



Richland County Council

Rules and Appointments March 15, 2016 - 4:00 PM 4th Floor Conference Room

Julie-Ann Dixon	Bill Malinowski (Chair)	Jim Manning
District 9	District 1	District 8

Call to Order

- 1 The Honorable Bill Malinowski

Approval of Minutes

- 2 March 1, 2016 [PAGES 4-5]

Adoption of Agenda

- 3

Items for Action

- 4 ITEMS FOR ACTION:

- a. Terms of Service [PAGE 6]
- b. Determine if an act that amended Section 27-2-105, code of laws of South Carolina, 1976, approved in June 2014, is a violation of Home Rule.

Background: The above amended bill gives the state the authority to change county boundaries with no input from the county/counties being affected. This could have a tremendous financial impact on a county by the transfer of millions of dollars of property from one county to another or even changing a county line to put property in a neighboring county to assist with economic



Richland County Council

incentives for a new business.

I also question why the Richland County Lobbyist did not make Richland County aware of this bill as it proceeded at the state level?

Currently the Richland County/Lexington County line is being looked into for change and neither county has requested this change or disputed the lines. (See 10-4-15 Tim Flach article in The State for some details). [MALINOWSKI] [PAGES 7-11]

c. Membership Requirements for Business Service Center Appeals Board [PAGES 12-15]

d. Add to Council Rules - All Regular and Special Called Council meetings will be broadcast [MALINOWSKI and MANNING]

Adjournment



Richland County Council



Special Accommodations and Interpreter Services Citizens may be present during any of the County's meetings. If requested, the agenda and backup materials will be made available in alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), as amended and the federal rules and regulations adopted in implementation thereof. Any person who requires a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may request such modification, accommodation, aid or service by contacting the Clerk of Council's office either in person at 2020 Hampton Street, Columbia, SC, by telephone at (803) 576-2061, or TDD at 803-576-2045 no later than 24 hours prior to the scheduled meeting.

RICHLAND COUNTY COUNCIL SOUTH CAROLINA



RULES AND APPOINTMENTS COMMITTEE

March 1, 2016
4:00 PM
4th Floor Conference Room

In accordance with the Freedom of Information Act, a copy of the agenda was sent to radio and TV stations, newspapers, persons requesting notification, and was posted on the bulletin board located in the lobby of the County Administration Building

CALL TO ORDER

Mr. Malinowski called the meeting to order at approximately 4:00 PM

APPROVAL OF MINUTES

February 16, 2016 – Ms. Dixon moved, seconded by Mr. Malinowski, to approve the minutes as distributed.

Mr. Malinowski moved, seconded by Ms. Dixon, to reconsider the portion of the minutes related to the appointment to the Lexington Richland Alcohol and Drug Abuse Council. The vote in favor was unanimous.

Mr. Malinowski stated he was informed there was only one appointment to the council instead of two.

Mr. Malinowski moved, seconded by Ms. Dixon, to forward the appointment to the Lexington Richland Alcohol and Drug Abuse Council to Council without a recommendation. The vote in favor was unanimous.

Ms. Dixon moved, seconded by Mr. Manning, to approve the remaining minutes as distributed. The vote in favor was unanimous.

ADOPTION OF THE AGENDA

Ms. Dixon moved, seconded by Mr. Manning, to adopt the agenda as published. The vote in favor was unanimous.

NOTIFICATION OF VACANCIES

- a. Township Auditorium Board – 1
- b. Board of Zoning Appeals – 2
- c. Board of Assessment Appeals – 1
- d. Accommodations Tax – 1 [Applicant must have a background in Lodging]

Mr. Manning moved, seconded by Ms. Dixon, to advertise for the vacancies. The vote in favor was unanimous.

Committee Members Present

Bill Malinowski, Chair
Julie-Ann Dixon
Jim Manning

Others Present:

Kimberly Roberts
Michelle Onley

INTERVIEWS

- a. **Employee Grievance Committee – 1** – Mr. James H. Hill, III; Elmer C. Brown, Jr.; Sidra Nelson; Camilla H. Gill; and Bruce Greenberg were interviewed.

