

**CAPITAL PROJECT SALES TAX COMMISSION  
MINUTES  
OCTOBER 19, 2009 – 6:00 P.M.**

**MEMBERS PRESENT:**     **Al Harvey**  
                                  **Phil Spotts**  
                                  **Lisa Toland**  
                                  **Dave Waldrop**  
                                  **Renee Joiner**

**STAFF PRESENT:**       **Wayne Adams, County Administrator**  
                                  **Jay Tothacer, County Attorney**  
                                  **Theo DuBose, Consulting Attorney**  
                                  **Laurie Renwick, Clerk to Council**  
                                  **Debbie Cromer, Finance Director**

**MEDIA PRESENT:**      **Heather Hawkins, WKDK**  
                                  **Cindy Pitts, Newberry Observer**

The meeting was duly advertised as required by law.

**1.     Welcome and Introduction – Wayne Adams, County Administrator**

Mr. Adams thanked the Commissioners for accepting this appointment to the Capital Project Sales Tax Commission (CPST). He stated that by law, the CPST Commission is comprised of three (3) County appointees and three (3) Municipal appointees. County Council made three (3) appointments to the Commission; two of these, Mr. Dave Waldrop and Mr. Phil Spotts are present tonight. The third County appointee, Mr. David Abrams, brought to our attention that his continuing to serve on the County's Planning Commission and serving on the CPST Commission would create a dual office holding conflict. Mr. Abrams asked that Council make another appointment to the CPST Commission in order for him to continue serving on the Planning Commission. This appointment will be made at the next County Council meeting on October 21, 2009. Under the statutory index, the City of Newberry was charged with making two (2) of the three (3) Municipal appointments. The City's appointees represented tonight are Mr. Al Harvey and Mrs. Lisa Toland. They together, by statue, were to choose the third Municipal appointee who must be a resident of a municipality within the County of Newberry but not in the City of Newberry. Their appointment to the Commission was Renee Joiner who resides in the Town of Prosperity, also in attendance.

Mr. Adams introduced the following staff that will be assisting the Commission:

- Theo DuBose, Consulting Attorney, will be serving the County and the Commission as a technical advisor pertaining to the CPST Referendum and the bonding element of the process.
- Jay Tothacer, County Attorney, will be available to answer questions concerning FOIA requirements and potential voting conflicts; however, it is ultimately the

Commission member's responsibility to act for themselves where there might be a voting conflict.

- Laurie Renwick, Clerk to Council, will assist the Commission in the taking of minutes and posting of advertisements and meeting notices. She will also assist your elected Chairperson in the preparation and mailing of agendas.
- His role as County Administrator, beyond these introductory remarks, will move toward the background and will represent the County's interest in the CPST and the ballot development process. He will oversee the planning of any County proposed projects that might be submitted to the Commission and will scrutinize other projects submitted to the Commission that might have future impacts on the County's finances and planning. He will monitor the Commissions deadlines and procedures to make sure that Council has the time it needs to adopt the Ordinance that is required, and will provide any administrative and technical support to the Commission when requested.

Mr. Adams briefed the Commission on the information provided in their notebooks which included contact information for Commission and Staff members, Agenda formatting and adoption, legal authorities governing the CPST Commission, proposed Commission meeting schedule, and a proposed criteria checklist for project submission.

Mr. Adams turned the meeting over to Mr. Theo DuBose with Haynsworth, Sinkler, Boyd, P.A.

## **2. Discussion of Commission's Purpose – Theo DuBose, Esquire**

Mr. DuBose stated he was looking forward to working with the Commission and putting the ballot together. He encouraged the Commission to call him using the numbers listed in their book should they have any questions.

Mr. Dubose stated that their job under the statue is to formulate the ballot question. You are to review projects, approve projects that are permissible under the statue, and prioritize projects. He referred the Commission to Section 4-10-330 of the statue; he read the following permissible projects for which proceeds of the tax can be used:

- a) highways, roads, streets bridges and public parking garages and related facilities;
- b) courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, or any combination of theses projects; and technical education facilities under the direction of an area technical commission;
- c) cultural, recreational, or historic facilities, or any combination of these facilities;
- d) water, sewer, or water and sewer projects;
- e) flood control projects and storm water management facilities;
- f) beach access and beach renourishment;

- g) jointly operated projects of the County, a municipality, special purpose district, and school district, or any combination of those entities, for the projects delineated in sub items (a) through (f) of this item;
- h) any combination of the projects described in sub items (a) through (g) of this item

Mr. DuBose stated that the law does not say anything about setting criteria for project so it is really left up the Commission to put conditions and restrictions of the funding as the Commission feels prudent. This Commission is truly a citizens committee.

Mr. Waldrop wanted confirmation from Mr. Dubose that the Commission could draw their own guidelines.

Mr. Dubose said the Commissions duty is to decide what the ballot question will be and that it can only have these types of projects. After that, the statue puts the discretion in the Commissions hand to decide on the criteria and how to approve projects.

### **3. Organizational Considerations of the Commission – Jay Tothacer, County Attorney**

Mr. Tothacer stated that the first item under his topic was the election of officers. The Commission will need to elect a chairman, who will run the meeting and set the agenda and a vice chairman who will serve when the chairman is unable. He asked the Commission if they were prepared to go through with the election process or would they like to postpone elections until your next meeting. One more member will be appointed to the Commission and should be on board at the next scheduled meeting.

Mr. Harvey stated he did not want to exclude anybody and recommended waiting to elect officers at the next meeting.

Mr. Tothacer directed the Commission to the SC Freedom of Information Act. Any request that you receive either from the media or an individual should be directed to Mrs. Renwick as soon as possible. There is a 15 day timeframe to respond to FOI request. He stated the Commission was a public body and would need to post meeting notices in accordance with the Freedom of Information Act. Mrs. Renwick can post an agenda similar to the one used tonight on our County information board. Once the Commission has approved their regular meeting schedule, it can be advertised to meet the FOI requirement with any special called meetings needing to be posted at least 24 hours before the meeting. Mr. Tothacer informed the members that as a public body they should not meet as a quorum to discuss the business of this Commission without it having first been an advertised or posted. He shared these thoughts as it pertains to the Freedom of Information Act: When is doubt, disclose; when in doubt, keep the meeting open; when in doubt, comply.

Mr. Tothacer shared with the Commission on a sample agenda used by County Council for them to use in formulating one that will suit the needs of the Commission. He said the

agenda provides a road map to get through the meeting. It lets the members know the expectations of the evening and gives the public a view of the process. He touched on the fact that this would be a public meeting not a publicly run meeting. The chairman will have the power to recognize someone, and that is the person who speaks, until the chairman recognizes someone else. He suggested the Commission include a public comment section in their agenda to help keep the meeting running smoothly and enable them to reach all of their points while allowing a set aside time for the public to speak. In the event you feel a need for an executive session, let Mr. Dubose of myself know before hand so we can help you determine if there is an actual need for one.

Mr. Tothacer briefed the Commission on potential conflicts of interest and said he would be available to assist any member who thinks they may have one. It is your decision as to whether it is a conflict. If you think you may have a conflict, the statue calls for you to remove yourself from any discussions and voting on the matter. If you have a need for additional guidance on a potential conflict of interest, you may contact the Ethics Commission.

Mr. Tothacer informed all Commission members that they are considered to be an office holder under the SC State Constitution and by accepting a subsequent office, that is considered an office, you effectively are considered dual office holding and resign from your position from your prior office. He said if you have any concerns, he will be available to help you determine that.

Mr. Harvey asked is anyone who wished to address the commission could be required to notify them no later than the day the agenda goes out rather than going around during the meeting for public comments.

Mr. Tothacer stated that would be fine as long as it was clear up front that is how you will operate. The person could be placed on the agenda under personal appearances or be allowed to comment at the meetings under public comments, which require you to sign up prior to the meeting in order to speak.

Mr. Harvey asked if the Commission would be governed by the same agenda rule as Council.

Mr. Tothacer said if the Commission chooses to require advanced notice to speak that it be clearly understood, so folks do not show up expecting to see a sign up sheet.

#### **4. The Ballot Formulation Process – Theo DuBose, Esquire**

Mr. DuBose stated that another change to the statue this past session was to exempt all unprepared food to be consumed off premises from the one cent taxation. Presently, on a quarterly basis, the County is collecting somewhere between 900-950 thousand dollars per quarter for the current CPST. You will be provided at the next meeting with as good an estimate as they can give using 2008 data. By the first of the year more current data will be available based on 2009. They are getting some good data from the Treasurer's

Office which will need to be discounted due to the exemption of non prepared food tax. We can use a 15% rule to cover for the reduction in tax collections which will give us a conservative estimate. The revenue estimate will change up until May reflecting more accurate reports from the Dept. of Revenue and collections in the Treasurer's Office.

Mr. Dubose recommended that the Commission consider implementing the Project submission requirements to avoid the unexpected factors that negatively affected the last CPST. The template before you is a way to think through some of these issues ahead of time. He felt the Commission needed to bring their good common sense to this process and prioritize the projects so that projects that are bid and meet their budget are ready to go and projects that are over budget loose their priority.

Mr. DuBose briefed the Commission on the draft schedule of meetings which is a suggested order of action to help get through this process. The Commission is being asked to finish their work by the end of May so time will be left to incorporate an Ordinance for Council's consideration which will take three readings. It will be left up to Commission to adopt or amend this schedule to their choosing.

Mr. DuBose shared with the Commission how the County prioritized and funded the previous CPST projects. He said the projects could be funded by pay you go or funded all up front with a bond issue, while figuring in cost overruns into the prioritization. The statue states that each project and amount be listed on the ballot. His recommendation is that each project only receives the amount specified on the ballot, even if not completed, until all projects have been paid off. Any left over can be used then to complete the over-budgeted project. The County Council Ordinance can make this clear if you choose to go this route.

The Commission will be responsible for deciding what the ballot looks like and whether it will include a bond issue. If you are not going to borrow the money up front, you will have to get deeply into prioritizing these projects. The cost of borrowed money would be the interest, and that takes money out of the pot of collected sales tax. Pay as you go can result in an inflation factor. Mr. DuBose said interest rates on bonds are about 3% and the question would be if the Commission thinks that inflation will exceed 3% over the next seven years and if so, the bonding would be the route to go. It will allow you to fund a lot of project upfront and avoid inflation factor.

## **5. Discussion/Questions from Commission Members**

Mr. Harvey shared the concerns of the Mayors about the expense involved for the smaller municipalities without any assurance that their projects will be on the list or get funded. He stated he did not have a problem with the proposed criteria for project that could involve county funding at some point, but felt there needed to be a different standard for those projects for small municipalities. He would like to suggest the Commission look at a different set of standards that doesn't require such restrictive standards. We can use the County standards that staff has prepared and revise it to lessen the amount of upfront

money needed for the smaller folks. Mr. Harvey asked Mr. Adams to work with them and the local jurisdictions to come up with a comparable set of standards.

## **6. Other Business**

No other business

## **7. Summary of Official Actions Taken by the Commission**

Mr. Waldrop motioned to approve the next meeting of the Commission to be held on November 2, 2009 @ 6:00; seconded by Mrs. Joiner. The vote was unanimous.

The following were items recommended for inclusion on the Agenda for the November 2, 2009 meeting:

- Election of Chairman and Vice Chairman
- Determine Agenda format
- Determine meeting schedule
- Approve Project Submission Guidelines
- Review Revenue estimates
- Discuss Prioritization process for project inclusion
- Discuss bonding considerations for projects

Mr. Waldrop motioned to accept the recommended agenda items for the meeting on November 2, 2009; seconded by Mrs. Joiner. The vote was unanimous.

Mrs. Joiner motioned to recommended Mr. Harvey and Mr. Waldrop as representatives of the CPST Commission at a meeting with Mr. Adams and the Mayors on Thursday @ 6:00 p.m. to revise the project submission guidelines; seconded by Mr. Spotts. The vote was unanimous.

## **8. Public Comments**

Mr. Buddy Johnson complimented County Council and the other entities on the Commission appointees and their experience and they have confidence in any judgments that you make.

## **9. Adjournment**

The meeting was adjourned at 7:47 p.m.

**CAPITAL PROJECT SALES TAX COMMISSION**

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**Chairman**

**APPROVED:**

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**Laurie N. Renwick, Clerk to Council**