

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE G. THOMAS COOPER, JR.
CIRCUIT COURT JUDGE

CASE NO. 2014-CP-32-0697

2014-000829

Vivian Atkins, Robert P. Frick, and Kay Hollis,
in their official capacities as members of the
Town Council of the Town of Chapin,

Appellants,

v.

James R. Wilson, Jr. in his official capacity
as Mayor of the Town of Chapin,
Gregg White in his official capacity as a
member of the Town Council of the
Town of Chapin and the Town of Chapin, Defendants

Of whom James R. Wilson, Jr. and Gregg White are

Respondents.

RECORD ON APPEAL

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early January 2014. As mayor, Wilson serves as a member of the Town Council. Plaintiffs are the three remaining members of the Town Council.

Plaintiffs state four distinct causes of action in their Complaint. First, Plaintiffs claim that Mayor Wilson has improperly denied their requests to have certain items placed on the agenda for consideration by the Council under Town Ordinance 2.206. Second, Plaintiffs challenge the employment contract entered into between Mayor Wilson and Karen Owens. On January 24, 2014, Mayor Wilson entered into the contract on behalf of the Town of Chapin to have Ms. Owens serve as "Director of Communication and Economic Development" without approval from the Town Council. Additionally, Mayor Wilson made adjustments to the budget to fund Ms. Owens' position without receiving approval from the Council. Third, Plaintiffs seek to enforce a contract entered into with David W. Knight. On December 3, 2013, Mr. Knight entered into a contract with the Town of Chapin wherein he would represent the Chapin Utility Department in exchange for compensation of \$1,500 per month. Mayor Wilson has not signed any checks payable to Mr. Knight since the employment contract was entered into. Finally, Plaintiffs claim that they are entitled to attorneys' fees and costs under Section 15-77-300 of the South Carolina Code of Laws.

ANALYSIS

I. Plaintiff's Motion for Preliminary Injunction

a. Standard of Review

Plaintiffs have filed a motion for a preliminary injunction, asking the Court to "order[] the Mayor to place on the agenda of the next Council meeting, without any delay, any item requested by any member of Council." (Compl. ¶ 12.). A preliminary injunction should issue "only if necessary to preserve the *status quo ante*." *Poynter Invs., Inc. v. Century Builders of*

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Piedmont, Inc., 378 S.C. 583, 586. Plaintiffs' Motion, however, is actually in the form of a mandamus petition, which "is to command and execute, and not to inquire and adjudicate." *Sanford v. South Carolina State Ethics, Comm'n*, 385 S.C. 483, 493 (2009) (internal quotation and citation omitted).

Mandamus is "the highest judicial writ known to the law." *Willimon v. City of Greenville*, 243 S.C. 82, 86, 132 S.E.2d 169, 170 (1963). Because it involves one branch of government ordering another branch to undertake specific actions, mandamus is proper only in the narrow circumstance where an officer: (1) has a duty to perform the act; (2) the act is ministerial in nature; (3) the petitioner has a specific legal right for which discharge of the duty is necessary; and (4) there is a lack of any other legal remedy. 385 S.C. 483 at 494. When there is any doubt about the officer's legal obligations, or if he is vested with any discretion in performing those duties, then mandamus must be rejected. *See, e.g., id.* (denying mandamus request due to the absence of any "ministerial act to be performed"); *Redmond v. Lexington County Sch. Dist. No. 4*, 314 S.C. 431, 438, 445 S.E.2d 441, 445 (1994) (denying mandamus request because the school board's challenged conduct involved the exercise of "discretionary authority").

b. Application of the Law

Chapin has a mayor-council form of government. Chapin Town Ord. § 2.101. Under this system, Mayor Wilson is:

- Chapin's Chief Executive Officer, *id.* § 2.105;
- Chapin's Chief Administrative Officer, S.C. Code Ann. § 5-9-30, Chapin Town Ord. § 2.402; and
- The presiding officer over all meetings of Council, S.C. Code Ann. § 5-9-30(3), Chapin Town Ord. § 2.205.

As part of his authority regarding Council meetings, Ordinance § 2.206(b) provides as follows:

"The agenda shall be approved by the Mayor, prior to distribution." This "approval" authority is

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unambiguous—the Mayor must sign off on the agenda prior to its distribution to Council, and there is no requirement that the Mayor place items on the agenda that he believes do not merit Council’s consideration. Case law is uniform that the authority to “approve,” such as that vested in Mayor Wilson by Ordinance § 2.206(b), includes the discretion to deny or reject. *See Paslay v. Brooks*, 198 S.C. 345, 354, 17 S.E.2d 865, 869 (1941) (“Undoubtedly, the power to approve a claim as the one before us carries with it the discretion to disapprove.”); *see also State ex rel. Pilkinton v. Bush*, 198 S.W.2d 1004, 1005 (Ark. 1947) (“The very act of approval, unless limited by the context of the statute providing therefor, imports the act of passing judgment, the use of discretion and a determination as a deduction therefrom.” (quoting *Fuller v. Bd. of Univ. & Sch. Lands*, 129 N.W. 1029, 1032 (N.D. 1911))); *People v. Riggs*, 87 P.3d 109, 114 (Colo. 2004) (“The term ‘approval’ itself implies knowledge and the exercise of discretion after knowledge.”); *Morse v. Curtis*, 200 S.E.2d 832, 835 (N.C. Ct. App. 1973) (“Indeed, Black’s Law Dictionary defines it: “the act of approval” imports the act of passing judgment, the use of discretion and determination as a deduction therefrom.” (quoting *Brice v. Robertson House Moving Wrecking & Salvage Co.*, 105 S.E.2d 439, 446 (N.C. 1958))).

Because Mayor Wilson has the discretionary authority to approve or deny items to be placed on the Town Council's agenda, Plaintiffs cannot demonstrate that Mayor Wilson has a duty to place *any* item requested on the agenda. Therefore, Plaintiffs have failed to satisfy the first requirement for mandamus by showing that there is a duty to perform the requested action. Plaintiff's Motion for Preliminary Injunction is therefore **DENIED**.



II. Defendants' Motion to Dismiss under Rule 12(b)(6)

a. Standard of Review

Rule 12(b)(6), SCRPC, tests the legal sufficiency of a complaint. Under this rule, the Court should dismiss a claim if it fails "to state facts sufficient to constitute a cause of action." *Id.* When evaluating a motion under this rule, the Court is not to read unalleged facts into the pleadings, *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005), nor need it credit the claimant's legal conclusions or predicate act labels, *Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 512, 563 S.E.2d 352, 358 (Ct. App. 2002). The Court is free to take judicial notice of matters of public record when reviewing a motion under Rule 12(b)(6). *See, e.g.*, Rule 201(b), SCRE (explaining that courts can take judicial notice of facts that are "not subject to reasonable dispute"); *id.* 201(f) ("Judicial notice may be taken at any stage of the proceeding."); *Sec'y of State for Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007) ("In reviewing the dismissal of a complaint under Rule 12(b)(6), we may properly take judicial notice of matters of public record.").

b. Application of the Law

i. Mayor Wilson's Authority to Approve the Chapin Town Council Agenda

Plaintiffs ask this Court to declare the rights and status of the parties as to Chapin Town Ordinance 2.206(a)-(b), which provide as follows:

- (a) Matters to be considered by the Mayor and Council at a regular meeting shall be placed on a written agenda and publicly posted at least twenty-four (24) hours prior to the meeting. Matters not on the agenda may be considered upon request of a member unless at least two (2) members object.
- (b) The agenda shall be approved by the Mayor, prior to the distribution. It shall be prepared under the supervision of the Clerk/Treasurer

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Plaintiffs assert that the above Ordinance does not grant Mayor Wilson any discretion to refuse to place a requested item on the agenda. However, as stated in Section I(b) above, Ordinance 2.206(b) grants Mayor Wilson the authority and discretion to approve and, inherently, to deny any item requested to be on the agenda for a Council meeting.

Plaintiffs further assert, in the alternative, that if Mayor Wilson does have authority to control the agenda for Chapin Town Council meetings, then such authority offends the First Amendment and Fifteenth Amendments to the United States Constitution by abridging the right to assemble, the right to petition the government for redress of grievances, and the right to vote. The guarantees of the First Amendment have been incorporated to apply to the States and its political subdivisions. *See DeJonge v. Oregon*, 299 U.S. 353 (1937); *Edwards v. South Carolina*, 372 U.S. 229 (1963). However, should Mayor Wilson choose not to place a matter on the agenda as requested by other Councilmembers, Ordinance 2.206 still provides that "[m]atters not on the agenda may be considered upon request of a member unless [a majority of the Council] object." This provision acts as a safeguard against autocratic mayoral action that may otherwise rise to a constitutional deprivation of basic rights. There is little, if any, evidence in the record that Plaintiffs invoked this section of Ordinance 2.206.

ii. Plaintiffs' Claim that the Employment of Karen Owens as Director of Communication and Economic Development was Improper

Plaintiffs' second claim is that Mayor Wilson wrongly failed to get full approval from the Town Council prior to hiring and paying Karen Owens to be Chapin's Director of Economic Development. As such, they seek to void Ms. Owens's employment. However, there is no dispute that the Town Council voted unanimously during its January 15, 2014 meeting to "hire an Economic Development/Administrative Assistant to the Mayor." (Chapin Town Council

Meeting Minutes, at 1 (Jan. 15, 2014)).¹ Once the Town Council created the position, the South Carolina Code vested Mayor Wilson with the authority to fill the position on his own. Indeed, the mayor's hiring authority is a key distinguishing characteristic of the mayor-council form of government. See S.C. Code Ann. § 5-9-30(1) (giving the mayor the power and duty "to appoint and . . . suspend or remove all municipal employees"); *id.* § 5-9-30(2) (vesting the mayor with the authority "to direct and supervise the administration of all departments, offices and agencies" unless otherwise indicated by law); *id.* § 5-9-40 ("All departments, offices and agencies under the direction and supervision of the mayor shall be administered by an officer appointed by and subject to the direction and supervision of the mayor."). Chapin's Ordinances reinforce this power. See Chapin Town Ord. § 2.403 (indicating that, with exceptions inapplicable to the Plaintiffs' second claim, "all officers and employees of the town shall be appointed by the Mayor"). Thus, Mayor Wilson has been given full authority under state and municipal law to appoint Ms. Owens.