NOTIFICATION OF APPOINTMENTS

- a. **Employee Grievance Committee – 1** – Ms. Dixon moved, seconded by Mr. Manning, to appoint Mr. Elmer C. Brown, Jr. The vote in favor was unanimous.

ADJOURNMENT

The meeting adjourned at approximately 4:51 PM.

The Minutes were transcribed by Michelle M. Onley, Deputy Clerk of Council

Red-Lined Version

[DRAFT Amendment—Term limits with one (1) year of non-service interval following expiration of member’s term]

Section 2-327. Terms of service

(a) The members of such boards, commissions and committees shall not serve more than two (2) consecutive terms; provided, however, that upon service of two (2) consecutive terms a member may be eligible for reappointment after one ~~day~~ **year** of non- service. ~~Provided, however, that an individual serving in an executive position on a county board, commission, or committee shall be allowed to complete the term for that position when the individual's term on the board, commission expires prior to the expiration of the executive appointment. Further provided, regional boards, commissions and committees are exempt from the two (2) consecutive term limits requirement whenever the other jurisdiction(s) appointing said members do not limit the number of terms held by their appointee(s).~~

(b) Notwithstanding any other provision of this Article, any member serving on a board, commission or committee may continue to serve until such time as ~~an advertisement has appeared in the local newspaper and a successor has been duly appointed;~~ provided, however, the term of an elected member (who is serving on a board, commission or committee) ends when such member **'s term expires.** ~~is no longer serving in the capacity of an elected member.~~
(Ord. No. 015-11HR, § I, 3-1-11)



RECEIVED
3/4/2016 JD

ALAN WILSON
ATTORNEY GENERAL

March 1, 2016

Mr. Bradley T. Farrar, Esquire
Chief Deputy Richland County Attorney
P.O. Box 192
Columbia, SC 29202

Dear Mr. Farrar:

Attorney General Alan Wilson has referred your letter dated November 25, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter):

S.C. Const. Art. VII, Section 7 provides in part:

The General Assembly shall have the power to alter County lines at any time; Provided, That before any existing County line is altered the question shall be first submitted to the qualified electors of the territory proposed to be taken from one County and given to another, and shall have received two-thirds of the votes cast...

S.C. Code Ann. Section 27-2-105 makes no reference to the above Constitutional provision nor does it seem to take in into account in the "clarification" (which could entail "alteration" or perceived alteration) of county boundaries. Therefore, the question respectfully submitted for your opinion is as follows:

Does S.C. Code Ann. Section 27-2-105 violate the South Carolina Constitution by not providing for the two-thirds vote of "the qualified electors of the territory proposed to be taken from one County and given to another" requirement of Article VII, Section 7, thereof?

In framing this issue, the concern is not with regard to clarifying a boundary by making that boundary easier to see or locate, but rather demarking a boundary in a way that gives anyone with a stake in that boundary concern that the County line may have been changed as a result of the activities undertaken pursuant to 27-2-105 is consistent with S.C. Const. Art. VII, Section 7 and its requirement for two-thirds approval of qualified electors before a County line may be altered, in the event "clarification" becomes "alteration" in the opinion of anyone alleged to have been aggrieved by the clarification.

Law/Analysis:

By way of background and as you are aware, the General Assembly established Richland County's boundaries by statute as:

Richland County is bounded on the north by Fairfield County, from which it is separated by new boundary lines set forth and specifically described in the location

and boundary of Fairfield County; on the east by Kershaw County and Sumter County from which it is separated by the Wateree River; on the south by Calhoun County; on the west by Lexington County, from which it is separated by a line beginning on the Congaree River where the counties of Lexington and Richland meet on the southern division thereof, and running thence with the Congaree River to where the confluence of the Broad and Saluda Rivers unite to form the Congaree, and following the thread of Saluda River about two and one-half miles to a concrete boundary marker; thence in a northwesterly direction upon the circumference of a circle having Lexington courthouse as its center, with a radius of not less than eight miles and a deflection of $1^{\circ} 21'$ for every one thousand feet, to a concrete boundary marker on the eastern boundary line of the town of Irmo; thence along the boundary line of the town of Irmo to the northeast corner of the town; thence west along the northern boundary of the town of Irmo 2,260 feet to a stake located thereon; thence along the circumference of the circle first described 11,360 feet to a stake; then N. $42^{\circ} 30'$ W. 878 feet; thence west 5,000 feet to a stake; thence S. 85° W. 5,000 feet to a stake; thence S. 80° W. 5,541 feet to a stake; thence N. $37^{\circ} 28'$ W. 10,618 feet to a stake; thence S. 85° W. 750 feet to a pine; thence N. $34^{\circ} 45'$ W. 10,491 feet to a stake; thence N. 22° E. 914 feet to a stake; thence N. $37^{\circ} 5'$ W. 1,313 feet to a stake; thence N. $13^{\circ} 45'$ E. 2,597 feet to a stake; thence N. $56^{\circ} 35'$ E. 3,920 feet to a point on Rocky Ford on Wateree Creek; thence north, northeast and east along the Wateree Creek to where it empties into Broad River. To the above-described area of Richland County is to be added all that territory transferred from Lexington County by act approved March 11 1922, to wit: all that certain piece of land containing 8,900 acres, or 14 square miles, situate in the northeastern part of Lexington County on the Broad River, and being bounded and delineated as follows, to wit: beginning at a point on the Broad River, and running S. 41° W. 82.51 chains to a stake; thence turning and running S. 32.5° W. 160.65 chains to a stake; thence running along a creek which empties into Wateree Creek 42.24 chains to a stake; thence running to the point where said creek joins Wateree Creek 71.51 chains; thence running along Wateree Creek 94 chains; thence turning and running S. 23° E. 142.50 chains to a point in Slice Creek known as Rocky Ford; thence turning and running northerly along Slice Creek 164 chains; thence turning and running easterly along Wateree Creek 305.00 chains to the point of entrance of Wateree Creek and Broad River; thence turning and running in a northwesterly direction along Broad River 410 chains, said piece of land being bounded on the west by Newberry County, on the south and southwest by Lexington County, on the south by Richland County, and on the east and north by the Broad River, being more particularly known as the plat of said property, completed on November 25 1921, by W.A. Counts and J.C. Wessinger, surveyors, said plat being filed in the office of the Secretary of State.

S.C. Code § 4-3-460 (1976 Code, as amended). Thus, the General Assembly has clearly defined Richland County's boundaries by this legal description. *Id.* As you mention in your question, South Carolina Code § 27-2-105 authorizes the South Carolina Geodetic Survey to "assist counties in defining and monumenting the locations of county boundaries and positioning the monuments using geodetic surveys" where the boundaries are "ill-defined, unmarked, or poorly marked." S.C. Code § 27-2-105 (1976 Code, as amended) (emphasis added). Moreover, the General Assembly authorized the S.C. Geodetic Survey to

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serve as mediator between any boundary dispute among two or more counties. Id. The statute also authorizes appeals from a boundary determination by the S.C. Geodetic Survey to the S.C. Administrative Law Court. S.C. Code § 27-2-105(B) (1976 Code, as amended).

Regarding your question, this Office has issued previous opinions where two statutes appear to be in conflict. In one opinion, we stated:

The language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. S.C. Tax Commission, 292 S.C. 411, 357 S.E.2d 6 (1987). And where two statutes are in apparent conflict, they should be construed, if reasonably possible, to give force and effect to each. Stone & Clamp, General Contractors v. Holmes, 217 S.C. 203, 60 S.E.2d 231 (1950). This rule applies with peculiar force to statutes passed during the same legislative session, and as to such statutes, they must not be construed as inconsistent if they can reasonably be construed otherwise. State ex rel. S.C. Tax Commission v. Brown, 154 S.C. 55, 151 S.E. 218 (1930).

