

**NEWBERRY COUNTY COUNCIL
MINUTES
JANUARY 19, 20110
7:00 p.m.**

Newberry County Council met on Wednesday, January 19, 2011, at 7:00 p.m. in Council Chambers at the Courthouse Annex, 1309 College Street, Newberry, SC, for a regular scheduled meeting.

PRESENT: Henry H. Livingston, III, Chairman
Kirksey Koon, Vice Chairman
William D. Waldrop, Councilman
John E. Caldwell, Councilman
Edgar Baker, Councilman
Leslie (Les) Hipp, Councilman
Steven C. Stockman, Councilman
Wayne Adams, County Administrator
A.J. Tothacer, County Attorney
Laurie Renwick, Clerk to Council
Debbie Cromer, Finance Director

PRESS: Heather Hawkins, WKDK
Cindy Pitts, Newberry Observer

The meeting was duly advertised as required by law.

Chairman Livingston called the meeting to order and determined a quorum present.

Mr. Adams led the invocation followed by the Pledge of Allegiance.

1. Adoption of Consent Agenda

Mr. Baker motioned to adopt the consent agenda; seconded by Mr. Stockman. The vote was unanimous.

2. Additions, Deletions, and Adoption of Agenda

Mr. Caldwell motioned to adopt the agenda as written; seconded by Mr. Hipp. The vote was unanimous.

3. Personal Appearance

- a. **Mrs. Peggy Schumpert – Remaining funds budgeted for the Village Cemetery Project**

Mrs. Schumpert thanked the Chairman and members of Council for approving the funding for restoring and fencing the Village Cemetery. She shared the good news that Ms. Tucky Taylor had gone by the cemetery this afternoon and the fencing was almost complete. She stated that a certain amount was appropriated for this project and there will be funds left over and they were aware that these remaining funds will need to go back into the general fund. She asked for Council's consideration to approve a line-item for the Village Cemetery in the upcoming budget with these remaining funds that will allow them to complete some of the work that still needs to be done. Some additional tombstones need to be replaced and repaired and they will be glad to make a prioritized list of all the tombstones that need work. This request should use the left over funding from the original request. She said they would appreciate any consideration Council was willing to give.

4. **Ordinance #02-04-10: An Ordinance acting on a request to amend the Official Zoning Map established pursuant to Zoning Ordinance No. 12-24-01, codified in Chapter 153 of the Newberry County Code of Ordinances, so as to rezone a twelve and thirteen hundredths (12.13) acres portion of a real estate parcel totaling thirty-four and thirteen hundredths (34.13) acres designated as TMS Parcel No. 512-15 from Rural (R2) to Light Industrial (LI).**

Mr. Hipp motioned to approve third reading of Ordinance #02-04-10; seconded by Mr. Stockman.

Chairman Livingston asked if there was any discussion.

Mr. Koon recommended that Council go into Executive Session at this time to seek legal advice.

[Executive Session 7:05 p.m. – 7:45 p.m.]

Mr. Tothacer reported that Newberry County Council went into Executive Session to receive legal advice and no action was taken in that session.

Chairman Livingston stated that it has been customary to give people the opportunity to speak pro or con and asked if there was anyone signed up to speak on this ordinance.

Mr. Chris McLain stated that he lives right next door to the property to be rezoned and said he has spoken against it quite a few times. He asked Council to enforce the regulations set forth by the County to others around him. He felt the zoning department's opposition and a submitted petition of over 100 signatures against this rezoning should be enough keep this from happening. He said there was a similar request to rezone some property so that the owner was allowed to have horses; however, the owner had the full support of his neighbors and he was fine with that. The majority of the community has responded to this issue and they are against it. He felt the petition was dismissed and this issue should have never made it to second reading. For Council to take it upon

themselves to decide this issue for them as a community is a dereliction of duty because you guys are elected to represent us; the entire community. He said Councilman Hipp seemed to be at the opposite end of this issue and he would expect him to represent the voice of his community in a more favorable manner. He felt this should be put to a countywide vote and the people interested in the issue will turn out. One man's desire to change the way the land is intended to be used and is presently zoned should not outweigh the majority of the community that has responded against it. We will all be affected if the County lets all R2 rural property be rezoned as desired.