Further, Ordinance § 8.103(a) gives the Mayor the authority to "transfer funds within and between departments" after the Council has approved the Mayor's proposed budget. Under this system, the Town Council sets the budget and the Mayor is vested with authority and discretion to move funds within the budget as long as he does not exceed the budget. There are no allegations that Mayor Wilson exceeded the current fiscal year's budget when paying Ms. Owens's salary. Thus, the Court determines that Plaintiffs' claim that Plaintiffs have failed to state a claim under Rule 12(b)(6) entitling them to relief.

¹ Because these meeting minutes are public records, the Court may consider them when resolving this Motion. See, e.g., *Sec'y of State for Defence*, 484 F.3d at 705 ("In reviewing the dismissal of a complaint under Rule 12(b)(6), we may properly take judicial notice of matters of public record.").

iii. Plaintiffs' Claim for Breach of Contract

Plaintiffs next assert that the Town Council approved the hiring of David K. Knight as attorney for the Chapin Utility Department and properly designated Mr. Knight's compensation at \$1,500 per month. Plaintiffs claim that though a check has been prepared for Mr. Knight, Mayor Wilson has refused to sign it, and thus, they are entitled to an order compelling the Mayor to do so.

While styling their claim as a writ of mandamus asking the Court to order Mayor Wilson to perform a specific act, Plaintiffs are, in essence, attempting to assert a breach of contract claim on behalf of Mr. Knight. However, Plaintiffs do not have standing to bring a contract claim on behalf of a third party. *See Park v. Safeco Ins. Co.*, 251 S.C. 410, 415, 162 S.E.2d 709, 711 (1968) (indicating that a litigant who is not a party to a contract lacks "primary standing" to assert a breach-of-contract claim). If Mr. Knight believes that Mayor Wilson or the Town of Chapin has breached an agreement, then Mr. Knight would be the proper plaintiff in such an action. Accordingly, Plaintiffs third claim is hereby dismissed.

iv. Attorneys' Fees and Costs

Finally, Plaintiffs have requested attorneys' fees and costs under South Carolina Code § 15-77-300(A). Section 15-77-300 provides that:

(A) In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:

- (1) the court finds that the agency acted without substantial justification in pressing its claim against the party; and
- (2) the court finds that there are no special circumstances that would make the award of attorney's fees unjust.

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The agency is presumed to be substantially justified in pressing its claim against the party if the agency follows a statutory or constitutional mandate that has not been invalidated by a court of competent jurisdiction.

S.C. Code Ann. § 15-77-300 (Supp. 2013).

Section 15-77-300 allows a prevailing party who is contesting "state action" to recover reasonable costs and fees. However, the statute allows fees and costs to be recovered against "the appropriate agency" and only if "the agency" acted without substantial justification. A "prevailing party" is:

one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention.

Heath v. County of Aiken, 302 S.C. 178, 182-83 (1990) (citation omitted).

In the previous sections of this Order, the Court has dismissed each of Plaintiffs' claims and denied Plaintiffs Motion for Injunctive Relief. Thus, Plaintiff has failed to "successfully prosecute the action" by "prevailing on the main issue" and is therefore not a prevailing party entitled to attorneys' fees under Section 15-77-300. Thus, Plaintiffs' claim for attorneys' fees and costs is dismissed.

CONCLUSION

For the reasons set forth herein, this Court hereby **DENIES** Plaintiffs' Motion for Injunctive Relief and **GRANTS** Defendants' Motion to Dismiss.

IT IS SO ORDERED

Columbia, South Carolina
March 18, 2014


G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

ORIGINAL

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL CIRCUIT

FILED

Case No. 2014-CP-32-00697

Vivian Atkins, Robert P. Frick, and Kay Hollis, in their official capacities as members of the Town Council of the Town of Chapin,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Plaintiffs,

vs.

**ORDER DENYING PLAINTIFFS' MOTION
TO RECONSIDER**

James R. Wilson, Jr., in his official capacity as Mayor of the Town of Chapin; Gregg White, in his official capacity as a member of the Town Council of the Town of Chapin, and the Town of Chapin,

Defendants.

This matter comes before the Court by way of Plaintiffs Vivian Atkins, Robert P. Frick, and Kay Hollis's Motion to Reconsider filed March 31, 2014 pursuant to Rule 59(e), SCRPC. Specifically, Plaintiffs ask this Court to reconsider its Order Denying Plaintiffs' Motion for Injunctive Relief and Granting Defendants' Motion to Dismiss filed March 18, 2014.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Plaintiffs' Motion under Rule 59(e), SCRPC to Reconsider this Court's Order filed March 18, 2014. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
April 8, 2014

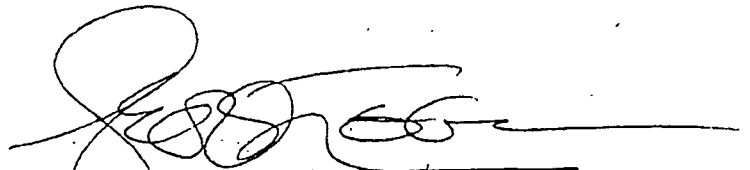

G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

The Supreme Court of South Carolina

ORDER

Pursuant to the provisions of S.C. CONST. Art. V, §4,

IT IS ORDERED that a nonjury term of the Court of Common Pleas for the Eleventh Judicial Circuit for the day of April 25, 2014 be held and that the Honorable G. Thomas Cooper, Jr., retired Circuit Judge of the Fifth Judicial Circuit, be assigned as a Circuit Judge to preside over this term. Pursuant to this appointment he is to have and exercise all powers and duties appertaining to a Circuit Judge of the Eleventh Judicial Circuit while presiding over this term.


Jean Hofer Toal
Chief Justice

April 23, 2014
Columbia, South Carolina

ORIGINAL

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STATE OF SOUTH CAROLINA **FILED** IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON 2014 MAY -5 P 4 ELEVENTH JUDICIAL CIRCUIT

Vivian Atkins, Robert P. Frick, and Kaya, CAPRIGG Civil Action No. 2014-CP-32-00697
Hollis, in their official capacities as CLERK OF COURT
members of the Town Council of the (TOWN) SC
of Chapin, LEXINGTON

Plaintiffs,

vs.

James R. Wilson, Jr., in his official capacity
as Mayor of the Town of Chapin; Gregg
White, in his official capacity as a member
of the Town Council of the Town of
Chapin; and the Town of Chapin,

Defendants.

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5/17
**ORDER ON DEFENDANTS' MOTION
TO ENFORCE ORDER AND ENJOIN
CONTRARY CONDUCT AND
MOTION FOR CIVIL CONTEMPT**

Before the Court are two motions filed by Defendants designed to enforce the Court's March 18, 2014 Order in this matter. One is captioned "Motion to Enforce Order and to Enjoin Contrary Conduct," and the other is captioned "Motion for Civil Contempt." Because the Court finds that Plaintiffs' actions following the issuance of the Court's March 18th Order are contrary to the law as stated in that ruling, as well as the plain language of the relevant ordinances, the Court hereby **GRANTS** Defendants' Motion to Enforce Order and Enjoin Contrary Conduct and **DENIES** Defendants' Motion for Civil Contempt.

BACKGROUND

On February 26, 2014, Plaintiffs commenced this case and sought a declaration that Mayor Wilson cannot lawfully exercise any control over agendas for council meetings in the Town of Chapin. After a hearing and full briefing by the parties, the Court denied Plaintiffs' request and dismissed this case, holding that Chapin Town Ordinance § 2.206(b) unambiguously

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requires that "the Mayor must sign off on the agenda prior to its distribution to Council, and there is no requirement that the Mayor place items on the agenda that he believes do not merit Council's consideration." Plaintiffs sought reconsideration of this ruling, which the Court denied. Plaintiffs have appealed this ruling to the Court of Appeals.

Since the Court issued its March 18th Order, Plaintiffs have noticed and held several "special" meetings of Town Council, and have done so without submitting the proposed agenda for either meeting to the Mayor for his consideration. (Aff. Wilson ¶¶ 5, 9 (Apr. 14, 2014); Supplemental Aff. Wilson ¶¶ 3, 6 (Apr. 21, 2014)). During those meetings, Plaintiffs have attempted to amend the Town Ordinance that they presented to the Court for its review and interpretation in this lawsuit in order to take authority over the agenda away from the Mayor, as well as attempting to conduct other business.

