

**NEWBERRY COUNTY COUNCIL
MINUTES
MARCH 3, 2010**

Newberry County Council met on Wednesday, March 3, 2010, 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
William D. Waldrop, Vice Chairman
Kirksey Koon, 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.

Councilman Koon led the invocation followed by the Pledge of Allegiance

1. Adoption of Consent Agenda

The consent agenda was not adopted. The item will be presented for adoption at a subsequent Council meeting.

2. Additions, Deletions and Adoption of Agenda

Chairman Livingston added a presentation by Senator Ronnie Cromer as agenda item 3a under Personal Appearances moving Mrs. Emily Cope with DNR to agenda item 3b.

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

3. Personal Appearances

a. Senator Ronnie Cromer, Rep. Bobby Bowers and Rep. Walt McLeod

Representative Bowers said it was a pleasure for him to come back to his home County and bring back money like this. The money presented tonight is from the 911 account and can only be used for 911. Debra Beard, Newberry County's 911 Coordinator, has worked closely with his staff to obtain this funding in the amount of \$95,590.97. Rep. Bowers, Senator Cromer and Rep. McLeod made the check presentation to Sheriff Lee Foster and Debra Beard.

**b. Emily Cope, Assistant Director Special projects and National Affairs –
DNR Belfast Land Acquisition**

Mrs. Cope thanked Council for the opportunity to talk about the Belfast project. She updated Council on DNR's progress to date on the portion that was acquired in October of 2008 and their plans for the additional acreage they hoped to purchase. Their intentions are to use the Belfast project as a role model for some of their other properties throughout the state by implementing some new activities and programs such as an archery range, rifle range, and fitness trails. There was a lengthy, informative discussion by Council and Mrs. Cope on the pros and cons of the additional purchase of land at Belfast and the effect it would have on Newberry County.

Chairman Livingston stated there were many people signed up to speak on the Belfast land acquisition and he wanted everyone to have the chance to speak now instead of waiting later under the Public Comments section of the agenda. He asked that everyone keep their comments concise and to the point.

Chairman Livingston asked the following individuals who signed up to come to the podium, state their name and address for the record, and share their comments.

The following came forward and spoke in support of the Belfast land acquisition: Gerald Stoudemire from Little Mountain; Bobby Bouknight from Pomaria; Cary Chamblee from Columbia representing the SC Wildlife Federation and the SC Camo Coalition; Tarri McKinney from Clinton and employee of the US Forest Service; Eddie Wilson from Newberry; Gary Peters from Prosperity; Mark Hatfield from Edgefield County representing the National Wild Turkey Federation; Steven Yandle from Little Mountain; and Billy McTeer retired DNR employee and present employee of Major and Company.

The following two citizens, Mark Kiser and Tom Henderson both from Newberry County, spoke in opposition to the Belfast land acquisition.

(A copy of the tape is on file in the Clerk to Council's Office)

**4. Ordinance #01-01-10: An Ordinance repealing Ordinance No. 01-01-06,
relating to the creation of the Emergency Services Board.**

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

5. Ordinance #02-03-10: An Ordinance enacting and adopting 2010 S-7 supplement to the Code of Ordinances for the County of Newberry, South Carolina.

Chairman Livingston stated that this Ordinance was for the codification of Newberry County Ordinances through December 2009.

Mr. Caldwell motioned to approve second reading of Ordinance #02-02-10; seconded by Mr. Baker. The vote was unanimous.

6. 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).

Mrs. Peters identified the parcel on a map and stated that the tract was divided into two parcels. The 12.13 acre parcel located at the back of the tract was the one before you tonight for proposed rezoning to Light Industrial (LI).

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

Chairman Livingston stated that Council would generally have discussions first but with the large number of people here tonight to discuss this, we will hear the public comments first.

Henry Bufkin came forward and stated he was representing the owners of the parcel who were asking for a change in zoning. He said this was a 30 acre tract purchased by the parties involved about 4 years. They have a light industrial complex where they manufacture agricultural equipment in Irmo and have been there for 30 years. The next generation of this family owned business wants to move the business to Newberry County. Southern Vacuum Cooling is a business that manufactures trailer mounted equipment that refrigerates and cools agricultural products by preparing them for long distance shipping. They have three phases of the business; one in California, one in Mexico, and one in South Carolina. The two nephews taking over would like to split the property into three pieces; put their business on the back portion and built their houses on the front portions. They manufacture some of these units at their business location; however, a significant amount of the company's income (\$1.5 million) comes from the rental of these units. Their plan is to build comparable sheds similar to ones at the Irmo location approximately 1,000 feet off of Jollystreet Road. They are only asking that a 12.13 portion of this tract be rezoned to accommodate their business which will have little impact to the existing residential area. He asked that Council render a favorable first reading to change the zoning on this parcel from Rural (R2) to Light Industrial (LI).

