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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
The Honorable Kristi F. Curtis

Appellate Case No. 2021-000685

The Station, Inc. d/b/a Company Two, Inc.,.....Appellant,

v.

Hampton County,Respondent.

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENT

Nothing in the County’s brief dispels two key arguments— that the 2011 and 2014 agreements are with a different legal entity than the 2005 agreement and that the County actually allowed Company Two to use the runway for ten years. The County’s attempt to frame this case as one about self-governance is unavailing. The conduct at issue in the contract and promise involves Company Two’s use of the County airport runway for about 25 minutes per month. That is hardly an encumbrance of property.

The County also ignores the standard of review and asks the Court to weigh the evidence and decide conflicts in the testimony. “When considering a directed verdict motion, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence.” *Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 188-89, 691 S.E.2d 170, 173 (Ct. App. 2010). “If the evidence is susceptible to more than one reasonable inference, the case should be submitted to the jury.” *Erickson v. Jones St. Publr., LLC*, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006). Here, the evidence is susceptible of more than one reasonable inference, and the lower court should have submitted all three causes of action to the jury.

I. THE LOWER COURT ERRED IN GRANTING A DIRECTED VERDICT ON BREACH OF CONTRACT.

The lower court erred in granting a directed verdict as to the breach of contract claim because, viewing the evidence in a light most favorable to Company Two, there is evidence of a contract for Company Two to use the Hampton County airport runway to test fire trucks. The County’s arguments to the contrary are factually disingenuous and legally incorrect.

A. The County’s conduct and formal actions in this case created a contract.

“A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct.” *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582

S.E.2d 432, 439 (Ct. App. 2003). The County contends that it is treated differently from a normal contracting party and may only enter into a contract through written conduct. It cites no law for this special treatment.

The County contends that it could not enter into a contract via the 2005 letter because that letter was written by Jim Daniels. This argument ignores that Daniels copied the County Administrator on the letter. (Pl.'s Exh. 1). In a County-Administrator form of government, "[t]he powers and duties of the administrator shall include, but not be limited to, the following: (1) to serve as the chief administrative officer of the county government; (2) to execute the policies, directives and legislative actions of the council." S.C. Code Ann. § 4-9-630. Giving actual notice to the County Administrator of a letter that states "Hampton County Council has authorized me to make" commitments to a potential business is evidence, viewed in a light most favorable to Company Two, of the existence of a contract. (Pl.'s Exh. 1). That the County disputes authority is not a basis for ruling as a matter of law but is, instead, evidence that "yields more than one inference" and warrants the denial of a motion for a direct verdict. *Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 188, 691 S.E.2d 170, 173 (Ct. App. 2010).

The County also ignores that it acted in accordance with the contract for ten years by allowing the runway testing with actual knowledge by County representatives and that it accepted Company Two's FOD clean-up. (Weinberg Depo. pp. 47-52). The County should not be allowed to accept the benefits of a contract and then deny its existence.

B. The 2005 County Council could enter into a valid contract that extends beyond four years.

The County argues that one Council cannot bind another. Because Hampton County Council members serve four-year terms, the County necessarily argues that it can never contract for a period longer than four years. This is non-sensical. Government entities regularly enter into

contracts whose terms extend beyond four years. Company Two does not dispute that a subsequent County Council may choose to not abide by the terms of the contract that a prior council entered into, but the consequence of that choice is breach of contract. A party contracts with Hampton County and not with a particular County Council.

Further, the County's argument is belied by its own conduct. It enters into contract with terms that extend beyond four years. Appellant moves the Court to take judicial notice of two official records of the Hampton County Council showing that it entered into agreements with a duration of longer than four years. "Judicial notice may be taken at any stage of the proceeding." Rule 201(f), SCRE. The two records are: (1) January 3, 2005 meeting minutes stating Council approved a **twenty-year** lease of property for a communications tower, (2) and September 19, 2005 meeting minutes stating Council approved a **five-year** lease agreement with the town of Varnville.¹

These records show the fallacy of the County's argument that it could not legally enter into the contract with Company Two. By entering into these two contracts, Council clearly believes it has the ability to contract past a four-year term, thus defeating this argument. There is no legal restriction on a County's ability to contract for a term that exceeds the current Council's term.

C. There is ample evidence of the terms of the agreement under a written breach of contract theory.

Company Two incorporates its initial brief argument as to the terms of the contract. The County makes three arguments on reply—the 2005 agreement does not use language about testing fire trucks, the testimony of 2005 Council members that the 2005 agreement was for fire truck

¹ Attached to reply brief and publicly available at <http://www.hamptoncountysc.org/Archive.aspx?ysnExecuteSearch=1&txtKeywords=years&lngArchiveMasterID=0&txtDateRange=&dtiStartDate=&dtiEndDate=>.

testing on the airport carries no weight, and the parties' 10-year conduct cannot establish a contract. (Br. of Resp't pp. 9-14). These arguments are all without merit.

First, as to the 2005 agreement language, it plainly states that Council "authorized [Mr. Daniels] to make the following commitments to you concerning the Hampton-Varnville Airport. Hampton County **agrees to** provide you with a private taxiway right to use **from the northeast tip of the airport to the Gemco property line.**" (Pl.'s Exh. 1) (emphasis added). "Agrees to" is present, not future, language. The property description includes the entire runway.² That is entirely consistent with Company Two's desired and actual use of the airport runway. A "contract exists where there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act." *Carolina Amusement Co. v. Conn. Nat'l Life Ins. Co.*, 313 S.C. 215, 220, 437 S.E.2d 122, 125 (Ct. App. 1993) (internal quotation marks omitted). The agreement does not need to specify "testing of fire trucks" because "right to use" is sufficient for the contractual purposes. That the letter **later** contains future language does not change that the first commitment is a **present** commitment for Company Two's right to use the airport runway.