Defendants have moved the Court for an order invalidating all actions Plaintiffs have attempted to take during all "special" meetings held in violation of the Court's March 18th ruling. Both Plaintiffs and Defendants have submitted affidavits, memoranda, and additional evidence. On April 25, 2014, the Court held a hearing on the motions.¹

After considering all of the evidence, arguments from counsel, and the governing law, the Court **GRANTS** Defendants' Motion to Enforce Order and Enjoin Contrary Conduct and exercises its authority under the Declaratory Judgment Act to enforce its prior ruling.

¹ Prior to the April 25, 2014 hearing, Plaintiffs filed a motion to cancel the hearing, arguing that the Court was without jurisdiction to hear Defendants' motions in Richland County. Plaintiffs have since withdrawn that motion in light of an Order from the Supreme Court vesting the below-signed with jurisdiction to decide matters pending in the Eleventh Judicial Circuit while seated in Richland County on the day of the hearing.

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DISCUSSION

South Carolina Code § 15-53-120 provides as follows:

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted forthwith.

This authority is to be administered “liberally” to eliminate “uncertainty” regarding the parties’ rights. *Id.* § 15-53-130. For the reasons explained below, the Court finds that it is necessary and proper to issue further relief to enforce its earlier ruling in this case.

In the March 18th Order, the Court declared that under the Chapin Town Ordinances, agendas for Council meetings must be reviewed and approved by the Mayor prior to distribution to Council. (Order at 2–6 (Mar. 18, 2014)). This ruling was based on the plain language of Chapin Town Ordinance § 2.206(b), which states: “The agenda shall be approved by the Mayor, prior to distribution.” (emphasis added).

Since that ruling, Plaintiffs have taken the position that Ordinance § 2.206(b)—and thus the Court’s earlier ruling—is limited only to agendas for “regular” meetings, as opposed to “special” meetings. The Court disagrees with Plaintiffs’ post-judgment construction of the Court’s March 18th Order for several reasons.

First, Plaintiffs initiated this lawsuit but at no time prior to the March 18th Order did they indicate that the declaratory ruling that they sought was limited to the Mayor’s authority over agendas for “regular” meetings alone. To the contrary, Plaintiffs’ Motion for Preliminary Injunction specifically sought a ruling that would require the Mayor “to place any item requested by any member of Council on the agenda of the next occurring Council meeting after the

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request, without any delay.” (Mot. for Prelim. Inj. at 1 (Feb. 26, 2014) (emphasis added)). Plaintiffs’ requested relief was not limited only to “regular” meetings, but encompassed whatever type of meeting may happen to be the “next occurring” meeting after a Council member requested an item to be placed on a meeting agenda. In turn, the Court denied Plaintiffs’ motion and held that the Mayor has authority “to deny any item requested to be on the agenda for a Council meeting.” (Order at 6 (Mar. 18, 2014)). Accordingly, neither Plaintiffs’ requested relief nor the Court’s denial of that request was limited only to “regular” meetings, as Plaintiffs now suggest.

Second, the plain language of Chapin Town Ordinance § 2.206(b) does not distinguish among various types of meetings when assigning to the Mayor approval authority over meeting agendas. Ordinance § 2.206(b) is the only ordinance in the entire Town Code that discusses how an agenda should be prepared. It does not indicate that agendas for different types of meetings must be prepared in different ways, nor does it limit the Mayor’s approval authority only to “regular” meetings.

Ordinance § 2.206(b)’s failure to distinguish among different types of meetings with respect to establishing an agenda is consistent with the South Carolina Freedom of Information Act. That statute requires public bodies to publish an agenda for “regularly scheduled meetings,” “called” meetings, “special” meetings, and “rescheduled meetings.” S.C. Code Ann. § 30-4-80(a). In short, the Freedom of Information Act requires agendas to be prepared for all types of meetings, and Ordinance § 2.206(b) is the lone ordinance that prescribes how those agendas are established in Chapin.

Third and finally, the plain language of the ordinance on which Plaintiffs have based their post-judgment actions does not provide support for those actions. Plaintiffs argue that Ordinance

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§ 2.202 authorizes them, as a majority of Council, to call “special” meetings, and that the authority to call a “special” meeting implicitly permits them to establish the agenda for such a meeting without any input or oversight by the Mayor. Ordinance § 2.202, however, only indicates when “special meetings may be held”; nothing in that ordinance indicates how the agenda for a “special” meeting is established. Instead, that language is found exclusively in Ordinance § 2.206(b).

To read into Ordinance § 2.202 a provision that subverts the Mayor’s authority under Ordinance § 2.206(b) to approve meeting agendas would amount to an implied repeal of the Mayor’s approval authority in the context of “special” meetings. Such a construction would violate numerous rules of statutory interpretation. For one, the law strongly disfavors implied repeal. *See Capco of Summerville, Inc. v. J.H. Gayle Constr. Co.*, 368 S.C. 137, 141, 628 S.E.2d 38, 41 (2006) (explaining that “[r]epeal by implication is disfavored”).

Similarly, when a set of statutes deals with the same general subject—here, meetings of Council—the entire set should be construed harmoniously to produce a uniform result. *See Beaufort County v. S.C. State Election Comm’n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011) (“Moreover, it is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result.”). Indeed, “the principle that related statutes should be construed *in pari materia* is a restatement of the presumption against implied repeal.” 2B Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction* § 51:1 at 190–91 (7th ed. 2012).

As a result of these well-established rules of statutory construction, “where a legislature inserts a provision in only one of two statutes that deal with a closely related subject, courts construe the omission as deliberate rather than inadvertent.” *Id.* § 51:1, at 213–14.

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Because Chapin Town Ordinance § 2.202 does not contain any language regarding how an agenda should be established for “special” meetings, but Ordinance § 2.206(b) expressly vests in the Mayor the authority to approve meeting agendas, the Court will not read into Ordinance § 2.202 any authority for Plaintiffs to set the agenda for a “special” meeting without first presenting the agenda to the Mayor for his approval, as required by Ordinance § 2.206(b) and the Court’s March 18th Order.

In so ruling, the Court does not express any opinion on the wisdom of the Chapin Town Ordinances or the authority that they vest in the Mayor over meeting agendas. If, in the eyes of the voters, the Mayor does not properly exercise his authority over the agenda, then they will hold him accountable at the ballot box. But this Court is not a proper venue for such a political argument.

Instead, the Court only interprets the Chapin Town Ordinances according to their plain language. As one treatise describes the Court’s responsibilities:

[A]n omission or failure to provide for contingencies, which it may seem wise to have provided for specifically, does not justify any judicial addition to the language of the statute. To the contrary, it is the duty of the courts to interpret a statute as they find it, without reference to whether its provisions are wise or unwise, necessary or unnecessary, appropriate or inappropriate, or well or ill conceived.

73 Am. Jur. 2d *Statutes* § 164 at 398–99 (2012). The Court has fulfilled its duty to enforce the law as it is written in both this ruling and in its March 18th Order.

CONCLUSION

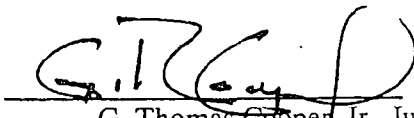
For the reasons explained above, the Court exercises its authority under South Carolina Code § 15-53-120 to issue further relief in support of its declaratory ruling. The Court finds Plaintiffs’ post-judgment “special” meetings to have been unlawfully held because the proposed

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agendas for those meetings were never presented to the Mayor for his approval under Ordinance § 2.206(b) and the Court's March 18th Order. Any votes or actions Plaintiffs attempted to take or other business Plaintiffs attempted to conduct at all meetings held contrary to Ordinance § 2.206(b) and the Court's March 18th Order are hereby invalidated and deemed to be without any force or effect.

IT IS SO ORDERED.

Columbia, South Carolina
May 5, 2014


G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

2014 FEB 26 A 8:26

Vivian Atkins,
Robert P. Frick, and
Kay Hollis,
in their official capacity as
members of the Town Council
of the Town of Chapin,

Plaintiffs,

vs.

James R. Wilson, Jr. in his
official capacity as Mayor of the
Town of Chapin, Gregg White
in his official capacity as a
member of the Town Council of
the Town of Chapin and the
Town of Chapin,

Defendants.

DETHA A. CAIS
CLERK OF COURT
LEXINGTON
SPEEDY HEARING REQUESTED (RULE 57)

COMPLAINT
Declaratory Judgment
2014-CP-32-

2014CP3200697

The Plaintiffs respectfully allege:

FOR A FIRST CAUSE OF ACTION:

1. The Court has jurisdiction over the parties and the subject matter hereof.
2. Plaintiffs are members of the Town Council of the Town of Chapin.
3. The Defendant, James R. Wilson, Jr., is the newly elected Mayor and also one of five members of the Town Council of the Town of Chapin.
4. The Defendant, Gregg White, is a newly elected member of the Town Council of the Town of Chapin.
5. The Town of Chapin is a body politic organized and existing under the laws of the State of South Carolina.
6. This action is brought for Declaratory Judgment pursuant to §15-53-10, et seq. of the Code of Laws of the State of South Carolina.
7. Section 2.206 of the Chapin Town Code (a copy of which is attached) provides as

follows:

- a. Matters to be considered by the Mayor and Town Council at a regular meeting shall be placed on a written agenda and publically posted at least twenty-four (24) hours prior to the meeting. Matters not on the agenda may be considered on request of a member unless a majority of council objects.
 - b. The agenda shall be approved by the Mayor prior to distribution. It shall be prepared under the supervision of the Clerk/Treasurer.
8. The Plaintiffs have submitted a number of items to be placed on the meeting agenda but the Mayor has refused to place the items on the agenda and claims that the Ordinance grants the Mayor complete control over whether an item shall be placed on the agenda. Unless an item is on the agenda, it cannot be considered at a meeting.
 9. The Plaintiffs are informed and believe that the provisions of section 2.206 do not grant the Mayor exclusive control over the agenda and that the provisions of 2.206(b) are intended solely to advise the Mayor of the items to be placed on the agenda. Further that section 2.206 does not grant the Mayor any discretion to refuse to place a requested item on the agenda.
 10. In the alternative, if Section 2.206 grants the Mayor complete control over the agenda, the Plaintiffs are informed and believe that the provision is unconstitutional under the First, Fourteenth and Fifteen Amendments to the United States Constitution and the Constitution of the State of South Carolina.
 11. The Plaintiffs are informed and believe that they are entitled to an Order declaring the provision unenforceable to the extent that it grants the Mayor any control over the agendas for council meetings.
 12. In addition, the Plaintiffs are informed and believe that they are entitled to an Order of the Court ordering the Mayor to place on the agenda of the next Council meeting, without any delay, any item requested by any member of Council.
- FOR A SECOND CAUSE OF ACTION:
13. The allegations of the preceding Cause of Action are incorporated herein as if set forth verbatim.