Mr. Baker asked Mr. Bufkin to explain the products and the process involved on photos 10-13 of the handout he provided Council members.

Mr. Bufkin said what you see in photograph 10 is the equipment that they have manufactured; the big cylinder with the refrigeration on it, being loaded with fresh produce, closed and sealed, refrigerant applied, and the temperature will be dropped to 34-36 degrees in approximately 25-35 minutes. Then it will be loaded onto refrigerated trucks and sent to market. This process preserves the products for long haul trips.

Mr. Baker inquired about the cover letter which stated no toxic materials would be on this site.

Mr. Bufkin said they use a non-toxic refrigerant.

The owner spoke up and shared that they use anhydrous ammonia which is a natural occurring element. They use anhydrous ammonia over Freon because Freon has been known damage the ozone layer.

Mr. Baker asked how much ammonia would be used to charge these units.

The owner stated that a unit roughly holds about 450 pounds of ammonia.

Mr. Bufkin said that the ammonia is used as the refrigerant; it pulls down the temperature in the cylinder and is not lost during this process. It is in a sealed unit.

Mr. Waldrop said he noticed in the photo that they use a stand-by electrical generator to power this.

The owner said that particular unit has a 300 kw generator attached to make it more automated for the customer to use. It provides electricity for the electric motors to run the components of the refrigeration.

Mr. Bufkin said they have to be totally portable because they are dropped off at farms and as the crops become ripe they are stored in these units.

Mr. Koon asked what would happen if the entire amount of the coolant was to leak out.

The owner said it would smell bad for an area about half the size of this room and would dissipate into the atmosphere. The smell is similar to that of a chicken farm.

Mr. Bufkin stated that this is a light impact industrial application and will not change the character of the neighborhood but will bring in a small light industry that will generate added tax base, purchases and sales tax for Newberry County.

Mr. Hipp asked how much actual space will be required for their operation and did it include future growth.

The owner stated the amount proposed for rezoning should allow for future growth and they would not have to come before Council later on. The amount slated for the shop right now is approximately 3 acres which will be located in the center of the 12.13 acre parcel.

Mr. Hipp asked the owner to characterize the noise production as a result of the operation and if it could be heard beyond the 12.13 acres.

The owner said the noise you would hear will be the generators running which is no louder than the Interstate 26 traffic or a tractor bailing hay. You might possibly hear noise but they are keeping all the trees as a buffer. He stated you would not be able to hear it at the road for sure.

Mr. Bufkin stated that they have letters from adjoining neighbors who live near the existing business in Irmo who support this operation and say the business does not bother them at all and they are good neighbors.

Mr. Hipp said if they only anticipate manufacturing 5 units in a year, this should only impact the traffic minimally and asked about the materials being supplied to the business.

The owner said Allied Crawford usually ships to them 2-3 times a year. He said 5 units in a year would be a lot; they only anticipate building one a year with the current economic conditions. They mainly do service work on rental units which come in maybe once or twice a year. With the overlap in the seasons, they do not make it to the shop near as much; they end up going to the customer's site to do the work.

Mr. Hipp asked if the traffic generated would be during the day or throughout the day and night.

The owner said the only consistent traffic will be generated by himself, his cousin, and another employee going to work. Truck traffic should not even be one per month.

Jim Hough of 4440 Jollystreet Road introduced himself and said he would encourage Council to follow the recommendations of the Planning Staff and reject the rezoning of this property in their neighborhood. Newberry County passed zoning laws and regulations back in 2001 and they were passed to implement the comprehensive plan for the orderly development and improvement of all unincorporated areas of Newberry County as set forth in SC Code 6-29-710. It was a fight to get zoning regulations in place in order to protect our properties. The zoning districts established are for the purpose of guiding development in accordance with existing and future needs and promoting public health, safety, morals, convenience, order, appearance, prosperity and the general welfare of all the purposes set forth in SC Code 6-29-710. The parcel of land in question designated as TMS Parcel # 512-15 has been zoned R2 since zoning ordinances were

passed in 2001, prior to purchase by Southern Vacuum Cooling in 2006. Southern Vacuum Cooling should have known that the property being purchased was not for light industrial use and therefore was not suitable for their intended purposes when it was purchased. Newberry County Joint Planning Commission reviewed Southern Vacuum Cooling's request for rezoning from R2 to LI and recommended the rezoning request be denied. He shared his concerns about entrepreneurs being able to randomly purchase property for intrusive industrial development within the rural areas in our County and our ability to stop future request for industrial rezoning in the R2 communities. He said the passage of this rezoning will be detrimental to those of us who live in this area and we would like to see the current R2 zoning stay in place. He said there are industrial parks set aside for this type of development. Most of the residents in the Jollystreet community oppose any action to allow an intrusive industrial development such as this.