Mrs. Anne Caughman stated that she really did not come to speak but to listen then decided she did not want go home and beat herself up if she failed to say something. She said she lives on Jolleystreet Road and has already written and sent a letter to Council along with some information. She was struck by an article involving an ammonia cloud that killed a woman and injured seven in Swansea. She said she knew that this was a different business but both work with the same chemical. She briefed Council on some of the side effects of the chemical and said she did not understand why this business could not locate in one of the four industrial parks in the county. She is afraid that if this is allowed, Jolleystreet Road will eventually have to have interstate access ramps. This road is already a busy and dangerous road. She said she hates to see this community that people built from hundreds and hundreds of years ago to be invaded with a business. She said she appreciated Mr. Hipp calling her twice to discuss this which shows some interest in what she had to say. She does not feel that the Jolleystreet community will be the same if this business comes. She stated she was here to stand up for some of the other people in the community and hoped that Council will consider what other people have said. She said she does not feel this plant will be in the best interest of the people in the Jolleystreet community.

Mrs. Toni Bouknight stated that she resided on Jolleystreet Road almost directly in front of the property to be rezoned. She said she is definitely not in favor of this rezoning and it will not be in the best of their community. She has lived there all her life and this is her home and she does not want to see another tractor trailer truck or have to deal with chemicals being spilled or worry about what is happening on this property. There is enough noise in our community with I-26 let alone having this plant right in front of her house too. She said she does not understand how one person can come into a community and the whole community has to change for one person. She was involved in acquiring the signatures on the petition and said she did not mislead anyone. She told them the facts as she knew them and recommended that they check out the Southern Vacuum Cooling website and make their own determination. Mrs. Bouknight shared that this is her home and her community and she does not want a business in there and said she does not trust this.

Chairman Livingston asked if there was any more discussion.

Mr. Koon said that after going into Executive Session, receiving legal advice, knowing that the Planning Commission entered a motion not to approve this and because of the many signatures on the petition in opposition, he will be casting his vote NO.

Mr. Hipp commented that we have some folks in the community who are in opposition to this rezoning and he understands their feelings of the unknown and of not wanting their community changed. We do not just represent each community in each district; we represent the entire county of 36,000 people. While it would be easy to defer the decision to a public vote as Mr. McLain as suggested, we cannot take the position that every time a controversial subject comes before us that we defer it and send it off to a public referendum. That would be shirking our responsibilities. He said he cannot think of many cases where a new industry would locate in one of our rural communities that there not be some objections. It doesn't make members of the community want it there any more, but he does not think from what he has been told that the facility being proposed will be intrusive into the community. He shared that he has known Mrs. Caughman for a long time and he took the information that she and Mr. Hough provided on anhydrous ammonia and he looked into it. We have many facilities in our county that already use this as a coolant and they use thousands of times more than what is being proposed here. This facility will use less than what is required by law for DHEC licensing. DHEC monitors and controls facilities that use much more of this and in neighborhoods with a much higher population densities. The owners have also attended training on how to handle anhydrous ammonia even though it is in a small quantity. Mr. Hipp said he was not speaking for any Council member other than himself but feels he is obligated to build the tax base in this county through industry. This is a case where we are not being approached by a large industry that is going to have a significant negative impact. He said he has voted twice in the past to approve this rezoning and that is how he will vote tonight.

Mr. Baker said that when we checked this industry out, their existing facility was not only clean but had an excellent track record for safety and they are not located in a rural area now. They are located almost in town and he does not see a problem with them. Based on the county's 10 year zoning plan, he will vote for it.

Chairman Livingston asked if there were any other questions or comments.