14. On January 26, 2014, on behalf of the Town, the Mayor allegedly entered into an employment contract with Karen Owens to serve as "Director of Communication and Economic Development."
15. In addition, the Mayor announced that he had made adjustments to the Town budget in order to fund the position. All of the adjustments were made without the consent of Council.
16. Neither of the foregoing actions were approved or authorized by Council.
17. The Mayor has declined to place these matters on the meeting agendas.
18. The Plaintiffs are informed and believe that they are entitled to an Order of the Court declaring the actions of the Mayor to be ultra vires, void and unenforceable.
FOR A THIRD CAUSE OF ACTION:
19. The allegations of the preceding Causes of Action are incorporated herein as if set forth verbatim.
20. On December 3, 2013, David W. Knight entered into a written contract with the Town for Mr. Knight to serve as attorney for the Chapin Utility Department at a compensation of \$1,500.00 per month payable by the first Friday after the first council meeting of the month commencing January 1, 2014.
21. Although a check has been prepared to pay Mr. Knight for his services, the Mayor has failed and refused to sign the check.
22. At the same time, the Mayor has signed a check to pay Karen Owens for services even though her contract was not approved by Council.
23. The Plaintiffs are informed and believe that they are entitled to an Order of the Court directing the Mayor to pay Mr. Knight, forthwith and without delay.
FOR A FOURTH CAUSE OF ACTION:
24. The allegations of the preceding Causes of Action are incorporated herein as if set forth verbatim.
25. Pursuant to §15-77-300, et seq., of the Code of Laws, the Plaintiffs are entitled to an award of attorney fees and costs.
WHEREFORE PLAINTIFFS PRAY:
1. For a speedy hearing pursuant to Rule 57, SCRCP.

2. For a preliminary injunction as to the First Cause of Action.
3. For an Order declaring Section 2.206 of the Chapin Town Code unenforceable to the extent that it grants the Mayor any control over the agendas for council meetings.
4. For an Order of the Court ordering the Mayor to place on the agenda of the next Council meeting, without any delay, any item requested by any member of Council.
5. For an Order of the Court declaring the purported contract with Karen Owens to be ultra vires, void and unenforceable.
6. For an Order of the Court declaring the actions of the Mayor in adjusting the Town budget without the consent of Council to be ultra vires, void and unenforceable.
7. For an Order directing the Mayor to pay Mr. Knight.
8. For an award of attorney fees and costs.
9. For such other and further relief as may be just and proper.



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February 24, 2014

Chapin Town Code 2.206 AGENDA reads:

- a. Matters to be considered by the Mayor and Council at a regular meeting shall be placed on a written agenda and publically posted at least twenty-four (24) hours prior to the meeting. Matters not on the agenda may be considered upon request of a member unless at least two (2) members object. But see amendment 6/6/2000: delete "At least two members object" and insert "a majority of council objects".
- b. The agenda shall be approved by the Mayor, prior to distribution. It shall be prepared under the supervision of the Clerk/Treasurer.

COPY

PROFESSIONAL SERVICE CONTRACT

FOR VALUABLE CONSIDERATION, receipt acknowledged, This Agreement made this 3rd day of December 2013, by and between the Town of Chapin, by its Mayor and Council, and David W. Knight, to be designated Utility Department Attorney, herein referred to as "Attorney", as follows:

1. The Attorney agrees to provide legal services to the Chapin Utility Department on as "as-needed" basis. Such services to include but not limited to: drafting Water and/or Sewer Service Agreements with developers in the Chapin Municipal Utility Service Area, reviewing Utility Plans and Record Drawings of Utility projects to be conveyed to Chapin, preparing and recording Deeds and Easements for Water and Sewer Mains and Pump Station sites, researching land titles, preparing and revising Utility Service Agreements with customers, preparing and serving notice of Municipal Liens to delinquent customers, coordinating activities with the Town Engineer and consulting firms, utility contractors, Lexington County Council and Attorney, Department of Public Works and Planning Commission, and performing other utility related tasks as requested by the Mayor and Utility Director and clerk.
2. The Attorney shall not be required to perform litigation services on behalf of the Town to pursue or defend an action, whether based on contract or in tort. As to suits based on contract, outside litigation counsel will be retained, and claims based at least partially in tort are usually referred to the South Carolina Insurance Reserve Fund for representation and insurance coverage. However, the Attorney will assist such retained counsel as requested, without additional compensation.
3. Attorney also agrees to provide a written report of services performed prior to each regular monthly Town Council Meeting.

4. Attorney agrees to perform such services as an independent contractor, not as an employee of the Town. The Town shall not be responsible to provide employee or other fringe benefits, FICA, state or federal taxes, retirement or workers compensation. The Town will furnish to Attorney an annual 1099 for tax reporting purposes.

5. The parties agree that Attorney shall be compensated a monthly fee as follows:

A flat retainer fee of \$1500.00, payable by the first Friday after the regular Council meeting, such fee to include all filing fees and expenses incurred by the Attorney in the course of his duties.

6. This Agreement shall commence on January 1, 2014 and shall be in effect for One Year, and thereafter may be terminated by the Attorney, or by Mayor and Council (as per Ordinance) on Sixty (60) day written notice. This notice term is deemed reasonable due to the time frame of various pending utility projects, to avoid disruption. Absent such notice, this Agreement shall continue in effect automatically from year to year, or until the death of the Attorney or an incapacity which prevents performance as intended.

7. This Agreement represents the entire understanding of the parties, and any modification hereto shall be by written addendum signed by both parties.

Witnesseth this Agreement this 3rd day of December 2013:

[Signature]
Witness

Town of Chapin

By
Its

[Signature]
MAYOR

[Signature]
Witness

[Signature]
Attorney

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF LEXINGTON ___) 2014-CP-32-00697

VIVIAN ATKINS, ROBERT FRICK,)
and KAY HOLLIS)

PLAINTIFFS)

vs.)

TRANSCRIPT OF RECORD

JAMES R. WILSON, MAYOR,)
TOWN OF CHAPIN, and GREGG)
WHITE,)

DEFENDANTS _)

March 10, 2014
Lexington, South Carolina

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE.

A P P E A R A N C E S:

SPENCER ANDREW SYRETT, ESQ.
Attorney for the Plaintiffs,

M. TODD CARROLL, ESQ.
Attorney for the Defendants

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

(There were no witnesses produced.)

EXHIBITS

(There were no exhibits marked.)

1 THE COURT: Good morning. Mr. Syrett, this is
2 your motion.

3 MR. SYRETTE: Good morning, Your Honor. May it
4 please the Court.

5 Your Honor, I represent Vivian Atkins, Robert
6 Frick, and Kay Hollis, who are three of the five members
7 of the town council of the Town of Chapin. The defendants
8 are James Wilson, who is the mayor and also a member of
9 council, and Gregg White, who is also a member of council.
10 We have brought an action for a declaratory judgment as to
11 a number of items, but specifically here before you this
12 morning is a motion for preliminary injunction
13 specifically addressed to Chapin Town Code Section 2.206.
14 That is the ordinance involved. And I can read it into
15 the record if you'd like.

16 THE COURT: It's your case. Go ahead.

17 MR. SYRETTE: "Matters to be considered by the
18 mayor and council at a regular meeting shall be placed on
19 a written agenda and publicly posted at least 24 hours
20 prior to the meeting. Matters not on the agenda may be
21 considered upon request of a member unless at least two
22 members object."

23 And that has apparently -- the Dunbar charter
24 check has been changed.

25 "The agenda shall be approved by the mayor prior

1 to distribution and shall be prepared under the
2 supervision of a clerk/treasurer," who is Ms. Adrian
3 Thompson.

4 The primary question is, what does the meaning
5 of the word "approved" mean. Under the prior mayor,
6 "approved" means that only he saw it before the meeting
7 proceeded and that if any council member requested an item
8 be on the agenda, it would be placed. The current mayor
9 interprets that to say that he has complete discretion
10 over what appears on the town agenda. And as you know,
11 under the Freedom of Information Act, nothing which is not
12 on the agenda can be discussed or voted on by council
13 members. So essentially if a council member wants an
14 item -- as things now stand, if a council member wants an
15 item on the agenda, the mayor refuses to put it on the
16 agenda, it doesn't get any action whatsoever.