Op. S.C. Atty. Gen., 1988 WL 485345 (December 1, 1988). Based on a plain reading of the statutes, we believe a court would reconcile S.C. Code § 27-2-105 with S.C. Code § 4-3-460 by interpreting S.C. Code § 27-2-105 as assisting counties in defining the county boundaries within the legal description already given in S.C. Code § 4-3-460. Furthermore, we believe a court would use this same reasoning to reconcile the statutes with the Constitutional provision restricting the alteration of county lines to two-thirds of the vote cast after submission to the qualified electors. Thus, construing S.C. Code §§ 27-2-105, 4-3-460 and S.C. Const. Art. VII, Section 7, Section 4-3-460 (Richland County's legal description) could not be changed without a successful election where two-thirds of the voters casting ballots vote to enact the change.¹ Moreover, S.C. Code § 27-2-105 serves as a tool for the county to clarify boundaries and markers within the legal description given in S.C. Code § 4-3-460.

However, a county's boundary line is statutory defined and should not be viewed as equivalent under the law to a dispute between adjoining landowners over a property line. Concerning boundary line disputes we have previously indicated that they can be litigated as an action at law, and the determination of a boundary line is a question of fact for a jury. Op. S.C. Att'y Gen., 2013 WL 1695520 (March 14, 2013) (citing Coker v. Cummings, 381 S.C. 45, 671 S.E.2d 383 (2008); Bodiford v. Spanish Oak Farms, Inc., 317 S.E. 359, 544 S.E.2d 194 (1995)). We further stated:

Additionally, "[i]f adjoining landowners occupy their respective premises up to a certain line, which they mutually recognize and acquiesce in for a long period of time, they are precluded from claiming the boundary line thus recognized and acquiesced in is not the true one." Id. (citing Gardner v. Mozingo, 293 S.C. 23, 26, 358 S.E.2d 390, 392 (1987)). "In other words, such recognition of, and acquiescence in, a line as the true boundary line, if continued for a sufficient length of time, will afford a conclusive presumption that the line thus acquiesced in is the true boundary line." Id. (citing Knox v. Bogan, 322 S.C. 64, 72, 472 S.E.2d 43, 48 (1996)). Acquiescence regarding a boundary line has been cited by this Office in regards to a municipality with a boundary in place forty-seven years without

¹ Please note other sections restrict the alteration of county boundaries. See, e.g., S.C. Const. Art. VII, § 12 and Art. VIII, §2

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dispute. Op. S.C. Atty. Gen., 1984 WL 249864 (April 23, 1984). Additionally, estoppel may be a defense to any such change in the county the property is located in.

Op. S.C. Att'y Gen., 2013 WL 1695520 (S.C.A.G. Mar. 14, 2013) (emphasis added). Hence, a boundary dispute between adjoining landowners where the boundary is not defined by statute or able to be determined by its statutory definition ultimately may be determined by a jury.

Conclusion:

Thus, it is the opinion of this Office that a court will determine that South Carolina Code § 27-2-105 cannot be used to change Richland County's statutory boundaries as defined by legal description in § 4-3-460. Moreover, any such "clarification" by § 27-2-105 would be limited to the terms within the statute, i.e. as a mediator for a boundary dispute between counties or to assist a county where boundaries are "ill-defined, unmarked, or poorly marked." S.C. Code § 27-2-105. Furthermore, we do not see how one could change the statutory legal description of Richland County as contained in South Carolina Code § 4-3-460 without compliance with South Carolina Constitution Article VII, Section 7, which includes an election by the qualified voters. Therefore, we believe a court will determine that South Carolina Code § 27-2-105 does not violate South Carolina Constitution Article VII, Section 7 where it does not change the statutory boundaries but only assists a county in clarification within the boundaries set by statute. However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

Session 120 - (2013-2014)