Mr. Caldwell asked Mr. Hipp and Mr. Baker how close they lived to the area being discussed and stated that unless you are there to experience these potential disasters then maybe this should be looked at in a different way. Unless you are willing to move down there yourselves, he is going to vote with the community and if they don't want it, that is how he is going to vote.

Having received no further discussion, the vote to approve third reading of Ordinance #02-04-10 passed 5-2 with Mr. Koon and Mr. Caldwell opposed.

5. Ordinance #12-30-10: An Ordinance repealing Ordinance No. 01-04-03, relating to the establishment of County Council Committees.

Mr. Koon motioned to approve third reading of Ordinance #23-30-10; seconded by Mr. Baker. The vote was unanimous.

6. **Ordinance #01-01-11: An Ordinance supplementing an Ordinance to provide for the issuance and sale of a not exceeding one million nine hundred thousand dollar (\$1,900,000) General Obligation Bond Anticipation Note of Newberry County, South Carolina, to prescribe the purposes for which the proceeds shall be expended, to provide for the payment thereof, to provide for the issuance and sale of not exceeding fifteen million six hundred twenty five thousand dollar (\$15,625,000) General Obligation Bonds of Newberry County, South Carolina, and other matters relating thereto.**

Mr. Caldwell motioned to approve first reading of Ordinance #01-10-11; seconded by Mr. Baker. The vote was unanimous.

7. **Consideration of proposed County Council Committees for 2011**

- Economic Development
- Finance
- Personnel and Intergovernmental Relations
- Public Safety and Courts
- Public Works and Planning

Mr. Koon motioned to approve the 2011 County Council Committees as recommended; seconded by Mr. Baker. The vote was unanimous.

8. **Consideration of proposed 2011 County Council Committee Meeting Schedule**

Chairman Livingston stated that the SC Freedom of Information Act requires that public bodies approve their regular meetings annually.

Mr. Caldwell motioned to approve the 2011 County Council Committee Meeting Schedule; seconded by Mr. Baker. The vote was unanimous.

9. **Consideration of proposed FY 2011-2012 Budget Calendar**

Mr. Waldrop motioned to approve the FY 2011-2012 Budget Calendar; seconded by Mr. Hipp. The vote was unanimous.

10. **Appointments**

a. County Council Committee Appointments – Chairman Buddy Livingston

Chairman Livingston appointed the follow Council members to the Council Committees.

- **Public Work and Planning Committee**
 - Bill Waldrop, Edgar Baker, Steve Stockman and John Caldwell
- **Economic Development Committee**
 - Les Hipp, Buddy Livingston, and Steve Stockman
- **Personnel and Intergovernmental Relations Committee**
 - Steve Stockman, John Caldwell, Edgar Baker and Kirksey Koon
- **Public Safety and Courts Committee**
 - Kirksey Koon, John Caldwell, and Bill Waldrop
- **Finance Committee**
 - Buddy Livingston, Les Hipp, and Bill Waldrop

Mr. Koon motioned to approve the 2011 County Council Committee Appointments; seconded by Mr. Hipp. The vote was unanimous.

b. Other

No other appointments.

11. Public Comments

Chairman Livingston invited Mr. Kyle Parker to the podium who had signed up to speak.

Mr. Parker introduced himself and stated he was here to address Council concerning his client Dottie Smith who lives at 1918 Dreher Island Road where she has lived for over 50 years. He said he would like to take this opportunity to provide Council with an opportunity to learn about and begin discussions on how to prevent the utter irrational mess that is Ms. Smith's current situation. Ms. Smith's daughter sold her home and moved in with her mother to care for her. She also brought some ponies to the property in conjunction with the move, which according to Ms. Smith's doctors, have provided her with physical and emotional benefits. To remove these ponies will cause Ms. Smith some emotional distress. Ms. Smith is facing two criminal charges based on a zoning violation by having these two ponies on her three acre tract despite the fact that her property, as well as others in the neighborhood, have always kept some sort of farm animals. This is also despite the fact that there is an actual full fledged horse on a farm ¼ of a mile down the road. No where does the zoning code prohibit Ms. Smith from having these ponies in any readily intelligible way. Mr. Parker made a suggestion that Council take a look at the zoning ordinance under the RS 3 and RS 1 Districts and if you can find where it says in a clear manner that she cannot have these ponies then he will not come before Council again. If we are all honest about this, this is all because of a complaint from a single neighbor who to his understanding is a regular complainer to the zoning office. What you have is a disagreement between neighbors. When zoning was enacted, the county did so in a manner than may not be able to withstand constitutional muster. It is highly unlikely that the county will be able to obtain a unanimous jury verdict against Ms. Smith for anything. I don't think there is a jury in all of Newberry County where