17 So the point that we say is that either this
18 ordinance should be interpreted by this court to mean
19 approved is simply a ministerial act, the mayor has to
20 know what the addenda is so he can preside over the
21 meeting under the statute, or if it in fact gives him
22 discretionary power, that that is in fact unconstitutional
23 under both the Federal Constitution's 1st, 14th, 15th
24 amendments and the South Carolina State Constitution,
25 Article One, Section 2.

1 Now, Chapin is organized under the mayor/council
2 form of government and essentially there are five members
3 of council. And under five -- Section 5-9-30, the mayor
4 is the chief executive officer of the municipality but he
5 is only one vote. He presides on meetings and only votes
6 as other council members. So he has one vote. So he is
7 not analogous to the presiding officer of, say, the state
8 legislature or the United States House of Representatives.
9 He is simply to preside.

10 Now, as a side thing, the Robert Rules of Order,
11 which is how meetings are normally conducted under most
12 places says that --

13 THE COURT: They've been adopted?

14 MR. SYRETTE: Judge?

15 THE COURT: Have they been adopted?

16 MR. SYRETTE: Pardon?

17 THE COURT: Have the Roberts Rules of Order been
18 adopted?

19 MR. SYRETTE: I do not know whether they have in
20 fact been adopted, but they have been used by Chapin for
21 many, many years as a guide to how to conduct the
22 meetings. And it basically says that in chapter two, the
23 order of a business meeting, preparing to use agendas,
24 gives the instructions to the presiding officer to solicit
25 items from the various board members or members of the

1 association for purpose of consideration. It does not say
2 that the presiding officer has the right not to present
3 anything that is requested to be in front of the court,
4 so -- or in front of the council members.

5 Under 2.206, a mayor has block consideration of
6 the number of items requested by council members,
7 including an attempt to amend this very ordinance to make
8 it clear that any council member or member of the public
9 can request something to be on the agenda. So, in fact,
10 we've got a chicken and egg situation. The ordinance as
11 it's written is being interpreted to block discussion,
12 including discussion of changing the very ordinance that
13 is blocking discussion. And that is a conundrum that I
14 don't know how you solve unless you wait four years for
15 another election, in which case Chapin town government may
16 crawl or may come to a halt when things just don't move.
17 In fact, the mayor's even blocked a discussion of whether
18 or not the town should in fact hire an attorney to appear
19 in this very lawsuit. So this is -- the defendants argue
20 that this is a political question.

21 It is not a political question. It is a
22 discussion or an action which seeks interpretation of an
23 ordinance. That is something that courts do all the time,
24 interpret what does a law mean. And so, therefore, it is
25 a question of interpretation of existing law.

1 Now, a statute or an ordinance can be
2 unconstitutional as written, and if an approval means that
3 the mayor has absolute discretion over the agenda, then
4 the ordinance as written is unconstitutional or it can be
5 unconstitutional in the way it is being enforced. And
6 it's clear that if this is a ministerial act under the
7 statute, the mayor is exercising discretion which is not
8 afforded to him, so therefore his actions are also
9 unconstitutional. In either event, the ordinance as
10 interpreted by the mayor must fall and so that
11 representative democracy will function.

12 What the majority of the council does after this
13 ordinance is clarified is not before us today. That is a
14 political question. The question is whether one person
15 has the right to prevent discussion, that very discussion
16 from even taking place. And it seems to me that that's
17 not what representative democracy is all about.

18 Now I understand that Mr. Carroll may challenge
19 the use of the affidavits that we've filed after the
20 hearing, but I think the court can look at the pleadings
21 and the statute and the ordinance itself and find that it
22 is unconstitutional or find that that ordinance is simply
23 a ministerial act and so therefore the agenda is prepared
24 after council members have their input.

25 THE COURT: You're not arguing that Code Section

1 2.206 is unconstitutional?

2 MR. SYRETTE: I'm arguing that if it is
3 interpreted to give the mayor discretion over what is --
4 what is to be on an agenda, then it is unconstitutional
5 because approval would -- as he has interpreted it, says
6 that he has a right to control what the agenda is. And
7 our position is is that if that is the way it is to be
8 read and understood, that the ordinance itself is
9 unconstitutional.

10 THE COURT: You're talking about the B section?

11 MR. SYRETTE: Yes, Your Honor.

12 THE COURT: All right.

13 MR. SYRETTE: That no person, no one person has
14 the right to shut down the debate. I think that was
15 conclusively decided in 1783.

16 THE COURT: All right. Mr. Carroll.

17 MR. CARROLL: Thank you, Your Honor. My name is
18 Todd Carroll and I'm here on behalf of Mayor Wilson,
19 Councilman White, and I believe on behalf of the Town of
20 Chapin which has been named as a defendant. I know
21 there's some dispute about that. That's who I come before
22 you on behalf of today, Judge.

23 A couple of quick housekeeping matters. As
24 opposing council alluded to, we do object to the
25 affidavits that were submitted belatedly in support of

1 their request for preliminary injunction.

2 THE COURT: When were they submitted?

3 MR. CARROLL: I got them on Friday. The motion
4 was filed I believe back in February, Judge. So the
5 affidavits were not contemporaneous with the motion
6 itself. So under Rule 6B we would move to have them
7 stricken and that the court not consider them.

8 Regarding the request for preliminary
9 injunction, we filed a brief in opposition. We've handed
10 it up this morning. I've got an extra copy for Your
11 Honor.

12 THE COURT: I have plenty.

13 MR. CARROLL: I had plenty, too, Judge.

14 MR. SYRETTE: Your Honor, I would object to that
15 argument because it's not --

16 THE COURT: Whoa, whoa, whoa.

17 MR. SYRETTE: The return does not address that
18 at all.

19 THE COURT: Address what?

20 MR. SYRETTE: The issue that he's about to raise
21 with regard to injunctive relief.

22 THE COURT: He just asked that I take cognizance
23 of his memorandum. That's what I heard him saying.

24 MR. SYRETTE: What I'm saying is the arguments
25 in the memorandum are not those that are presented in

1 his --

2 THE COURT: I will give you -- don't interrupt,
3 please.

4 Go ahead, Mr. Carroll.

5 MR. CARROLL: The motion that's pending before
6 you from the plaintiffs is a three-sentence motion that
7 says we want a preliminary injunction, we want the court
8 to issue an order requiring Mayor Wilson to put any item
9 on any council agenda that any member of council requests.

10 Your Honor, that's not really a request for an
11 injunction. That's really akin to a mandamus request.
12 The plaintiffs are asking the court to order the mayor to
13 take an affirmative action, and, Your Honor, we would
14 respectfully submit that whether this is a mandamus
15 request or a request for injunctive relief, it's
16 completely improper. Chapin Town Ordinance 2.206, subpart
17 B, plainly states, "The agenda of town council shall be
18 approved by the mayor prior to distribution." It is a
19 clear unambiguous statement in the ordinance. Chapin
20 has --

21 THE COURT: It's not clear. Obviously it's not
22 clear because you got all these two sides that can't
23 decide what it means.

24 MR. CARROLL: Well, Your Honor, I mean, every
25 lawsuit has two sides and courts routinely find disputes

1 of statutes and ordinances are in fact --

2 THE COURT: What is the word -- how do you
3 interpret the word "approve"?

4 MR. CARROLL: I interpret it to mean that the
5 mayor may approve or disapprove. And we have set, Your
6 Honor, on page six of our memo, we've cited case law from
7 South Carolina and elsewhere that makes it clear that when
8 an elected official is given the authority to approve,
9 that that necessarily is a discretionary act that allows
10 that official to use his or her own judgment and with it
11 comes the ability to deny or reject as well as approve.

12 Your Honor, Chapin is a strong mayor form of
13 government. It's a mayor/council form of government.
14 This is the exact type of government that Steve Benjamin
15 was seeking over in Columbia that the electorate rejected
16 in the last election cycle. But what Mayor Benjamin wants
17 is the power that Mayor Wilson and his predecessors all
18 had in Chapin. There's not five majors in Chapin, there's
19 one mayor, and under the Code of Laws and the town
20 ordinances he's the CEO of the town, he's the chief
21 administrator of the town, and he's the presiding official
22 over all council meetings, and with those authorities
23 comes the power under Ordinance 2.206B to approve items to
24 be placed on the agenda.

25 Now, I understand that the plaintiffs wish that

1 were not the case, and I heard in their argument, gee, do
2 we really have to wait four years to try to elect a new
3 mayor? Well, Judge, that's the way a lot of political
4 cases have to be resolved. We try cases from dog catcher
5 all the way up to the highest court, the highest office in
6 the land where the end result is, look, if you don't like
7 what this elected official is doing, your remedy is try to
8 defeat him or her at the ballot box, and that is the
9 solution to plaintiffs' first claim for relieve in this
10 case, Your Honor. It's not to rewrite -- for the court to
11 judicially rewrite town ordinances.

12 And this notion that this is an unconstitutional
13 ordinance, I just don't understand that argument. There's
14 no -- there's nothing -- the complaint says it's
15 unconstitutional under the 1st Amendment of the U.S.
16 Constitution, which is the right to free speech and free
17 exercise of religion. Well, that's not got anything to do
18 with this.

19 The 14th Amendment, which is due process and
20 equal protection, and the 15th Amendment, which prohibits
21 you from discriminating in the franchise based on race or
22 color, it has nothing to do with how a municipality sets
23 the addenda for its town council.

24 I will tell you the complaint doesn't actually
25 cite any part of the state constitution in support of

1 their argument. I heard today this Article 1, Section 2.
2 I think that all that provision says is that the power of
3 state government rests with the people.

4 Well, it did rest with the people here, Your
5 Honor, and they elected Mayor Wilson. And Mayor Wilson
6 was seated two months ago and he has the authority under
7 the state code of laws and the Chapin town ordinances to
8 exercise the authority given to the mayor in the strong
9 mayor form of government.

10 THE COURT: You cite that in your brief?

11 MR. CARROLL: What's that?

12 THE COURT: The adoption of the strong mayor
13 form of government?

14 MR. CARROLL: Yes, sir. Exhibit A to our brief
15 is actually a copy of all the ordinances cited in our
16 brief. I believe it's Ordinance 2.101. Yes, sir. The
17 form of -- Chapin Town Ordinance 2.101, the form of
18 government for the Town of Chapin shall be mayor/council
19 form of government.

20 So, Your Honor, on the first cause of action,
21 which is the only cause of action on which plaintiff's
22 have sought preliminary relief, we think that the request
23 for whether you call it an injunction, a mandamus, or what
24 have you, we just think the request is improper and in
25 fact the claim should fail on its face under 12(b)(6), in

1 addition to just being a political question in general. I
2 mean, how the Town of Chapin sets its agenda for business
3 is respectfully not within the purview of the court's
4 jurisdiction. We think it's a political question and have
5 cited a case in our brief to support that proposition.

6 Now, Your Honor, there are a couple of other
7 causes of action in the complaint that we've moved to
8 dismiss. The plaintiffs did not ask for preliminary
9 relief based on those, but I'd be happy to take up the
10 remaining causes of action if Your Honor would like to
11 hear argument on those or if you want to continue to
12 explore the first cause of action and answer questions
13 about it.

14 THE COURT: Go ahead. Hit the second one.
15 What's the second cause?

16 MR. CARROLL: Certainly, Your Honor. The second
17 cause of action is that Chapin, the town -- I'm
18 paraphrasing, Judge, what I think the nuts and bolts of it
19 are -- the Town of Chapin recently hired a director of
20 economic development. The town council unanimously
21 approved the creation --

22 (There was an interruption from the audience.)

23 THE COURT: All right. Quiet.

24 MR. CARROLL: Council unanimously approved the
25 creation of the position. I don't want to misstate the

1 drawing board commentary, but Exhibit B to our brief, Your
2 Honor, is a copy of Chapin town council's January 15th,
3 2014 meeting minutes. On page one there is -- there
4 apparently was an executive sessions to take up personnel
5 issues and then I'm reading from the bottom, "The motion
6 to hire an economic development/administrative assistant
7 to the mayor was based on Gregg White," who is the other
8 defendant in this case. "The entire council approved."
9 Okay. So the council, the entire council approved the
10 creation of this job position.

11 Well, after the town council created this job
12 position, the mayor solicited resumes and then hired
13 somebody to fill that position. He did it unilaterally
14 because that's exactly what the code of laws and the code
15 of ordinances allow him to do. South Carolina Code
16 Section 5-9-30, subpart one says that the mayor under the
17 strong mayor form of government can appoint all municipal
18 employees. That is reiterated in Ordinance 2.403.

19 South Carolina Code 5-9-30, sub two, says that
20 the mayor, by himself, gets to direct and supervise
21 people, municipal employees. And in South Carolina Code
22 5-9-40 authorizes the mayor to hire an officer to help him
23 administer the town's departments and offices and
24 agencies.

25 Well, that's exactly what Mayor Wilson did in

1 this case. Council created the position and the mayor
2 filled it consistent with the strong mayor form of
3 government and the South Carolina code provisions that
4 authorize him to do just that.

5 The complaint indicates somewhat oddly that --
6 okay, he did two things wrong. He shouldn't have hired
7 her by himself, and even if he could hire her, he
8 shouldn't be able to pay her. Well, I don't know how a
9 town hires somebody with the expectation that they just
10 come in and do a full-time job on the house. But in any
11 event, that problem is readily solved here because Chapin
12 Town Ordinance 8.103 -- I believe it's 8.103A authorizes
13 the mayor by himself to move funding around as long as he
14 stays within the budget.

15 Council approves the budget for a fiscal year,
16 and then as the year goes along, the Town of Chapin has
17 authorized the mayor to move funding around when needed as
18 long as he doesn't exceed the cap. And it makes perfect
19 sense. They've authorized the CEO of the town to make
20 budgetary changes when needs arise and circumstances
21 change.

22 And that's exactly what he did here, Your Honor.
23 He's got the authority under 8.103A to move funding as
24 long as he doesn't exceed the cap. He found some line
25 items for funds that were not going to be used. I think

1 there was -- this isn't in the record, but my
2 understanding is there were \$35,000 sitting in a line item
3 for the town to lease cars, but I understand the town did
4 not actually lease cars so that there was \$35,000 readily
5 available there. The mayor moved it around and the town's
6 director of economic development now gets the salary that
7 she was told she's going to be paid when she was hired.
8 She was hired with full authority by the mayor. So I'm
9 not really sure what the complaint is, but I think I've
10 summarized what the cause of action is as pled in the
11 complaint. And I ask that respectfully things be
12 dismissed and allow the sum, and Ms. Owens, the town's new
13 director of economic development, to get about the
14 business of the town rather than having this general cloud
15 of doubt hanging over her head as to whether or not she is
16 even authorized to act on behalf of the town.

17 Judge, there's a third cause of action that we'd
18 also move -- we move to dismiss all the claims. The third
19 cause of action is apparently the town entered into a
20 contract with an attorney to provide certain services and
21 the plaintiffs are attempting to enforce that contract
22 under cap of the vendor. We move to dismiss that just
23 based on lack of standing. If the vendor wants to file a
24 complaint or otherwise challenge the way the town has
25 administered the contract, then he's certainly free to do

1 so. These plaintiffs don't have standing to enforce a
2 contract on somebody else's behalf, Judge.

3 And then the final cause of action --

4 THE COURT: Wait a minute.

5 MR. CARROLL: Yes, sir.

6 THE COURT: I'm not sure I followed you. The
7 complaint says on December 3, 2013, David Knight entered
8 into a written contract for Mr. Knight to serve as
9 attorney for the utility department.

10 MR. CARROLL: Yes, sir.

11 THE COURT: Okay. And the mayor has failed to
12 sign his paycheck, is that it?

13 MR. CARROLL: Well --

14 THE COURT: That's the allegation?

15 MR. CARROLL: That's the allegation.

16 A couple of things, Judge. Mr. Knight is not
17 the town attorney. He was the town attorney. After the
18 November 2013 election he resigned. And then during the
19 lame duck session, the outgoing mayor signed him up to a
20 contract to provide services to the utility department.
21 He doesn't have the title of town attorney.

22 THE COURT: Okay.

23 MR. CARROLL: But there is a dispute between Mr.
24 Knight and the mayor as to exactly what the town is paying
25 for. Because the contract says that Mr. Knight is to be

1 paid a \$1,500 retainer every month.

2 THE COURT: Where's the contract?

3 MR. CARROLL: I have a copy of it. I don't know
4 if it was attached to the complaint.

5 MR. SYRETTE: The contract is attached to the
6 complaint, Your Honor.

7 THE COURT: All right. Thank you.

8 MR. CARROLL: There's a --

9 THE COURT: I see it. I see it.

10 MR. CARROLL: On the second page of it, Section
11 5 says that Mr. Knight -- that the town believes that Mr.
12 Knight wants a flat retainer fee of \$1,500.

13 THE COURT: Okay.

14 MR. CARROLL: So I think there's a dispute from
15 Mr. Knight and the mayor as to what a, quote, flat,
16 retainer fee means. Is that a retainer or is it fixed? I
17 think there's a distinction.

18 But my point of all this is, that's a claim for
19 Mr. Knight to bring if he wants to bring it. And I know
20 that the South Carolina Bar, the Supreme Court has
21 established a fee resolution board, a fee dispute
22 resolution board, and I think this just seems -- this does
23 not seem to be a claim that these plaintiffs can bring on
24 behalf of somebody else, Judge. So we would move to
25 dismiss it due to lack of standing.

1 And then their final claim is for attorney's
2 fees under the South Carolina equivalent to Section 1988,
3 40 U.S.C., Section 1988. Obviously if the claim is
4 dismissed, they're not entitled to attorney's fees. But
5 even if for some reason that Your Honor decides not to
6 dismiss their claims and allow this case to proceed and
7 the plaintiffs ultimately prove to be victorious, then I
8 think the standard of proceeding fees cannot probably be
9 met here. The standard is -- the challenged conduct can't
10 have any justification or reasonableness, and there's
11 certainly justification and reasonableness for all of
12 Mayor Wilson's decisions during the infant stages of his
13 administration because they're all supported by the Code
14 of Laws and the Chapin Town Code of Ordinances.

15 THE COURT: All right.

16 MR. CARROLL: So those are our arguments, Judge.
17 We would be pleased to answer any questions you may have.

18 THE COURT: Mr. Syrett.

19 MR. SYRETTE: Your Honor, the part of the 1st
20 Amendment that we are dealing with is the right to
21 petition for assembly and petition your government for
22 redress of grievances. And that is in the 1st Amendment
23 to the Constitution, it's in the 1st Amendment to the
24 South Carolina -- or excuse me, the first article of the
25 South Carolina Constitution says that people have the

1 right to peaceably assemble. If someone goes to a council
2 member and says I'd like to have this on the agenda and
3 the council member agrees and asks the mayor to put it on
4 the agenda and it doesn't get on there, it never gets
5 discussed, there's no right to -- essentially the right to
6 petition your government for redress of grievances is
7 essentially being denied. And so therefore -- and the
8 14th Amendment makes the 1st Amendment applicable to the
9 state and all of its subdivisions and the 15th Amendment
10 guarantees you the right to vote, and essentially this is
11 denying the people the right to vote.

12 With regard to his argument with Ms. Owens,
13 while the position may have been created, it was not
14 budgeted. There was no line item budget, and Mr. Carroll
15 has not argued that they created a line item budget for
16 paying this person. So essentially although the mayor may
17 have the right to move items around in the budget, the
18 item that he seeks to move the money to must be budgeted,
19 and it is not. So, therefore, to use the same argument,
20 to reduce it to an absurd result, if the mayor had decided
21 instead to use the money that was going to be designated
22 to lease cars to buy a pizza for everybody in Chapin, his
23 argument would say, "I can do that," which then makes a
24 mockery of the budgetary process. So while they've
25 created the position, they never budgeted the salary, they

1 never made an amendment to the budget to provide for her.
2 And in addition, there is attached to Ms. Thompson's
3 affidavit the personnel manual for the Town of Chapin on
4 how you go about filling a position, and none of that was
5 followed. So to the extent that the mayor says he's
6 following the ordinances and the requirements of the Town
7 of Chapin, he didn't do that. He just hired a crony to
8 fill this position and is paying her using budgeted funds
9 to pay a non-budgeted position. And I think town council
10 is intimately interested in whether or not the money that
11 they appropriated in a particular budget is used for the
12 purposes that are set forth in the budget that they
13 produced.

14 There are no funds provided in the Chapin town
15 budget to pay Ms. Owens. And so any payment to her is a
16 violation of the budgetary ordinance.

17 With regard to Mr. Knight's contract, town
18 council approved his contract. Town council entered
19 into -- the mayor entered into a contract with Mr. Knight.
20 Town council has -- the members of town council certainly
21 have a right to see that the money that they budgeted is
22 applied in the way that they said for it to be done. And
23 they know that if Mr. Knight is not paid that he is going
24 to a lawsuit to get paid and they want to avoid the
25 litigation expenses that are necessarily going to be part

1 and they have concluded that the mayor's position is a
2 losing position because it's says a flat fee, flat
3 retainer of \$1,500 a month, which includes any costs that
4 Mr. Knight would expend, and they feel that they have a
5 right to have relief with regard to that. They said we
6 want to spend this money and you're not spending it,
7 Mr. Mayor. And he's certainly performing the services --
8 that he's not doing it -- he is performing the services.

9 And with regard to attorney's fees, I think Mr.
10 Carroll reads the statute that we're relying on much too
11 narrowly. It's clear to us that the mayor's positions are
12 not well-founded, that he does not have the discretion
13 that he says he does, and he certainly did not have the
14 power to hire and pay Ms. Owens for a position that may
15 have been created but was not budgeted.

16 THE COURT: What do you think his power is under
17 the strong mayor ordinance?

18 MR. SYRETTE: Well, I think the strong mayor is
19 kind of an oxymoron because he really doesn't have the
20 power that you would think that a CEO of a corporation
21 would have in running a company. He does --

22 THE COURT: It does say he is the chief
23 executive officer.

24 MR. SYRETTE: I understand that, but his powers
25 are circumscribe. For example, he can't move money from a

1 budgeted position, a budgeted item to a non-budgeted item.
2 He cannot fire the town clerk without the consent of
3 council. He cannot hire an attorney for the town without
4 consent of the council.

5 THE COURT: What can he do? You've told me all
6 the things he can't do.

7 MR. SYRETTE: Well, Section 5-9-30 says what he
8 has the right to do. He has the right to appoint, and
9 when he deems necessary, suspend or remove municipal
10 employees and appoint administrative officers. He has the
11 right to direct and supervise administration of all
12 departments. He has the right to preside at council
13 meetings and vote as other councilmen. He has the right
14 to ensure that all laws and ordinances of council are
15 faithfully executed. He has the duty to prepare and
16 submit an annual budget and capital program. He has the
17 right to submit to council a complete report of the
18 finances and he has the right to make such other reports
19 as council may have concerning the operations of municipal
20 departments.

21 Incidentally, with regard to number 7, if under
22 the interpretation of 2.206 a council member said, "I want
23 to place on the agenda how you are paying Ms. Owens," the
24 mayor would say that "I have the right to control the
25 agenda and so therefore I don't have to comply with

1 5-9-30, sub paren 7," which is an absurd result. He's
2 charged with the duty and it says upon request of a member
3 of council that he can just say, oh, I'm not going to
4 answer because I don't want this on the agenda. That
5 makes this statutory enactment by the legislature a
6 nullity. So clearly there needs to be some addressing of
7 the ordinance.

8 If all the court does today is to say that the
9 council can place on the agenda a consideration of 2.206,
10 I think this case will go away because then the majority
11 of council, the three votes that I represent, we'll be
12 able to take the action that they deem appropriate in a
13 political sense, which the court's not going to be
14 concerned with, to resolve these issues. But as long as
15 the mayor stands at the council door and says you can't
16 address these items because I don't want them addressed,
17 that's not the way the government is supposed to work.
18 Council is supposed to be able to do its job, which is to
19 consider issues that are important to the town. And the
20 mayor subjective's decision as to what is and isn't
21 appropriate for council's decision making is an anathema
22 to representative democracy, Your Honor.

23 THE COURT: All right. Anything further, Mr.
24 Carroll?

25 MR. CARROLL: Yes, sir, Your Honor. I just want

1 to briefly respond.

2 First, I want to say for the record, I want to
3 reject the characterization of Ms. Owens as a crony. I
4 don't think there's any reason to get into making personal
5 attacks like that when discussing these legal issues.
6 She's a decorated individual in her field and I just want
7 to rid this case of that kind of characterization.

8 Regarding this notion that enforcing Ordinance
9 2.202B, according to the plain language which gives the
10 mayor authority to approve and reject things on the town
11 agenda, the idea that that somehow takes away the right to
12 peaceably assemble guaranteed by the 1st Amendment to the
13 U.S. Constitution is just not true. There's nothing about
14 how the mayor approves the -- council's agenda that in any
15 way keeps the citizens of Chapin, who elected the mayor
16 just four months ago, that keeps them from showing up at
17 council meetings, that keeps them from circulating
18 petitions, circulating flyers, protesting outside the
19 council door. They can peaceably assemble in a myriad of
20 ways. But none of that has anything to do with how this
21 ordinance is interpreted or enforced by the mayor.

22 I'm trying to recall what the other response
23 arguments were, but I think -- I don't want to belabor the
24 point, Judge. You've heard our position, we've laid it
25 out in our brief, and we respectfully think this whole

1 case should be dismissed and the town of Chapin should
2 just get back to the business of government and doing
3 right by the people of Chapin. Thank you.

4 THE COURT: All right. Mr. Syrett.

5 MR. SYRETTE: One last comment on the right to
6 peaceably assemble.

7 If the citizenry do assemble and petition for
8 redress of grievances and three out of the five council
9 members hear their petition and say, yeah, that's got
10 merit, we want to have the town council consider this
11 issue, and if it were considered the three out of the five
12 would vote in favor of addressing and resolving that
13 grievance, the way the mayor interprets the ordinance says
14 it never gets that far, that he and he alone can make the
15 decision not to have council consider it. And under the
16 mayor/council form of government, he is but one vote. He
17 does not have a super vote. He is -- there's not five
18 mayors, but there are five council members, and he is just
19 one of them. So strong mayor only goes so far.

20 So essentially the way this ordinance is being
21 implemented respectfully denies the people the right to
22 petition for redress of grievances because one man can say
23 no, and that's not the way our government is supposed to
24 work.

25 THE COURT: All right. Thank you very much. I

1 will take a look at it. I'm going to read your brief and
2 review the ordinances and I'll let you know.

3 Thank you very much, Counsel.

4 (The proceedings were concluded.)

5 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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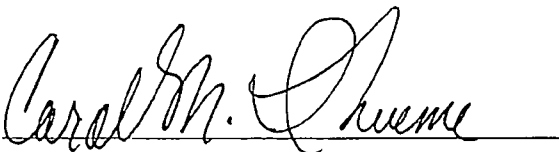
1 CERTIFICATE OF REPORTER

2
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4 STATE OF SOUTH CAROLINA)
5 COUNTY OF LEXINGTON)
6
7

8 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of Common Pleas for
14 Lexington County, South Carolina, on the 10th day of
15 March, 2014.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18
19

20 August 8, 2014

21 
22

23 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

County of Richland)

2014-CP-32-0697

VIVIAN ATKINS, ROBERT P.)
FRICK, AND KAY HOLLIS, IN)
THEIR OFFICIAL CAPACITY AS)
MEMBERS OF THE TOWN COUNCIL)
of the Town of Chapin,)

PLAINTIFFS,)

vs.)