Chairman Livingston commented that Mr. Hough said Council should support what the Planning Commission decided and asked him if this was correct.

Mr. Hough stated that it was.

Chairman Livingston said on page 2 of the Ordinance it states that the Planning Commission's failure to make a recommendation (vote) resulted in the zoning request being approved by the Planning Commission.

Mr. Hough said he had a Planning Staff report that indicated that the Planning Staff did not recommend that this portion of the real estate parcel be rezoned to Light Industrial.

Mr. Adams said this was a complicated matter in that there was a motion by the Planning Commission to approve the Planning Staff's recommendation not to approve zoning but subsequently there was no second; so there was no vote, which means the Planning Commission failed to act. Under the law, that means the rezoning request is deemed approved by the Planning Commission.

Mr. Koon asked Mr. Hough where his property was located.

Mr. Hough stated he lived at 4440 Jollystreet Road approximately 3/8 of a mile from the property in question.

Mrs. Judith Epps introduced herself and stated she resided at 371 Rabbithill Road which is the frontage road that runs along the Interstate and dead ends at their house. She has 11 acres on the Interstate side that are right up against the land in question as well as another strip of land right down the road. Mrs. Epps said that as of last night, her concerns were the same as Mr. Hough's. She is on family land; born and raised here. Her parents bought this land and her father taught them to be good stewards of the land. They love the peace and quiet of their property which they hope to someday pass down to her brothers grandchildren. This morning she had the opportunity to meet Mr. Calais and after sitting down and talking with him about his business and how he runs it, she doesn't

think that he will be a bad neighbor or change the land. Her concern now is if the land would have to be sold for some reason, would it revert back to R2.

Chairman Livingston commented that as we discuss this issue tonight, please keep in mind that this is only first reading.

Mr. Hipp commented that he did know how Council could pass an ordinance which takes three readings then revert it back to a previous ordinance. We will need to get some guidance from our attorney on the legal aspects.

Mrs. Epps said light industrial scares her because she has 160 acres right on the Interstate and she does not want to open the door to loose what her parents worked so hard for and she does not want to see it in her lifetime. She said she has met the owners; they are nice and can contribute to our community and she does not want to lock them out because of a rezoning issue. She asked if Council could come to some solution where everyone can be happy.

Mr. Caldwell asked Mrs. Epps what reason Southern Vacuum Cooling gave for not purchasing in our industrial parks.

Mrs. Epps said she could not speak for them. They would have to answer that question.

Mr. Bufkin stated that it is their family history to live on the same property that they run their business and the industrial park was never considered. They were looking for a tract where they could live and work, as it has been for their families over the last 30 years.

Chris McLane of 3388 Jollystreet Road introduced himself and stated that his property borders the property trying to be rezoned. He said he would be the one most affected by this zoning change. Mr. McLane said he spent 10 years looking for a piece of property for his home and chose to move to Newberry County so that he could have a safe and peaceful environment to raise his children. He shared his concerns about not wanting to sit on his front porch or be in a deer stand and have to listen to fork lifts, pallet jacks, 300 kw generators, or big tractor trailers. He is also concerned about the 450 lbs. of ammonia and what could happen if it were to leak out. It is toxic, dangerous, and can kill you. Mr. McLane stated that he was present at the Zoning meeting and it was his understanding, as well as the petitioners, that the Planning and Zoning Commission denied their request for rezoning. He distributed a petition he circulated throughout the neighborhood with 87 signatures of people in the community that are against this rezoning. If you value your constituent's opinion, he hoped that the petition would mean something. He said his family was welcomed by the Jollystreet community and he likes it here. He welcomes the petitioners as neighbors but feels that rezoning the parcel in question will detract from the community's way of life and lessen the natural resources that are available to them there.

George Kinard shared with Council the history behind the tracts of land that he and his family have owned for years that is within close proximity to the proposed property. He said he hoped we can deal with this matter and do what is best for Newberry County and