there wouldn't be at least one juror that will refuse to convict Ms. Smith. Given that the county has already paid jurors for the first call of this case and are set to pay nearly double that amount for a second time so that there is a big enough jury pool, he asked Council what was the point. To what end is this matter other than imposing some unnecessary stress associated with a criminal trial to which Ms. Smith really does not need. As a citizen of this county and at a time when there is talk of budget cuts, additional taxes and cuts to services, does it make sense for this county to be spending money on these types of things; certainly no positive outcome for the county in these cases. Mrs. Peters, Administrator of the Zoning Office, is a fine, well meaning, and able public servant and Newberry County is lucky to have her; however, she simply does not have the tools with which to deal with this kind of matter. This is a case where Ms. Peters is in between one neighbor pitted against another and the zoning code simple does not give her the ability to deal with that in an effective and efficient manner. This body, as the legislative arm of this county, has the power to do something about it. His recommendation is that some possible amendments of the zoning ordinance text be adopted. You need to give Mrs. Peter some more plays in her play book and he suspects that if you ask her about Ms. Smith's circumstance she will tell you her hands are tied. It is not OK for the system to essentially require a prosecution of people with zoning violations when there is no real likelihood of success. This is a waste of time and money, inefficient and patently absurd but can easily be fixed. He hopes that this body will put an end to this mess and stand up for what is right. Mr. Parker asked that Council please consider these issues, move forward, and send a clear signal that the status quo of things is unacceptable.

Mr. Adams responded that this matter first arouse a year ago and since that time neither Mr. Parker nor his client has appealed the decision of the Zoning Administrator to the Board of Zoning Appeals which they could have done for a year now. His client could also have requested rezoning before Council. He said why is it at this late date that this arises when it has such irrational impetus behind it.

Mr. Parker stated that there is no requirement that Ms. Smith appeal the decision of the Zoning Administrator and at the time Ms. Smith did not feel it would be beneficial to her. At this point, the County's only remedy is a criminal prosecution of this 86 year old lady.

Mr. Adams commented that Mr. Parker originally stated that he wanted to come here to request rezoning; something that should have been done a year ago.

Mr. Parker responded that the Administrator had not paid attention to what he actually asked Council to do. He said at the beginning of his remarks that he would forgo that request and instead inform and ask Council to consider the dynamics of the zoning code as it relates to situations like this. The thrust of what I am saying to Council is that the County's only remedy is a criminal prosecution of this lady. He said he is not asking Council to do anything specific to Mrs. Smith and that was one of the first things that came out his mouth. Mr. Parker stated he was here to talk about sanity in this process. There should be some mechanism by which the Zoning Administrator can resolve these

types of things. Just give her some extra authority to interpret the zoning code and give her some factors to go by, might result in avoiding these trivial matters.

Mr. Hipp stated he would like to hear from the zoning folks on the specific zoning requirement that was in violation here.

Chairman Livingston recommended that the County Attorney address that because he had researched it.

Mr. Tothacer suggested that since this matter is currently in litigation and if Council wishes to discuss it that it be an Executive Session matter. He would also strongly urge staff not to discuss this matter that is currently before litigation. He said in his opinion, he is constrained by two things that stop him from talking to Council about this in open session. First, it is his believe that the Code of Ethics that he swore to, while he may zealously represent his client, it is inappropriate for him to try to address a matter that is before litigation in a setting such as this. Secondly, for him to talk to Council about this matter is deemed attorney client privilege so; therefore, if you would like to discuss it with staff present, his recommendation is that we go into Executive Session to receive legal advice. This matter is currently pending before the Magistrate Court here in Newberry County.

Mr. Stockman thanked Mr. Parker for coming tonight and thanked Ms. Dottie and Shelly for their patience. He said this is in his district and he has lived in this community his whole life. He said he certainly knows a lot about the lay of the land and the fact that you are not going to drive very far without seeing horses, cows, pigs, etc. He said he thought it was ridiculous that this has gone as far as it has in this community. He would like to make a motion to add this to our next meeting's agenda for consideration of Council. This is what we were voted into office to do; to handle these situations, and this will give us a chance to understand the situation and then if we need to go into Executive Session for legal advice, we will have the opportunity. He said he thought we needed to hear this case and make a ruling on it.

Chairman Livingston reported that we have a motioned and asked if we had a second.

Mr. Waldrop seconded the motion.

Chairman Livingston asked if there was any discussion.

Mr. Waldrop asked if this was on the docket in Magistrate's Court.

Mr. Parker stated that was correct.

Mr. Tothacer reported that a date has not been set yet of the new court date.

Mr. Waldrop asked if there would be time then to discuss this without going into Executive Session at the next meeting.

Mr. Tothacer commented that his advice with regard to Mr. Stockman's motion would be we should do it tonight. It is entirely up to Council when you schedule the Executive Session, but he is constrained by a couple of issues. One being the Code of Ethics and the other being what he can discuss in an open session about a matter that is currently in litigation. He is also constrained with discussing any points with Council as his client because that abrogates the attorney client privilege. He said he was sorry but he was not willing to give that up.

Mr. Koon stated that we might want to take this under advisement and take it before the Public Safety and Courts Committee and then bring it back before Council.

Mr. Parker added that all he asked Council to do was to discuss and consider what changes if any could be made with the zoning code that would give Mrs. Peters more plays in her play book and if that means matters are referred to a committee for discussion then he thought that might be the better way to go. He does not think an open meeting such as tonight would give Council the ability to properly deal with it.

Mr. Baker stated that if Mr. Stockman would withdraw his motion he would second Mr. Koon.

Chairman Livingston said that he felt Council was not listening to the advice of the County Attorney and we probably should go into Executive Session. He asked Mr. Stockman if he would consider withdrawing his motion for the time being until we get legal advisement.

Mr. Stockman moved to withdraw his motion to receive legal advice from counsel; Mr. Waldrop withdrew his second.

12. Vote for Executive Session, When Necessary

Mr. Koon motioned to go into Executive Session to receive legal advice; seconded by Mr. Waldrop. The vote was unanimous.

13. Executive Session

[8:45 p.m. to 9:10 p.m.]

14. Necessary Action on Matters Discussed in Executive Session

Mr. Tothacer reported that Newberry County Council went in Executive Session to receive legal advice about a pending matter and no action was taken in that session.

15. Comments from County Administrator

No comment

16. Comments from Council Members

Chairman Livingston thanked all county employees for the efforts made during the winter storm we recently had and all the extra work to pull off a monumental task by making sure all the roads were safe and secure. He stated that Mr. Adams' evaluation needed to be done and if you have not turned in your information to Mrs. Renwick, to please do so.

17. Future Meetings

- a. County Council – February 2, 2011 @ 7:00 p.m.
- b. County Council – February 16, 2011 @ 7:00 p.m.

18. Vote to Adjourn

Mr. Baker motioned to adjourn; seconded by Mr. Waldrop.

19. Adjournment

Chairman Livingston declared the meeting adjourned at 9:15 p.m.

NEWBERRY COUNTY COUNCIL

Henry H. Livingston, III, Chairman

APPROVED:

Laurie N. Renwick, Clerk to Council