S*0988 (Rat #0282, Act #0262 of 2014) General Bill, By Cromer

Similar (H 4579)

Summary: Geodetic survey

AN ACT TO AMEND SECTION 27-2-105, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DUTIES OF THE SOUTH CAROLINA GEODETIC SURVEY (SCGS) WITH RESPECT TO DETERMINING COUNTY BOUNDARIES, SO AS TO AUTHORIZE THE SCGS TO CLARIFY COUNTY BOUNDARIES AND MEDIATE BOUNDARY DISPUTES BETWEEN COUNTIES BY PROVIDING A PROCEDURE ALLOWING THE SCGS ADMINISTRATIVELY TO ADJUST COUNTY BOUNDARIES, TO PROVIDE THE PROCEDURES INCLUDING NOTICE THAT SCGS MUST FOLLOW IN MAKING SUCH ADJUSTMENTS, TO PROVIDE THAT AFFECTED PARTIES MAY FILE A REQUEST FOR A CONTESTED CASE ON THESE ADJUSTMENTS TO THE ADMINISTRATIVE LAW COURT, PROVIDE THE TIME WITHIN WHICH SUCH A REQUEST MUST BE FILED, AND PROVIDE FOR FURTHER APPEALS, TO PROVIDE THE METHOD OF DETERMINING THE EFFECTIVE DATE OF THESE ADMINISTRATIVE COUNTY BOUNDARY ADJUSTMENTS AND THE NOTICE REQUIREMENTS FOR THESE ADJUSTMENTS TO BE EFFECTIVE, AND TO PROVIDE THAT NOTHING CONTAINED IN THIS ADMINISTRATIVE PROCESS RESTRICTS THE AUTHORITY OF THE GENERAL ASSEMBLY BY LEGISLATIVE ENACTMENT TO ADJUST OR OTHERWISE CLARIFY COUNTY BOUNDARIES BY LEGISLATIVE ENACTMENT. - ratified title

02/04/14	Senate	Introduced and read first time (Senate Journal-page 9)
02/04/14	Senate	Referred to Committee on Judiciary (Senate Journal-page 9)
02/11/14	Senate	Referred to Subcommittee: Hutto (ch), S.Martin, Gregory, Thurmond
04/16/14	Senate	Committee report: Favorable with amendment Judiciary (Senate Journal-page 7)
04/17/14		Scrivener's error corrected
04/29/14	Senate	Committee Amendment Adopted (Senate Journal-page 31)
04/29/14	Senate	Read second time (Senate Journal-page 31)
04/29/14	Senate	Roll call Ayes-40 Nays-0 (Senate Journal-page 31)
04/30/14	Senate	Read third time and sent to House (Senate Journal-page 38)
04/30/14	House	Introduced and read first time (House Journal-page 87)
04/30/14	House	Referred to Committee on Judiciary (House Journal-page 87)
04/30/14		Scrivener's error corrected
05/20/14	House	Recalled from Committee on Judiciary (House Journal-page 69)
05/28/14	House	Amended (House Journal-page 25)
05/28/14	House	Read second time (House Journal-page 25)
05/28/14	House	Roll call Yeas-109 Nays-0 (House Journal-page 26)
05/29/14	House	Read third time and returned to Senate with amendments (House Journal-page 22)
06/03/14	Senate	Concurred in House amendment and enrolled (Senate Journal-page 60)
06/03/14	Senate	Roll call Ayes-39 Nays-0 (Senate Journal-page 60)
06/05/14		Ratified R 282
06/09/14		Signed By Governor
06/13/14		Effective date 06/09/14
06/26/14		Act No. 262

Richland County Council Request of Action

Subject: Membership Requirements for Business Service Center Appeals Board

A. Purpose

To amend the requirements for the Business Service Center Appeals Board.

B. Background / Discussion

The Business Service Center Appeals Board is currently required to have five members: three CPA's, one attorney, and one business person.