the citizens of the Jollystreet area. He said he respected the opinions of those that have been expressed tonight and those that have not been expressed. He said for those that know him, know his affinity for the land. He said it saddened him to see the land in Newberry County being raped and pillaged and not being restored. Mr. Kinard stated that his family acquired his land in 1799 and has been on the same piece of land since then and there is probably nobody here that represents that community and piece of land any more than his family. He said he would like to see a decision made not on emotions but on facts and information. If the facts and information given are not in the best interest of that community or Newberry County to have Southern Vacuum down there, then deny the request. It is that simple. Mr. Kinard shared some information about a tract of land in the community referred to the "Hunter Estate" that consists of 1,100 acres that hasn't been touched since 1865. He said if we want something to worry about just wait until this tract goes on the market. When it goes on the market, we are going to have a lot of requests and concerns to deal with. It affronts the Interstate on both sides and is located approximately ¾ mile down from the Mid-Carolina Commerce Park on Hwy. 773. Mr. Kinard shared that things are not going to stay status quo in Newberry County for the next 100 years. He quoted Representative McLeod who said we have a weak tax base in Newberry County and we need to preserve the tax base we have. Mr. Kinard stated that we do not need to preserve the tax base but instead expand and accelerate the one we have and doubted this could be accomplished through R2 zoning. He commented on the number of trucks that transport chemicals and hazardous material up and down Interstate 26 and our worry over a couple of canisters. He said when he first found out about the rezoning; he went to their shop in Irmo and inspected their facility. There were no oil spills or run offs of any kind. He only saw two canister of oxygen and two empty canisters of ammonia. Mr. Kinard said they have more trouble with poachers, deer hunters, and trespassers than he believes they will have with John Calais with Southern Vacuum Cooling. He said Mr. Calais did not understand the emotional aspects of the issue and the politics of Newberry County. To improve the tax base we have to stop talking and do something about it. He felt Southern Vacuum Cooling would contribute more than the \$5,000.00 Council has spent 1 ½ talking about regarding the Belfast purchase tonight. This is a family operation with only one hired employee and it is agricultural. Newberry County is known for its family operations in agriculture. He said in summation, based on what he has seen, he has no objection to the rezoning and asked Council to do the right thing.

Chairman Livingston asked those in attendance in favor of the rezoning to stand, and then asked those opposed to the rezoning to stand. He stated for the record that it seemed to be equally split of those in favor and those opposed.

Chairman Livingston said at this time Council is charged with the responsibility of first reading of which we have a motion and a second. He said he felt we should move it forward to allow time to solicit additional information and asked Council if they had any further discussion.

After no further discussion, Chairman Livingston called for the question and the vote was unanimous to approve first reading of Ordinance #02-04-20.

7. **Ordinance #02-05-10: 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 twenty-seven and ninety-two hundredths (27.92) acres real estate parcel designated as TMS Parcel No. 536-5 from Single Family Residential (RS1) to Rural (R2).**

Mrs. Peters briefed Council on the location and rezoning request of TMS Parcel No. 536-5.

Mr. Baker asked Mrs. Peters what the Zoning Board thought of this rezoning.

Mrs. Peters stated the Zoning Board approved the rezoning of this property to R2.

Mr. Stockman motioned to approve first reading of Ordinance #02-05-10; seconded by Mr. Koon. The vote was unanimous.

8. Committee Reports

No Committee Reports

9. Appointments

Councilman Stockman motioned to reappoint Hodge Harmon to the Board of Directors of the Central Midlands Council of Governments for a 3 year term to expire 02/07/2013; seconded by Mr. Koon. The vote was unanimous to reappoint Hodge Harmon to the Central Midlands COG Board.

10. Consideration of Council's prioritization of Capital Project Sales Tax Proposals

Chairman Livingston stated that the Capital Sales Tax Projects were presented before Council and each Council member used a rubric in four different categories to rank the projects which were then combined, averaged, and ranked. He reminded everyone that Council did not turn any of projects down; they will all be submitted to the Capital Project Sales Tax Commission who will be charged with the responsibility of generating a list of projects for the ballot.

Mr. Baker approved the prioritized list of County sponsored project for submission to the CPST Commission; seconded by Mr. Hipp. The vote was unanimous.

11. Public Comments (by those who signed up at the meeting)

No public comments.

12. Vote for Executive Session, When Necessary

No vote for Executive Session

13. Executive Session

No Executive Session

14. Necessary Action on Matters Discussed in Executive Session

No necessary action.

15. Comments from County Administrator

No Comments

16. Comments/Request from Council Members

No Comments

17. Future Meetings

- a. County Council – March 17, 2010 @ 7:00 p.m.
- b. County Council – April 7, 2010 @ 7:00 p.m.
- c. Personnel and Intergovernmental Relations Committee – March 8, 2010 @ 6:00 p.m.

18. Vote to Adjourn

Mr. Waldrop motioned to adjourn; seconded by Mr. Koon. The vote was unanimous.

19. Adjournment

Chairman Livingston declared the meeting adjourned at 10:54 p.m.

NEWBERRY COUNTY COUNCIL

Henry H. Livingston, III, Chairman

APPROVED:

Laurie N. Renwick, Clerk to Council