Second, as to witness testimony that the County did contract with Company Two to test fire trucks on the runway, the County still resorts to a parol evidence argument. (Br. of Resp't p. 11). That is irrelevant at this stage of the case because the lower court admitted the evidence. Therefore, it must be included in the consideration of a directed verdict motion. Regardless, the County does not dispute that Mr. Jones, Mr. Wilson, and Mr. Daniels testified that Company Two and Hampton County entered into an agreement in 2005 for Company Two to use the airport runway to test fire trucks. (Tr. pp. 178, 194-96, 285-86, 345-46, 380). That evidence was properly

² The County does not provide an alternate explanation for what this passage means.

part of the lower court's consideration and, viewed in a light most favorable to Company Two, should result in a denial of the County's motion.

Third, as to the County's conduct, the County does not deny that it allowed Company Two to test fire trucks on the runway for ten years. The County misstates Company Two's argument on this point. Company Two does not argue for a contract implied by conduct. Company Two argues that conduct shows that the 2005 agreement is what Company Two says it is—an agreement granting Company Two a right to use the runway. That the parties performed the agreement matters in this case and is a proper consideration. “The intention of the parties should be determined from the surrounding circumstances, as well as from the testimony of all the witnesses; and subsequent acts are relevant to show whether a contract was intended.” *Byrd v. Livingston*, 398 S.C. 237, 243, 727 S.E.2d 620, 623 (Ct. App. 2012) (“We find no error with the court's determination that the subsequent conduct of the parties and attorneys established the parties had a meeting of the minds and intended to be bound by the Agreement.”). Finally, the County incorrectly argues that Company Two “maintains that the agreement isn't written” but asserts that ambiguity should be construed against the County as the drafter. (Br. of Resp't p. 13). Company Two consistently maintained that the 2005 agreement is a written contract. The arguments as to the parties' conduct is in direct response to the County's assertion that it never agreed to any use. If the County is going to argue that it never agreed to something, then evidence that it allowed that exact thing is certainly relevant.

Fourth, as to the necessary terms, they are all contained within the agreement. (Br. of App. pp. 14-15, 17). The County incorrectly insinuates that Company Two and Q&J Properties are not separate legal entities. (Br. of Resp't p. 14). It does not cite evidence for this insinuation. *Id.* At trial, Quincy Jones gave testimony showing that Company Two and Q&J Properties are separate

entities. Mr. Jones owns and is the president of Company Two. (Tr. p. 113). Company Two leases property from Q&J Properties. (Tr. p. 150). Mr. Jones testified that the 2005, 2011, and 2014 agreements involved “three separate entities.” (Tr. p. 211). The County **agreed** to remove Q&J Properties as a plaintiff with Company Two pursuing the case as the sole Plaintiff—meaning they must be two entities. (Consent order to Am. Cmpl.). Next, the County argues there is not a meeting of the minds as to duration, expiration, or method of cancellation. (Br. of Resp’t p. 14). Because the lower court addressed only duration (Order p. 5), and the County cites no law that expiration or method of cancellation are necessary for a meeting of the minds, duration is the only relevant term in this appeal. Company Two cited law that a specific duration is not necessary for a meeting of the minds and, in absence of that term, a contract is terminable at will with reasonable notice. *Doe v. TCSC, LLC*, 430 S.C. 602, 611, 846 S.E.2d 874, 879 (Ct. App. 2020). The County neither refutes this law nor cites law requiring every term of a contract to appear in writing. (Br. of Resp’t pp. 14-16). This absence of legal support defeats the County’s argument on this issue.

II. THE LOWER COURT ERRED IN GRANTING A DIRECTED VERDICT ON PROMISSORY ESTOPPEL.

The lower court granted a directed verdict based on only the first element of promissory estoppel—an unambiguous promise. (Order pp. 3-4). The lower court did not rule on the element of reasonable reliance, yet that is the focus of the County’s promissory estoppel argument. Company Two relies on and incorporates its initial argument as to the sufficiency of the evidence of promissory estoppel and responds to specific arguments made by the County not already addressed in the initial brief.

First, the County asserts that promissory estoppel does not apply because the contract for Company Two to use the runway is subject to the statute of frauds. (Br. of Resp’t p. 16). This is legally incorrect. “If there is a possibility that a contract might be performed within one year, the

statute of frauds is not a bar to enforcement of the contract.” *Springob v. Univ. of S.C.*, 407 S.C. 490, 495-96, 757 S.E.2d 384, 387 (2014). Company Two’s use of the runway could be performed within one year and, therefore, is not subject to the statute of frauds.

Second, the County asserts that Company Two did not raise the issue of sufficient notice of contract termination. (Br. of Resp’t p. 16 n.5). This is factually incorrect. At trial, Mr. Jones testified that, in 2015 after 10 years of Company Two testing fire trucks on the runway without incident, the County ordered Company Two to immediately stop using the runway, and Company Two lost business and suffered an increase in the cost of business with no available option for on-site testing. (Tr. pp. 144-47).

Third, the County argues that, because a license is revocable, promissory estoppel fails as a matter of law. (Br. of Resp’t p 17). This argument ignores that a revocable license is still a legal property right. *Hilton Head Air Serv. v. Beaufort Cnty.*, 308 S.C. 450, 457, 418 S.E.2d 849, 853 (Ct. App. 1992) (A “license to be on the premises for an agreed purpose is a contractual right personal to the licensee.”). Revocability also does not mean that one party may revoke at will for no reason without legal consequence.

Fourth, the County seems to argue that no one had authority to agree to the 2005 agreement and Company Two was on notice of a lack of authority. (Br. of Resp’t pp. 17-19). This ignores the fact that, in 2005, the County Administrator told Mr. Jones to go through Mr. Daniels to discuss a potential new business with the County. (Tr. p. 125). Further, the letter that Mr. Daniels sent as a follow-up to the 2005 County Council meeting says “Hampton County Council has **authorized me to make**” certain commitments. (Pl.’s Exh. 1) (emphasis added). It is not unreasonable to rely on promises in a letter that says the promises are made with authorization.

Finally, the County incorrectly characterizes the promise as “unfettered and perpetual access” in an effort to persuade the Court that it is unreasonable. (Br. of Resp’t p. 20). The promise is for Company Two to use the property for less than three minutes at a time for one to five times per month – a total of about twenty minutes per month *at the most*. (Tr. p. 142; Shaub Depo. p. 39). It is not unfettered or perpetual.

The Court should address the true nature of the promise and find that the lower court erred in granting a directed verdict as to promissory estoppel.

III. THE LOWER COURT ERRED IN GRANTING A DIRECTED VERDICT ON ALL CAUSES OF ACTION.

The County addresses all three causes of action in its final argument section IV. Many of those arguments are adequately addresses in Company Two’s initial brief. The remaining arguments are addressed below.

First, the County incorrectly and improperly asserts that “Company Two Fire is a legal fiction.” (Br. of Resp’t p. 22). It cites to **no** evidence for this assertion. There is evidence that Company Two is a separate entity. Mr. Jones testified that Company Two leases property from Q&J Properties and that the 2005, 2011, and 2014 agreements involved “three separate entities.” (Tr. pp. 150, 211). Further, the County **agreed** to remove Q&J Properties as a plaintiff with Company Two pursuing the case as the sole Plaintiff. (Consent order to Am. Cmplt.). It cannot now argue that they are really the same entity.

Second, the County cites to a 2016 letter that Company Two sent to Council after it ordered Company Two to stop using the runway. (Br. of Resp’t p. 24). The County argues this is evidence that Company Two “was aware that it did not have a legal right to test fire trucks.” (Br. of Resp’t p. 24). Factually, there is no support for that argument. An attempt to negotiate a disagreement is not a concession of any party’s legal rights. Whether Company Two chose to aggressively pursue

legal rights or attempt a more cooperative negotiation has no bearing on the legal issue before the Court of whether there was sufficient evidence of the causes of action. Legally, the evidence is inadmissible and improper for the County's purpose under Rule 408, SCRE.

Properly applying the directed verdict standard, the lower court erred in granting a directed verdict as to all three causes of action.

CONCLUSION

For the reasons stated above and in the initial brief, the Court should reverse the decisions of the lower court and remand the case for a new jury trial.

Dated: August 17, 2022

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**HAMPTON COUNTY COUNCIL MEETING MINUTES
MONDAY; JANUARY 3, 2005; 6:00 P. M.
COUNCIL CHAMBERS, B. T. DeLOACH BUILDING, HAMPTON, SC**

Hampton County Council held a regularly scheduled meeting on Monday, January 3, 2005, 6:00 p. m., Council Chambers, B. T. DeLoach Building, Hampton, South Carolina. Council Member(s) present: Lisa Ball; Lee S. Bowers; Virgin Johnson, Sr., Margaret S. Parker, Chairman Willard E. Wilson, Vice Chairman. Staff present: Sabrena Posey, Administrator; Aline Newton, Clerk to Council and A. G. Solomons, Jr., County Attorney.

CALL MEETING TO ORDER

CALL TO ORDER:

Chairman Parker called the meeting to order.

INVOCATION AND PLEDGE OF ALLEGIANCE

INVOCATION:

Pastor Kevin Byrd, County Chaplain, gave the invocation.

PLEDGE OF ALLEGIANCE:

The Pledge of Allegiance was led by Chairman Parker.

CHAIRMAN WELCOMED COUNCIL MEMBERS

Chairman Parker stated that before council moved to the next item, she wanted to welcome the new the brand new council member, Mr. Willard Wilson. She stated that for those who were here earlier, they were sworn in about fifteen minutes ago, and Mr. Virgin Johnson who is an incumbent back on council.

ELECTION OF OFFICERS AND APPOINTMENT OF STAFF

ELECTION OF CHAIRMAN:

Council voted by secret ballot to appoint Margaret S. "Peggy" Parker as Chairman for two years. (Margaret S. Parker - 3 votes and Willard E. Wilson - 2 votes). Chairman Parker thanked Council. She stated that they will be publishing accomplishments for the last six months, and she stated that the Administrator would agree that there will be many more good solid accomplishments in economic development and the way Council handles meetings, etc. in the future.

ELECTION OF THE VICE CHAIRMAN:

Council voted by secret ballot to elect Willard E. Wilson as Vice Chairman. (Willard E. Wilson - 3 votes and Lee S. Bowers - 2 votes).

APPOINTMENT OF STAFF:

**HAMPTON COUNTY COUNCIL MEETING MINUTES
MONDAY; JANUARY 3, 2005; 6:00 P. M.
COUNCIL CHAMBERS, B. T. DeLOACH BUILDING, HAMPTON, SC**

Moved by Council Member Bowers, seconded by Council Member Wilson, to reappoint Sabrena Posey as Administrator and Aline Newton as Clerk to Council and to rehire part-time, County Attorney, Algernon Solomons, Jr. Motion carried unanimously.

ADOPTION OF THE AGENDA

REVISIONS:

Chairman Parker asked if there were any changes to the agenda. Administrator Posey stated that she had an update on an executive session regarding a contractual matter with the library (15.3) and one other item, a resolution from the Disabilities and Special Needs Board regarding their transportation program (14.1.5)

APPROVAL OF MINUTES

DECEMBER 13, 2004 REGULAR MEETING MINUTES:

Chairman Parker asked Council if there were any additions or corrections. There were none. She stated that the minutes would stand approved as they received the.

DECEMBER 20, 2004 SPECIAL MEETING MINUTES:

Chairman Parker asked Council if there were any additions or corrections. There were none. She stated that the minutes were approved as received.

PRESENTATION

There were no presentations.

APPOINTMENTS TO BOARDS AND COMMISSIONS

There were no appointments.

RESOLUTIONS

There were no resolutions scheduled.

ORDINANCES

THIRD (3rd) AND FINAL READING TO ORDINANCE #2004-004 - ORDINANCE AUTHORIZING THE EXECUTION OF AND DELIVERY OF A FEE IN LIEU OF TAX AGREEMENT BY AND BETWEEN HAMPTON COUNTY, SOUTH CAROLINA AND NEVAMAR COMPANY, LLC

Chairman Parker stated that the Nevamar Ordinance, Ordinance #2004-004 was deferred

THIRD (3rd) AND FINAL READING TO ORDINANCE #2004-006, ESTABLISHMENT OF

**HAMPTON COUNTY COUNCIL MEETING MINUTES
MONDAY; JANUARY 3, 2005; 6:00 P. M.
COUNCIL CHAMBERS, B. T. DeLOACH BUILDING, HAMPTON, SC**

THE HAMPTON COUNTY ANIMAL CONTROL OFFICER AND DUTIES:

Chairman Parker stated that Ordinance #2004-006 will be referred to the appropriate committee when the new committees are appointed. She stated that when it is appointed then that committee will take that up.

SECOND (2nd) READING TO ORDINANCE #2004-012, PUBLIC NUISANCES AND UNFIT DWELLINGS ORDINANCE:

Chairman Parker this ordinance was also discussed back in December and will be discussed at the second meeting in this month. If you could, if you don't have the latest copy, council received a copy back in December that was the copy of the last draft, if you don't have that She stated that she wanted to set by this Friday for members to please write on there your concerns, anything that you want to express and then they will bring another draft back that will be on the agenda for the next meeting

BIDS

There were no bids.

COUNCIL'S BRIEFING

SELECTION OF COMMITTEES:

Chairman Parker asked that Council fill out the forms regarding the committees in which they would like to serve and getting them back to her.

SCHEDULING OF A COUNCIL WORKSHOP:

Chairman Parker stated that there is a need for a council workshop. She stated that she and Ms. Posey discussed this today. Chairman Parker stated that Ms. Posey will see if she can get someone assigned from the university who will conduct this workshop. She stated that Council will look at the policies and procedures and the way that Council conducts itself and goals and objectives before Council starts the budget process. Chairman Parker stated that Administrator Posey stated that maybe the workshop could be held on a weekday starting at 4:00 p. m. Administrator Posey stated that maybe starting at 4:00 p. m. and going until about 8:00 p. m. or a Saturday morning, spending a half day on Saturday, whatever was Council's preference. Council Member Bowers stated that you would probably do better getting people coming at 4:00 p. m. in the afternoon. Council Member Johnson stated that 4:00 p. m. in the afternoon is not good for some people who may have jobs. Administrator Posey stated that Council could start as late as they like and do it over two or three days. She stated that if they would like to start later and do it two nights, then that would be fine. Chairman Parker wanted to know what day was more preferable. Council Member Bowers asked that it not be done on a Monday, because meetings were held on Monday. Council Member Johnson stated that Wednesday is not good, because prayer meetings are on Wednesday. Chairman Parker stated that Tuesday would be a good day since they did budgets on Tuesday. Chairman Parker asked that the Tuesday for off weeks of council meetings, second or fourth Tuesday. Administrator Posey will get the dates of the meeting for Council.

**HAMPTON COUNTY COUNCIL MEETING MINUTES
MONDAY; JANUARY 3, 2005; 6:00 P. M.
COUNCIL CHAMBERS, B. T. DeLOACH BUILDING, HAMPTON, SC**

REPORTS TO COUNCIL

LEASE AGREEMENT FOR RENTAL PROPERTY THE COMMUNICATION'S TOWER:

Administrator Posey stated that this is retro approval, because the tower is now up and placed on property of Wilson and Susanne Peeples. She stated that it is 11.328 acres that they have agreed to lease to the County to locate the tower on. She stated that the lease agreement was prepared by the County Attorney for twenty (30) years commencing on November 1, 2004. She stated that the agreement stipulates the rental amount is \$800 (eight hundred dollars) per year for the first four (4) years and shall increase thereafter by 10% (ten percent) every four (4) years for the remaining sixteen (16) years. She stated that the tower was funded through the Homeland Security Grant that houses the equipment for Fire, EMS and Sheriff Departments. She stated that she was asking for the approval of the eight hundred (\$800) dollars for the lease. Council Members Bowers wanted to know if you would pay from contingency. Administrator Posey stated that it would come from within the department's budget. Council Member Johnson wanted to know if the renewal of the lease was after twenty (20) years. Administrator Posey stated that this was correct. She stated that the lease would renew after twenty (20) years, but the rate will increase after four (4) years. Chairman Parker stated that it would increase by 10% (ten percent). She wanted to know why twenty years. Administrator Posey stated that she would defer to the County Attorney. She stated that if probably is just a reasonable time in terms of not having to come back. She stated that it's a tower there that the County plans to have there for a very long time. The County Attorney stated that the only thing he can say is that this is what Gene Rushing agreed on. He stated that twenty (20) years is reasonable for that structure. Chairman Parker wanted to know if this is something that the County gets through the Homeland Security Grant. She asked if the County knows that the grant is going to be for that long. Administrator Posey stated that the funding for the lease is not through the Homeland Security Grant. She stated that the grant paid for the tower, but the funding will be budgeted annually. Administrator Posey stated that she believed that Council was informed about this under Mr. Klugh where the original site was not appropriate for the tower, and the County had to find a new location. She stated that this was the location. **Moved** by Council Member Bowers, seconded by Council Member Ball, to accept the lease as prepared by the County Attorney for the communication tower property rental lease. Motion carried unanimously.

APPROVAL OF OUT OF STATE TRAVEL FROM THE SHERIFF:

Administrator Posey stated that this comes as a request because it is a part of the County's policy that all out of state travel must be approved by County Council. She stated that she hopes in the future that Council can review that policy such that department heads and Administration can review out of state travel and if the travel is within the department's budget and the authorized travel is work related, then that policy can perhaps be reviewed. She stated that it is the policy that Council approve out of state travel. She stated that the Sheriff has submitted information regarding this travel to the National Sheriff's Association Mid-Winter Conference to be held in Washington. She stated that the dates for the conference is February 28, 2005 - March 6, 2005. She stated that he has supplied all the documentation and travel pre-authorization form. Administrator Posey stated that the approximate cost for the trip is \$1,990. She stated that funds are budgeted and available for this

**HAMPTON COUNTY COUNCIL MEETING MINUTES
MONDAY; JANUARY 3, 2005; 6:00 P. M.
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trip if Council so agree to approve. Chairman Parker wanted to know if he took the trip that there will be money left for training for deputies, etc. Sheriff Brown stated that he wished he could answer that question but he can't. He stated that Major Firster is the budget person. Major Firster stated that there will be funds left for training. **Moved** by Council Member Wilson, seconded by Council Member Johnson, to grant approval for the Sheriff to attend the National Sheriff Association's Mid-Winter Conference. Motion carried unanimously.

EQUAL EMPLOYMENT OPPORTUNITY PLAN:

Administrator Posey stated that this plan was developed by the Finance Director per a request from the Detention Center Grant. She stated that the County must have an Equal Employment Opportunity Plan in place in order to continue to receive that funding. She stated that this plan simply identifies for the County, the employment, the structure of our employment in terms of the level of professionals. She stated that it looks at race, and the ratio of minorities, that the County has hired and any plans that the County needs to put in place to possibly look at the category in which the county is falling short in. She stated that they put that plan together based on the recommendation and guidance from the grant agency and Council's approval of it. She stated that there is no funding attached whatsoever. She stated that it was just a matter of having a plan in place for grant purposes. Council Member Bowers asked if Administrator Posey recommends it. She stated that she did. **Moved** by Council Member Bowers, seconded by Council Member Wilson, to adopt the Equal Employment Opportunity Plan. Chairman Parker stated that this is what the County always does. Administrator Posey stated that she did not know but it was a standard plan that the County should have, and the County has adopted it based on the draft that the grant agency provided to the County. Motion carried unanimously.

MR. WALT INABINET, SOUTHERN CAROLINA REGIONAL DEVELOPMENT ALLIANCE, REGARDING THE ACTIVITY REPORT FOR DECEMBER 2004:

Mr. Inabinet came before Council to make his presentation. (See attachment #1 for presentation). Council thanked Mr. Inabinet for the report.

RESOLUTION #R-2005-001 FROM THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS REGARDING DESIGNATION AS THE ENTITY IN HAMPTON COUNTY TO PROVIDE TRANSPORTATION THE PERSONS WITH MENTAL RETARDATION AND RELATED DISABILITIES AND TO PARTICULAR SECTORS OF THE ELDERLY AND/OR PERSONS WITH DISABILITIES:

Moved by Council Member Bowers, seconded by Council Member Wilson, to adopt Resolution #R-2005-001 designating Hampton County Disabilities and Special Needs Board as an entity in Hampton County to provide transportation to the Person with Mental Retardation and Related Disabilities and transportation services to particular sectors of the elderly and/or persons with disabilities. Motion carried unanimously.

EXECUTIVE SESSION

**HAMPTON COUNTY COUNCIL MEETING MINUTES
MONDAY; JANUARY 3, 2005; 6:00 P. M.
COUNCIL CHAMBERS, B. T. DeLOACH BUILDING, HAMPTON, SC**

EXECUTIVE SESSION REGARDING CONTRACTUAL MATTERS CONCERNING THE DEPARTMENT OF SOCIAL SERVICES PROJECT, ECONOMIC DEVELOPMENT AND THE LIBRARY:

Moved by Council Member Ball, seconded by Council Member Bowers, to go into executive session to discuss the contractual matters. Motion carried. Session began 6:40 p. m. and ended 7:40 p. m. **Moved** by Council Member Johnson, seconded by Council Member Ball, to come out of executive session. **After coming out of Executive Session**, Chairman Parker stated that:

- a contractual matter regarding the DSS Project was discussed, and Council gave direction to the Administrator.
- a contractual matter regarding economic development was discussed, and Council gave direction to the Economic Development Director, the County Administrator and the County Attorney.
- a contractual matter regarding the library was discussed, and Council gave direction to the Administrator and the County Attorney.

ADJOURNMENT

Moved by Council Member Johnson, seconded by Council Member Ball, to adjourn. Chairman Parker adjourned the meeting at 7:42 p. m.

**HAMPTON COUNTY COUNCIL MEETING MINUTES
MONDAY; SEPTEMBER 19, 2005; 6:00 P. M.
COUNCIL CHAMBERS, B. T. DeLOACH BUILDING, HAMPTON, SC**

Hampton County Council held its regularly scheduled meeting on Monday, September 19, 2005, 6:00 p. m., Council Chambers, B. T. DeLoach Building, Hampton, South Carolina. Council Member(s) present: Lisa Ball, Lee S. Bowers, Virgin Johnson, Sr.; Margaret S. Parker, Chairman and Willard E. Wilson, Vice Chair. Staff present: Sabrena Posey-Graham, Administrator; Aline Newton, Clerk to Council and A. G. Solomons, Jr., County Attorney. Media present: Mr. Wayne Knuckles, The Hampton County Guardian. The meeting was advertised as prescribed by law.

CALL MEETING TO ORDER

CALL TO ORDER:

Chairman Parker called the meeting to order.

INVOCATION AND PLEDGE OF ALLEGIANCE

INVOCATION:

Pastor Kevin Byrd, Chaplain, Hampton County, gave the invocation.

PLEDGE OF ALLEGIANCE:

The Pledge of Allegiance was led by Chairman Parker.

PUBLIC HEARING(S)

HAMPTON COUNTY'S NEEDS ASSESSMENT:

Chairman Parker opened the public hearing to receive comments regarding the needs of Hampton County. Mrs. Holly Crews, Lowcountry Council of Governments, came before Council to state that she was there to receive public input regarding what everyone thought the needs of Hampton County were. Before taking comments, she presented to Hampton County an Award of Excellence for the Department of Social Services (DSS) Project. She stated that the grants for Downtown revitalization ended in September. She stated that the next funding cycle is open until April. She stated that the cycle is open for drainage, water, sewer, roads, etc. Economic Development Executive Director, Jim Daniel, stated that he would like to state that economic development was one of the needs for Hampton County. He stated that Hampton County is a distressed county and would appreciate any assistance on Community Development Block (CDBG) Grants and any other assistance that is available. Administrator Graham stated that she like water, sewer and roads also be added. Mrs. Polly Knight stated that she felt that the taxes are too high that is why you cannot get industry. With no other comments, Chairman Parker closed the public hearing.

CLOSE OUT FOR REGIONAL GRANT:

Chairman Parker opened the public hearing to receive public comments. Mrs. Holly Crews stated that this was a close out for a regional grant. She stated that Lowcountry Council of Governments (LCOG) usually applies for planning grants to assist local governments with technical assistance to

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support other grants. She stated that they usually use Hampton County as a pass through agency but will use Jasper County for the next one. With no other comments, Chairman Parker closed the public hearing. Mrs. Crews circulated a sign-in sheet. (See attachment #1 - sign in sheet).

PUBLIC COMMENT(S)

MRS. POLLY KNIGHT:

Mrs. Polly Knight stated that they the registered voters of Hampton County hereby petition the Hampton County Council for a referendum to decide the kind of government that they want in Hampton County. She stated that they have been asked to do this by a lot of people, and she was giving the County a copy. She stated that the County Attorney was kind enough to look at it and would get back with them to make sure that it was okay and acceptable. Mrs. Knight asked that when the petition was ready that they be allowed to meet in the Council Chamber to be distributed and be able to pick up petitions on a certain date. Chairman Parker told Mrs. Knight if she would call Administrator Graham about this. Mrs. Knight asked if this would be okay. Chairman Parker stated yes.

ADOPTION OF THE AGENDA

ADOPTION OF SEPTEMBER 19, 2005 COUNTY COUNCIL MEETING AGENDA:

Chairman Parker asked if there were any changes. Administrator Graham stated that she had the following wanted to add under Resolutions - #9, a tax anticipation note. There were no objections. Chairman Parker stated that the agenda was adopted with the addition.

APPROVAL OF MINUTES

SEPTEMBER 6, 2005 REGULAR MEETING MINUTES:

Chairman Parker asked if there were any changes to the minutes. There were none. Chairman Parker stated that the September 6, 2005 minutes were approved as received.

PRESENTATIONS

There were no presentation(s).

APPOINTMENTS TO BOARDS AND COMMISSIONS

Three were no appointment(s).

RESOLUTION(S)

**HAMPTON COUNTY COUNCIL MEETING MINUTES
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TAX ANTICIPATION NOTE:

Administrator Graham stated that she wanted to solicit a tax anticipation note to cover the cash flow pending collections from 2005-2006 tax notices. Administrator Graham stated that tax notices were due to be issued September 30, 2005. She stated that the ability to issue a TAN is a part of the budget document notices beyond this date. She stated that the TAN is not to exceed \$1,300,000 (one million three hundred thousand dollars). **Moved** by Council Member Bowers, seconded by Council Member Ball, for the issuance of a Tax Anticipation Note (TAN) not to exceed 1.3 million dollars. Council Member Johnson stated that the note is to be repaid as soon as the taxes are collected. Administrator Graham stated that this was correct. Council Member Wilson wanted to know if the note would be based on the time period needed. Motion carried unanimously. Council Member Johnson stated that as long as it is paid back when the taxes are collected.

ORDINANCES

THIRD (3rd) AND FINAL READING TO ORDINANCE 2005-006, AN ORDINANCE TO SET THE MILLAGE:

Chairman Parker stated that third (3rd) and final reading was needed to Ordinance 2005-006, ordinance to levy taxes. Administrator Graham read the millage rates as follows:

HAMPTON COUNTY MILLAGE FOR 2005 TAX YEAR		
	Hampton County District #1 (North)	Hampton County District #2 (South)
General Fund	189 mills	189 mills
County Capital Projects	5 mills	5 mills
County Rural Fire Protection	12 mills	12 mills
School	208 mills	298 mills
School Shortage (Prior Years)	2 mills	10 mills

Council Member Bowers explained why he was not present at the special meeting that was held in Estill on September 12, 2005. He stated that it would be easier to reduce the millage but the budget is already in process and the money is already spent. He stated that Council was already obligated. He stated that it would put Council in a legal crisis if the County did not find the money that they had already authorize by the budget ordinance. He stated that the only thing that he could think of that they could possibly cut is that they could not fund Capital Outlays Program. He told Mayor Owens that he wanted to say something about South District too, because he was from there and it has been a thorn in his craw for most of his life. He stated that he paid, he thought, more taxes than anyone on Council; he stated that maybe not. He stated that he paid almost \$20,000 in Hampton County taxes. He stated that he is mindful of the budget. He stated that those in South School

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District pay 2.5 times more school taxes than the people in North District. He stated that Council does not have the authority to change that, but it takes a mill in South School District is worth \$12,000; a mill in North School District is worth \$30,000. He stated that is 2.5 more times tax that he is levied in his District. He stated that something has got to be done about it/ He stated that millage in South School District is going to continue to go up; the valuation is going down. He stated that it just has to be done differently if they want them to fund schools in South School District like rich people in Richland and Irmo, then somebody has got to help. He stated that he felt that he did not have any choice but to move forward with the millage being set by the County. He stated that he wanted not to, and it would have been a lot easier not to. He stated that as soon as they did not pay the workmen's comp bill and someone got hurt, then they would have a lawsuit; he stated that as soon as they did not pay the people that they have funded; they would have a lawsuit. For this reason, he stated that he moved to adopt the millage less the five (5) mills for the Capital Improvements. Chairman Parker stated that she had a motion and asked for a second.