In order to provide greater flexibility and thereby enhance the ability to fill vacant Board positions, it is requested that the membership requirements be revised. The new membership requirements requested would maintain the five positions. However, the number of CPA's, attorneys, and business people permitted to be on the Board would be flexible:

- No more than three and no less than two CPA's,
- No more than two and no less than one attorney, and
- No more than two and no less than one business person.

Additionally, the definition of "business person" is added, referring to a person who owns his/her own business or holds an executive role in a business.

Please see the ordinance amendment on the following pages.

C. Legislative / Chronological History

The Business Service Center Appeals Board was established in 2006. (There were seven appeals in 2008, two appeals in 2009, one appeal in 2014, and two appeals in 2015.)

D. Financial Impact

There is no financial impact associated with this request.

E. Alternatives

1. Approve the request to revise the membership as requested.
2. Do not approve the membership revisions and maintain the current membership requirements.

F. Recommendation

This request is at Council's discretion.

Recommended by: Pam Davis
Department: Business Service Center
Date: February 29, 2016

G. Reviews

(Please replace the appropriate box with a ✓ and then support your recommendation in the Comments section before routing on. Thank you!)

Please be specific in your recommendation. While “Council Discretion” may be appropriate at times, it is recommended that Staff provide Council with a professional recommendation of approval or denial, and justification for that recommendation, as often as possible.

Finance

Reviewed by: Daniel Driggers

Date: 2/29/16

Recommend Council approval

Recommend Council denial

Comments regarding recommendation:

One observation of the ROA is that given the number of appeals over the past three years, the member requirements may be unnecessarily restrictive. However, since I have not been involved in the working process of the board, I will defer the recommendation in support of the BSC Manager’s recommendation.

Business Service Center

Reviewed by: Pam Davis

Date: 3/7/16

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: This change is at Council’s discretion. However, allowing some flexibility in the membership requirements would seem to make it easier for vacancies to be filled.

Legal

Reviewed by: Brad Farrar

Date: 3/8/16

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Policy decision of Council.

Administration

Reviewed by: Tony McDonald

Date: 3/11/16

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Recommend approval as outlined above by the Business Service Center Manager.

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. ___-16HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES; CHAPTER 2, ADMINISTRATION; ARTICLE VII. BOARDS, COMMISSIONS AND COMMITTEES; SECTION 2-332. BOARDS, COMMISSIONS AND COMMITTEES CREATED; SUBSECTION (L), RICHLAND COUNTY BUSINESS SERVICE CENTER APPEALS BOARD; PARAGRAPH (2), MEMBERSHIP; SO AS TO REVISE THE MEMBERSHIP REQUIREMENTS OF THE BUSINESS SERVICE CENTER APPEALS BOARD.

Pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, BE IT ENACTED BY THE RICHLAND COUNTY COUNCIL:

SECTION I. The Richland County Code of Ordinances; Chapter 2, Administration; Article VII. Boards, Commissions and Committees; Section 2-332. Boards, Commissions and Committees; Subsection (l), Richland County Business Service Center Appeals Board; Paragraph (2), Membership; is hereby amended to read as follows:

(2) *Membership.* The Business Service Center Appeals Board shall consist of five members who shall be appointed by majority vote of the Council. The five-member board shall be comprised of no more than three and no less than two Certified Public Accountants, no more than two and no less than one member of the S.C. Bar Association, and no more than two and no less than one other business person, defined as a person who either owns their own business or has an executive role in a business. All members must be interested citizens residing in Richland County. Not more than one member of the Appeals Board may be an employee of the County.

SECTION II. Severability. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION III. Conflicting Ordinances. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION IV. Effective Date. All sections of this ordinance shall be effective on and after _____, 2016.

RICHLAND COUNTY COUNCIL

BY: _____
Torrey Rush, Chair

ATTEST this the ____ day of _____, 2016.

S. Monique McDaniels, Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

Approved As To LEGAL Form Only.
No Opinion Rendered As To Content.

First Reading:
Second Reading:
Third Reading: