

**NEWBERRY COUNTY COUNCIL
MINUTES
August 26, 2009**

Newberry County Council met on Wednesday, August 26, 2009, at 7:00 p.m. in Council Chambers at the Courthouse Annex, 1309 College Street, Newberry, SC, for a special called meeting.

PRESENT: Henry H. Livingston, III, Chairman
William D. Waldrop, Vice Chairman
Kirksey Koon, 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

ABSENT: John E. Caldwell, Councilman

PRESS: Cindy Pitts, Newberry Observer
Heather Hawkins, WKDK

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.

Chairman Livingston shared that fellow Councilman John Caldwell had an accident and fell off of a house and would not be in attendance tonight.

- 1. Vote for Executive Session to consider the terms of a proposed settlement in the case of Newberry County vs. W.E. Baker & Son, Inc., et.al.**

Mr. Hipp moved to go into Executive Session; second by Mr. Stockman. Vote was unanimous.

Councilman Baker requested to be excused from Executive Session.

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

- 3. Necessary Action on Matters Discussed in Executive Session**

Chairman Livingston declared Council out of Executive Session and asked Mr. Adams to report out.

Mr. Adams reported that Council received legal advice concerning the terms of the proposed settlement in the case of Newberry County vs. W.E. Baker & Son, et. al. No action was taken during Executive Session.

Chairman Livingston stated that the question before Council is whether to accept the settlement being offered in the lawsuit concerning the building on Hwy. 219 which was originally constructed as the Sheriff's Office building. Short of the settlement, this case is scheduled to be heard in court on September 28, 2009. He asked Mr. Frank Smith, Attorney for the County in this matter, to report to Council in public session the terms of the proposed settlement.

Mr. Smith stated he was pleased to report that the defendants in this case have made an offer to Newberry County Council of \$900,000.00, which will be paid in approximately 30 days. In turn for this \$900,000.00 payment, Newberry County Council would release any and all claims it has related to the building on Hwy. 219. There are other actions between some of the defendants in the matter and they will also be releasing all of their claims. So basically, the settlement offer is for a \$900,000.00 payment to Newberry County in turn for a release of all claims. Mr. Smith said he highly recommends that Council accepts this settlement. There are extremely large risks when you go into litigation, such as the expense. This settlement will put County Council in excellent position and he highly recommends they accept it.

Chairman Livingston wanted clarification that the County will retain ownership of the building and the land which it is on.

Mr. Smith stated that was correct.

Chairman Livingston said that at this point a motion will be in order to either accept or reject the settlement.

Mr. Koon moved that they accept the settlement; second by Mr. Stockman.

Chairman Livingston asked if there was any discussion.

Mr. Stockman made the following verbatim statement:

“The on going litigation between Newberry County and W.E. Baker and Son, Inc, has been going on long enough. We do not need to be focused on past issues; our time is better spent on the present and future well being of Newberry County. We need to cut the on-going legal expenses and accept the proposed settlement and move forward. I feel the other option of taking this litigation to trial would be a very risky road to take for the taxpayers of this County. I was elected by the people of District 2 to make sound decisions in the

best interest of everyone in this county; therefore, I can not in good judgment leave this decision in the hands of 12 jurors. As a small business man, I believe this settlement is the most secure and right thing to do for the taxpayers of Newberry County.”

Mr. Hipp stated that he had a written statement. He wanted to make sure he did not leave out any salient points. He said he does not normally like to read a discussion item, but with this case being such a significant issue; he has given it a lot of thought and has put some words on paper.