Council Member Johnson stated that what he was kicking on too if something was to happen and the County would bite the bullet and do the right thing; the money could flow to flow and go all across the County. He stated but the County first has to bite to get the job done. He stated that he had a sheet there that in the 70's after school integration in which they changed the line over from Salkehatchie Swamp way up in Nixville near to Highway 3 and back in Gifford to Ginn Hill Road. He stated that North District School got some of the best houses in that side that should have remained in South District. He asked where was Council when that happened. He stated that two of them were fighting it for fifty years, and it is still going on. He stated that someone has to bite the bullet. Chairman Parker told Council Member Johnson that they had a motion to adopt the millage with a decrease of five (5) mills for Capital Projects, and she stated that they needed to stick with the motion. Council Member Bowers stated that he wanted to explain why he thought that they could leave out Capital Projects. He stated that the others is funded and authorized, and Capital Projects is not. He stated that legally Council could leave that out. Chairman Parker stated that she had a motion to approve the millage less the five (5) mills for Capital Projects . Council Member Wilson called for a point of order. He stated that there was a motion but not a second. Council Member Johnson raised his hand to speak, because there was no motion on the floor, because there was no second on it. He stated that the point of order is that he should have been allowed to finish his statement. Chairman Parker stated that he was allowed. Council Member Wilson stated that the Chairman cut off Council Member Johnson. Chairman Parker stated that if she could have a second, then Council could have their discussion, and if they don't get a second, then... Council Member Johnson stated that he would vote and yield to what was going on now. Council Member Johnson stated that he was not through with it yet. Chairman Parker asked if there was a second to Council Member Bowers' motion. She stated that she was just trying to stick with Parliamentary Procedure. Council Member Ball seconded Council Member Bowers' motion The motion was seconded by Council Member Ball. Chairman Parker stated that Council Member Johnson could speak. Council Member Johnson showed a map, and he pointed out the zig zag lines. He stated that somebody took a part of South District. He stated that it was done in the 70's when school integrated. He stated that it was done without the legislators. He asked who did that. He asked why did the legislators have to come back to them now. Chairman Parker stated that she was teaching school then, she did not know. Council Member Ball stated that maybe they needed

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to look at the map (displayed by Council Member Johnson); she stated that they today, they could not do anything about that. Council Member Johnson stated that he could not go along with the millage. Chairman Parker stated that they had a motion and a second to pass the millage as is with a decrease of five (5) mills which was set aside for capital projects, equipment, cars, etc. Chairman Parker asked for discussion on the motion. Chairman Parker stated that she had a discussion about the motion. She stated that Council talked about this during budget time. She stated that the county's cars are so old; they have been talking about this since she's been on Council; she stated that the interim administrators were shocked about the mileage on the cars, the sheriff's cars; she stated that they hear from public works about the old equipment. She stated that if Council does not do it now, she stated that they keep saying this, it is going to be a problem down the road. She stated that they hear that those cars out there are old. She stated that she felt that it would be very wise to continue as they do in their own homes to keep your equipment up and to keep your vehicles, etc. Chairman Parker stated that she had reservations about not trying to stay on top of things. She stated that this was her discussion. Council Member Ball stated that she had heard that there are other options; go back and look at your numbers again. Council Ball stated that the three biggest things that is being funded is Fire, EMS and Sheriff. She stated that these are the three that you could effect that would really make a big difference in the world. She stated that unless Council was willing to send people home or to cut employees or whatever. She stated that she could not see where they could not set the millage tonight. Council Member Wilson stated that there were other items that could be cut. He stated that there were other things that could look at and adjust the budget. Council Member Wilson stated that they could not do it just looking at an overview, and nobody sitting down and willing to take the time to bite the bullet; he stated that the easiest thing to do is to say "yea, let's pass it", but it is not easy on the citizens, because Council is taxing them out of their houses. Council Member stated that he listed to them talk and asked that they listen to him; he stated that he did not cut in on anyone. He stated that Council Member Johnson said earlier that there is a certain group that is buying up the houses. He stated that folks are ending up out doors. He stated that Council is not being concerned about the fact that people are being taxed out of their houses. He stated that he felt that Council owed that to the citizens to go back and look at the budget; look at it closer and see the things that they have over exuberant; he stated that they have some things that are over exuberant. He stated that if you are sitting around the table, and your check is the only one coming in and that is the only thing that is feeding the family, then a car, etc. has to be cut out to make sure that they eat. He stated that this is what they have to do as Council; go back and make sure that the people have homes and a place to live – to be able to maintain until the Council gets the industry here to build these elaborate buildings that they are building and the other things that Council is doing. Chairman Parker stated that for the record; she received no request from any council member to consider calling a meeting to discuss things in the last week. She stated that she received no request to do that. Chairman Parker stated that they had a motion and a second to give third reading to set the millage with a decrease of five (5) mills for Capital Improvements. She asked if there were any comments. Chairman Parker called for the vote. Chairman Parker called for a vote. The vote. Council Members Ball and Bowers voted "Yea", and Council Members Johnson, Parker and Wilson voting "Nay". Chairman Parker stated that it stayed as it is. Chairman Parker asked if the vote was gotten. Administrator Graham stated that she had not done anything that the millage did not pass. Administrator Graham told Chairman Parker that she needed to offer a new motion, or they would not have a millage adopted. Administrator Graham stated that they would have to offer a new motion of some sort to get

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approval, because they did not have a millage adopted. Citizens stated that the vote was already taken. Chairman Parker called for order; she stated that they could make another motion. She stated that they could make motions all night long. **Moved** by Chairman Parker to set the millage as written and as presented to Council. Council Member Wilson stated that she was going back on her vote. Chairman Parker stated that she was correcting her vote. She stated that they were voting on the five (5) mills. Chairman Parker stated that she thought they were voting on the five (5) mill decrease. She stated that she would like to vote on the millage as presented to Council, before they had the five (5) mills decrease. Chairman Parker asked if she had a second. Council Member Johnson stated that it was a lost motion. Chairman Parker asked Council Member Wilson if that was what he wanted to do was to leave it as it was. She asked Council Member Johnson if this is what he voted for. Council Member Johnson stated that he voted for no increase period –over the 2.7%. Council Member Bowers stated that they would have to have his motion or none. Motion died for a second. Administrator Graham asked if Council Member Bowers could offer his motion again. Chairman Parker asked County Attorney Solomons if Council Member Bowers could offer his motion again. Attorney Solomons stated that the answer was yes. He stated that Council Member Bowers was authorized to renew his motion. County Attorney Solomons stated that Administrator Graham stated that this was the question, could he renew his motion or not. He stated that the motion failed, because of a misunderstanding of what the motion was about, then you clarify it and restate your motion and go on. Chairman Parker stated that they were back to third (3rd) reading of the ordinance to set the millage. Chairman Parker called for a motion. Council Member Bowers stated that he renewed his motion, seconded by Council Member Ball. Chairman Parker stated that she wanted to make it clear where she stood on this. She stated that she felt that they have to move forward; would like to keep that in there for equipment, because she feels that it will be a problem, but she did not vote against passing the millage so they can operate the county as she felt they should. She stated that she misunderstood where that was going and apologized for the confusion. She stated that let it be known that they were doing this legally; absolutely not trying to pull anything. She stated that right in front of the public; they were voting again. Chairman Parker called for the vote. Motion carried with Council Members Ball, Bowers and Parker voting “Yea” and Council Members Johnson and Wilson voting “Nay”.

SECOND (2nd) READING TO ORDINANCE 2005-007, AN ORDINANCE AMENDING THE ORDINANCE ADOPTED APRIL 15, 2005 FOR THE DEVELOPMENT OF A JOINTLY OWNED AND OPERATED INDUSTRIAL/BUSINESS PARK IN CONJUNCTION WITH JASPER COUNTY AND ESTABLISHED PURSUANT TO SOUTH CAROLINA CODE OF LAWS OF 1976 SECTION 4-1-170, ET SEQ., AS AMENDED; AND AMENDING THE AGREEMENT WITH JASPER COUNTY PROVIDING FOR THE DISTRIBUTION OF FEES IN LIEU OF AD VALOREM TAXES TO THE COUNTIES AND RELEVANT TAXING ENTITIES; AND OTHER MATTERS RELATING THERETO:

Moved by Council Member Bowers, seconded by Council Member Wilson, to give second (2nd) reading to the amendment of the ordinance adopted April 15, 2005 for the development of a jointly owned and operated Industrial/Business Park in conjunction with Jasper County and established pursuant to South Carolina Code of Laws of 1976 Section 4-1-170, et. Seq., as amended; and the amendment of the agreement with Jasper County providing for the distribution of fees in lieu of ad valorem taxes to the counties and relevant taxing entities; and other matter relating thereto. Motion carried unanimously.

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BIDS

There were no bid(s) scheduled.

COUNCIL'S BRIEFING

ADMINISTRATION AND FINANCE COMMITTEE:

Chairman Parker stated that the Administration and Finance Committee met last week, and they are going through the policies and procedures. Council Member Johnson stated that he would like the Council to stick to Robert's Rules of Order. He stated that he would not like all that other stuff that they are using from the internet.

LEGISLATIVE DELEGATION MEETING:

Chairman Parker stated that the meeting with the Legislative Delegation is scheduled for September 20, 2005, 6:00 p. m., Council Chambers, B. T. DeLoach Building, Hampton, South Carolina, with dinner at Taylor's afterwards. Town Council Member Anna Sue Rivers stated that the Town of Hampton is meeting the same night and time. She stated that she would have liked to attend but could not. Chairman Parker stated that all the public is invited to attend.

JASPER COUNTY'S TERMINAL PORT:

Administrator Graham stated that a bus will meet at the Hampton County Courthouse on September 20, 2005 at 6:30 a. m. to take those who would like to support Jasper at the Port Hearing in Columbia. She stated that there were thirteen seats available. She stated that the hearing will start at 9:30 a. m. Chairman Parker encouraged everyone who could to support Jasper.

LEASE VARNVILLE TOWN HALL:

Administrator Graham presented to Council a lease agreement with the Town of Varnville. She stated that the amount of the lease is \$1,300 (one thousand, three hundred dollars) per month for five years. **Moved** by Council Member Bowers, seconded by Council Member Wilson, to approve the lease agreement with the Town of Varnville. Motion carried.

CONTINGENCY FUND:

Administrator Graham presented to Council a breakdown of expenditures from the contingency account. She stated that the balance left in contingency is \$19,915 (nineteen thousand, nine hundred fifteen dollars). Motion carried. (See attachment #2)

FINANCIAL REPORT:

Administrator Graham stated that she was presenting an unaudited financial report. Chairman Parker asked if she could have a motion to accept the report. **Moved** by Council Member Bowers, seconded by Council Member Ball, to accept the financial report as information. Motion carried unanimously.

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EXECUTIVE SESSION

Moved by Council Member Johnson, seconded by Council Member Bowers, to go into executive session to discuss a contractual matter (economic development). Motion carried. Session began 7:02 p. m. and ended 7:17 p. m. Moved by Council Member Bowers, seconded by Council Member Wilson, to come out of executive session. **Chairman Parker** stated that the Economic Development Executive Director was given direction.

ADJOURNMENT

Moved by Council Member Bowers, seconded by Council Member Wilson, to adjourn the meeting. Motion carried. Chairman Parker adjourned the meeting at 7:18 p. m.

Minutes Respectfully Submitted By:

Hampton County Council Members:

Aline Newton, Clerk to Council

Margaret S. Parker, Chairman

Willard E. Wilson, Vice Chairman

Lisa Ball

Lee S. Bowers

Virgin Johnson, Sr.

RECEIVED

Aug 17 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
The Honorable Kristi F. Curtis

Appellate Case No. 2021-000685

The Station, Inc. d/b/a Company Two, Inc.,.....Appellant,

v.

Hampton County,Respondent.

PROOF OF SERVICE

The undersigned certifies that a copy of the Initial Reply Brief of Appellant has been served upon counsel of record for the Respondent using their primary email addresses listed in the Attorney Information System, as shown below, on August 17, 2022.

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Attorneys for Respondent Hampton County

Dated: August 17, 2022

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August 17, 2022

The Honorable Jenny Abbott Kitchings
Clerk of Court for the Court of Appeals
Post Office Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

RECEIVED

Aug 17 2022

SC Court of Appeals

Via E-Mail

Re: *The Station, Inc. d/b/a Company Two, Inc. v. Hampton County*
Appellate Case No. 2021-000685

Dear Mrs. Kitchings:

Attached for electronic filing and service please find:

- (1) Initial Brief of Appellant, and
- (2) Proof of Service.

Please file the documents and return one file-stamped copy to me via email. By electronic copy of this letter, I am serving all counsel of record with a copy of the same.

With kind regards, I am,

BARNES LAW FIRM, LLC

s/Kathleen C. Barnes

cc: Richard B. Ness (via email)
Norma A. T. Jett (via email)
R. Aaron Ness (via email)
Alison D. Hood (via email)