleman stated he understand. He inquired if this matter would be on Council's next agenda.

Mr. Pearce responded in the affirmative.

- c. Extension of Waverly Magistrate Lease – Mr. Pearce stated the item before committee is a routine extension of the Waverly Magistrate's lease.

Mr. Livingston moved, seconded by Mr. Malinowski, to forward to Council with a recommendation to approve the extension.

Mr. Malinowski inquired about the difference between the old installment and the new installment.

Staff responded it is the same.

Mr. Malinowski stated once again we have a lease that has already expired. He stated it seems we are always chasing the things. We need to find a better way to track these.

In Favor: Malinowski, Pearce, N. Jackson, and Livingston

The vote in favor was unanimous.

- d. Direct staff, in conjunction with the legal department, to determine how a service fee can be imposed on property that is not taxed in Richland County. The purpose is that even though certain properties are exempt from taxes, they still receive all amenities provided by Richland County that others must pay for in addition to property taxes [MALINOWSKI and N. JACKSON] – Mr. Pearce

stated the motion before Council is to impose fees on non-profit entities in the County that currently do not pay taxes. It is his understanding there is a precedence on this.

Mr. Farrar stated this came up at Council's Retreat. The law is clear on taxes, as far as who is exempt. It includes a number of entities: State property, County property, municipal property, school district, churches, schools and colleges, etc. are generally exempt if they are used for those purposes. It is unchartered water in terms of uniform service fees. There was one case found, *German Evangelical Lutheran Church of Charleston v. City of Charleston*, and there was a fee imposed in connection with a municipal improvement act, which is a specific piece of legislation. The assessment was held to legal. He further stated that is an assessment and not necessarily the same thing as a uniform service fee or charge. What he was trying to say is there is no prohibition against attempting to impose it, but you have to understand the entities you might impose this against you would likely hear from those entities. Not on the legal side, per se, but they are going to appeal to you along the lines of, look we are exempt from taxes what is the difference between that and a fee. You may get into a in the weeds discussion. They are probably going to want to keep it on the philosophical level of there is really no difference. Why are you imposing it? It is not something you could not legally attempt to do, but you need to understand you will probably hear public relations issues, political issues that go along with that initiative.

Mr. Pearce stated he would suspect if we passed one we would have legal challenges.

Mr. Malinowski stated right now the taxpayers are paying for the non-tax property. What he is saying is they are receiving services that everyone else is paying for. We are already giving them a break on not paying taxes. Yet we continue to send fire, sheriff, local law enforcement, and EMS. They get the benefits of all this. They may even have the benefits of trash pickup. Yet they do not pay a penny. We are not asking that we tax their property. He is simply saying they should pay their fair share like all other residents of the County do for these special services, which are very important for them.

Mr. Malinowski moved, seconded by N. Jackson, to direct legal to create a fee agreement or ordinance we can use in order to begin to reap some benefits to defray the costs.

Mr. N. Jackson stated Midlands Technical College has a County fee, an in State fee and an out of State fee. The residents of Richland County pay a lower fee just because of the taxes the residents pay in Richland County. Instead of a fee, it would be great if all the institutions (i.e. USC) would give the residents of Richland County a discount to attend. He requested a friendly amendment to have staff explore the possibility of reduced fees for County residents at these entities.

Mr. Malinowski accepted Mr. N. Jackson's friendly amendment.

Mr. Manning stated he is fine with looking at the entities that are not governmental entities. He stated he does not have a problem with not charging, for example, the State Department of Social Services and someone has a heart attack over there during the day and we send EMS. Because all we are doing, if we do that, is the State government is going to raise taxes to pay for it. It seems like this will be getting people all wound up and upset. Ultimately, at the end of the year, when we are done paying local and State taxes we are still going to pay the same amount. The County tax may be a little less and my State tax a little higher because the government entity, whether it is the County or the State, is still going to get the money to pay for it. Mr. Manning requested a friendly amendment to remove purely government organizations.

Mr. Malinowski accepted Mr. Manning's friendly amendment.

Mr. Pearce stated the motion is to request the legal department to prepare a structured proposal, excluding government entities, and bring back to committee.

In Favor: Malinowski, Pearce, Manning, N. Jackson and Livingston

The vote in favor was unanimous.

- e. A Resolution in support of the issuance of JEDA Bonds in the aggregate principal amount of \$1,500,000,000 and authorizing a pledge of revenues of SC Health Company in connection herewith – Mr. Pearce stated this is an action requested by Palmetto Health.

Mr. Manning moved, seconded Mr. Pearce, to forward to Council with a recommendation for approval.

Mr. Pearce stated to keep in mind all we are doing is providing a resolution in support of this. It does not apply against our debt capacity in any way.

Mr. Malinowski stated he supports the resolution. He wants it on the record that Council rules states agenda items, with all backup material, have to be before us 2 weeks prior to the meeting. This one was not. The rules further state in exigent circumstances the Chair can put it on and that is why this was put on because time was of the essence.

In Favor: Malinowski, Pearce, Manning, N. Jackson and Livingston

The vote in favor was unanimous.

5. **ITEMS PENDING ANALYSIS**

- a. Council Motion: The City of Columbia announced that they will be targeting Hospitality Tax businesses in the unincorporated area for annexation to take HTax funds. The City receives more than \$10 million annually while the unincorporated area receives over \$5 million annually. The County spends more than half its funds in the City while the City spends its funds in the City only. I move unless the City develops an IGA or MOU with the County not to take target and take the County HTax funds that Richland County then there should be some discussion to reevaluate collection of the HTax funds [N. JACKSON & MALINOWSKI] – No action was taken.
- b. Council Motion: Explore funding Eco Tourism with funds from Mitigation Bank Credits and Economic Development [N. JACKSON] – No action was taken.
- c. Council Motion: Explore additional options on supplemental insurance for employees. NOTE: There are new products available. Staff should talk to existing and additional agencies to provide better or additional options for employees. [N. JACKSON] – No action was taken.
- d. Council Motion: Move that the Recreation Commission provide an update of the Recreation Bond to ensure that it was executed as council approved and that any funds remaining after all items are completed it is Richland County Council's decision on how it is spent [N. JACKSON] – No action was taken.
- e. Council Motion: Richland County funds thirteen mills eight mills more than the five mills required by statute. I move that County Council develop a separate Recreation Commission to manage the eight additional mills if the Recreation Commission does not agree to the MOU or if Council still feels that

there is taxation without representation. NOTE: This is a partial solution to the constant challenge for taxation and representation [N. JACKSON] – No action was taken.

- f. Council Motion: Revisit the 2002 Richland County Water Plan, and any updates, for providing water to unincorporated areas of Richland County and in conjunction with the future Lower Richland Sewer Project [MALINOWSKI and MYERS] – No action was taken.

- 6. **ADJOURNMENT** – The meeting adjourned at approximately 6:48 PM.