The following is a verbatim statement given by Mr. Hipp:

“During my recent campaign, I had the opportunity to talk with many citizens throughout Newberry County. The resolution of the Sheriff’s Office was an emotional issue about which I made some commitments. I committed to go forward with the lawsuit and to allow the impartial judicial system to reach a fair judgment based on facts and not preferential bias. I felt then and now that having an impartial jury decide on the most equitable solution was the best solution to prevent public perception of favoritism by Council to Mr. Baker and to prevent Councilman Baker from harboring resentment toward Council that might affect his future objectivity. I especially felt this was important at a time when public confidence in County Government was at low point. Therefore, it was my opinion that a jury decision would be in the best interest of Newberry County. A trial date of September 2009 was established which is in the very near term. I recognize that it is important to resolve the issue as timely as possible and move on to the other business of establishing a permanent location for the Sheriff’s Office and the supporting 911 emergency infrastructure. Based on the firmly established date proximity and the objectivity of a trial by jury, I decided to not deviate from my commitment and vote to continue with the trial.”

“However, it is very important that I get this message across to the citizens of the County and my fellow Council members; I am not entirely opposed to the settlement as mediated. First, I want to assure all citizens that at no time in our discussions have I witnessed any form of favoritism by any Council member based on partisan politics or favoritism toward Councilman Baker based on long standing friendships. The mediated settlement of \$900,000.00, while less than requested in the suit, appears to be reasonable to all parties. It is said that a solution by arbitration leaves all parties equally unhappy. In any case, the settlement has many favorable attributes. First, since there is agreement by both parties, there will be no delays or appeals as might be the case prior to or after a jury trial. The agreed upon amount is collectable and final. And finally, the issue that has been lingering for years is resolved.”

“There is no one right answer to the issue. While I am standing behind by commitment, I would not attempt to dissuade my fellow Councilmen from voting

their conviction for the mediated settlement. Nor do I think that a jury trial would result in a better solution for either party.”

“Regardless of the path taken, I can assure citizens of Newberry County that all Council members have labored over this issue at great length to reach the best possible solution.”

“You can note by my statement that I will not be voting in favor of this but I do believe this is a fair decision in judgment.”

Chairman Livingston said that since Mr. Baker would not be voting, he could make his comments after the vote.

Mr. Baker stated that he would be abstaining from voting.

Mr. Koon thanked Council for the job they have done. He thanked the Attorney, the County Administrator, and the Sheriff’s Department. All of Council has worked very hard to come to a decision and he feels they have made a fair, just, and honest decision. Hopefully, they can now move on for the betterment of Newberry County.

Mr. Waldrop said he thought this was a fair settlement for the people of Newberry County. He was glad that they are going to make a decision tonight to end the lawsuit.

Chairman Livingston thanked the County Administrator for working so hard on this and also the Attorney who represented them. He thanked Council members for making this difficult decision as easy as it has been, even though they have been faced with a difficult task. He stated he appreciated the respect that has been shown for each other.

Having received no further discussion, all in favor of accepting the settlement were Mr. Stockman, Mr. Koon, Mr. Waldrop and Mr. Livingston. Opposed was Mr. Hipp (4-1). Mr. Baker abstained from voting; Mr. Caldwell was absent.

Chairman Livingston said this settlement is one we believe to be in the best interest of the County financially. While we might not all be unanimous, we mutually respect each others decision and firmly believe that all have acted in what they feel is in the best interest of the County and our citizens.

Chairman Livingston asked Mr. Baker if he would like to make a statement.

Mr. Baker stated that he would hold from making any statement at the present time.

Chairman Livingston thanked Mr. Baker for his professionalism.

Mr. Adams stated that this body has acted in an admirable way to consider these matters as it was a difficult decision. He said they were a body that can agree to disagree and do

so in a civil manner. He thanked the Sheriff and the adaptations that his folks have made throughout this whole process.

4. Public Comments

No comments.

5. Vote to Adjourn

Mr. Koon moved to adjourn; second by Mr. Hipp. Vote was unanimous.

6. Adjournment

Chairman Livingston declared the meeting adjourned at 8:15 p.m.

NEWBERRY COUNTY COUNCIL

Henry H. Livingston, III, Chairman

APPROVED:

Laurie N. Renwick, Clerk to Council