TRANSCRIPT OF RECORD

JAMES R. WILSON, JR. IN HIS)
OFFICIAL CAPACITY AS MAYOR OF)
THE TOWN OF CHAPIN, GREGG)
WHITE IN HIS OFFICIAL)
CAPACITY AS MEMBER OF THE)
TOWN COUNCIL OF THE TOWN OF)
CHAPIN AND THE TOWN OF)
CHAPIN,)

DEFENDANTS,)

April 25, 2014
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE.

APPEARANCES:

SPENCER ANDREW SYRETT, ESQ.
Attorney for the Plaintiffs

MATTHEW TODD CARROLL, ESQ.
Attorney for the Defendants

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: All right. Mr. Carroll, your motion.

2 MR. CARROLL: Yes, sir. Thank you, Judge Cooper, for
3 your time today and for hearing us on this, on this
4 matter.

5 I'm sorry to have to bring it back to you, but we've
6 got, I think, some -- some just differences of opinion
7 with regard to what Your Honor's order from the middle of
8 March in this case required from the parties.

9 We're here on -- on -- I represent the defendants.
10 We're here on our motion to basically enforce the Court's
11 order. We have got two motions, two post-judgment motions
12 that are pending, one was filed at the beginning of April,
13 all motions to enforce the Court's order, and then one
14 filed in the middle of April, April 14th, I believe, for
15 contempt and under the Declaratory Judgment Act.

16 Both motions basically go to the same conduct. One
17 was forward looking; the second one would be as backward
18 looking, but we're aiming at the same conduct, Judge.

19 The -- well, first of all, let me notify Your Honor,
20 I spoke with plaintiff's counsel right before the hearing
21 began. My understanding is that they're not challenging
22 Your Honor's jurisdiction over this, this hearing, or
23 anything like that any longer.

24 I'll let Mr. Syrett speak to that, but Your Honor, I
25 don't think that jurisdictional questions that are before

1 the Court.

2 MR. SYRETT: We have no -- Judge, the Chief Justice's
3 order, I think, resolves both those issues.

4 MR. CARROLL: Your Honor, your -- your May -- I'm
5 sorry, your March 18th order indicated that under the
6 Chapin Town Ordinances, the mayor -- just from Your
7 Honor's opinion, the mayor must sign off on the agenda
8 prior to its distribution to Town Council.

9 Since Your Honor issued that ruling, the plaintiffs
10 have noticed two meetings of Chapin Town Council, both
11 with agendas that were never presented to the mayor for
12 his approval pursuant to Your Honor's order and to the
13 Chapin Town Ordinance 2.206(b) which is the ordinance that
14 Your Honor interpreted in your March 18th order.

15 The plaintiffs have reported to take action on items
16 on the agendas that both of those -- both the meetings
17 they noticed. They called them special meetings, but they
18 intended to take action on the items on the agenda of
19 those meetings that were never presented to the mayor for
20 his approval prior to the meetings.

21 So respectfully, Your Honor, we're not here to be
22 heavy handed. We're here to just try to enforce the town
23 ordinances as Your Honor has already interpreted them and
24 Your Honor's order from March 18th which the plaintiffs
25 have appealed to the Court of Appeals.

1 The relief that we're seeking, Your Honor, is a
2 declaration that the plaintiff's conduct with regard to
3 these two meetings that have been held since your order
4 were improper and any action they attempted to take at
5 those meetings were invalid; number two, an injunction
6 that they just not do anything.

7 Respectfully, Your Honor, we'd like the Court to
8 consider awarding us our attorney's fees and costs
9 associated with -- with having to file those post-judgment
10 motions.

11 That's the crux of our argument, Your Honor. On our
12 contempt motion, our burden is to show that there is an
13 existing order in place and the non-movant took actions
14 contrary to that. I don't think there is a dispute that
15 Your Honor issued an order that is part of this case.

16 THE COURT: Did I order them to do anything?

17 MR. CARROLL: Yes, sir. Well, your order -- they
18 asked you to declare that the mayor -- the mayor has no
19 authority over the town agenda.

20 Your Honor rejected their request for declaration and
21 instead, declared precisely the opposite. You told them
22 that the mayor has to sign off on the agenda.

23 THE COURT: That's what the ordinance says.

24 MR. CARROLL: That is -- yes, sir, and so in our
25 view, there is no -- there was nothing ambiguous about

1 Your Honor's order. It says what it says; that the mayor
2 was to be given the opportunity to do this, and they
3 didn't give the mayor the opportunity to do it twice now.
4 That has forced us to come back to the court and seek an
5 order remedying what we believe to be actions contrary to
6 what the Court ordered in March.

7 We think that -- we think that this is -- that we can
8 get the relief we're seeking from underneath their
9 contempt -- both civil contempt or the Declaratory
10 Judgment's Act which is South Carolina Code 15-53-120
11 fully vests the Court with the authority to enter any
12 relief the Court believes is necessary or proper to
13 enforce its prior rulings in the declaratory judgment
14 context.

15 So we think both -- that that's cited in our motion
16 beginning with the brief we filed yesterday. We think
17 that either avenue, that we prefer for preserving the
18 record purposes, we prefer both; that Your Honor would
19 consider both.

20 I'd be pleased to answer any questions that Your
21 Honor has, but we think -- we think this is a pretty
22 narrow, straightforward situation.

23 THE COURT: I doubt that Mr. Syrett would agree with
24 you.

25 MR. CARROLL: I'm sure that there is some

1 disagreement, Judge.

2 THE COURT: Mr. Syrett?

3 MR. SYRETT: Your Honor, I have an affidavit of
4 Ms. Atkins and a return to the motion I'd like to hand up
5 to you --

6 THE COURT: All right.

7 MR. SYRETT: -- and then do my argument about it.

8 THE COURT: I'll be glad to.

9 MR. SYRETT: Copies have already been given to
10 Mr. Carroll.

11 THE COURT: Thank you.

12 MR. SYRETT: Your Honor, may it please the Court. To
13 be found in contempt of an order of the Court, contempt is
14 the willful disobedience of a court order, and the order
15 must be clear and ambiguous. And I think the order has to
16 be directly --

17 THE COURT: Unambiguous.

18 MR. SYRETT: Huh?

19 THE COURT: Unambiguous.

20 MR. SYRETT: Unambiguous, right.

21 Must direct the party to do something or direct the
22 party not to do something.

23 The short answer to your question that you asked
24 Mr. Carroll is your order does not direct them to do
25 anything, and it does not direct them not to do anything.

1 Your order simply says that we -- our -- my clients
2 were not entitled to the relief that they sought, which
3 was an injunction, and then it went on to say, "They don't
4 have a cause of action based on your reading of the
5 ordinance." So you dismissed the case.

6 So there really is no order other than the order
7 dismissing the case. This case is over except for the
8 fact that we have filed an appeal of your order.

9 Now, in your order --

10 THE COURT: Let me just say to put it -- that issue
11 to bed. I agree with you.

12 MR. SYRETT: Okay. All right. So in your order, you
13 said that the plaintiffs were not without a remedy, and
14 you suggested a remedy which was to raise matters at a
15 meeting.

16 THE COURT: I merely quoted the ordinance.

17 MR. SYRETT: Well, I understand that, and so -- but
18 let me -- let me go back to the exact ordinance that we're
19 talking about so you know.

20 First of all, section 1.204 of the Town Ordinances
21 refers to catch lines with regard to sections of the code,
22 and I'm going to hand that up to you also, Your Honor.

23 What it basically says is even though an order of a
24 particular ordinance has a heading, that that is not part
25 of the ordinance. So with regard to section 2.206, the

1 fact that it is titled "agenda" doesn't -- isn't what's
2 important. It is what the language in the ordinance is.

3 (A) says, "Matters to be considered by the mayor and
4 council at a regular meeting" --

5 THE COURT: Right.

6 MR. SYRETT: -- "shall be placed on a written
7 agenda."

8 So section A refers only to regular meetings, and B
9 says the agenda -- and I say the only way that you can
10 effectively read that is that the term the agenda has to
11 refer to a written agenda which is in section A.

12 So section 2.206 has application only to a regular
13 meeting, and the mayor clearly has authority, as you
14 ruled, has discretion to determine what is on the agenda
15 for a regular meeting.

16 What the plaintiffs have held is a special meeting
17 which is under section 2.202. A special meeting may be
18 held, and there are three circumstances: Number one, by
19 the mayor in cases of emergency; number two, when in the
20 judgment of the mayor, the good of the municipality
21 requires it; or three, by a majority of the members of
22 counsel.

23 If you will look at the two notices that we filed and
24 acted upon, they are signed by a majority of the members
25 of counsel. There is no allegation in any of the

1 materials that Mr. Carroll has presented that says that we
2 did not comply in its entirety with the Freedom of
3 Information Act.

4 Now, under the section 30-4-80 of the Freedom of
5 Information Act, it says that all public bodies must post
6 on such bulletin board public notice for any called,
7 special or rescheduled meetings.

8 Such notice must be posted as early as practicable
9 but not less -- later than 24 hours before the meeting.
10 The notice must include the agenda, date, time and place
11 of the meeting. It doesn't apply to emergency meetings.

12 Then it goes on to say that the news media and the
13 public have to be notified. In this case, we notified
14 four television stations and four newspapers of the
15 meeting and also the public by posting it on the website
16 and posting it at Town Hall.

17 It makes no sense whatsoever to say that 2.206
18 applies to a special meeting called by a majority of
19 counsel. 2.206 clearly by its terms applies to a regular
20 meeting only.

21 The mayor under 2.202 has the right to call a meeting
22 all by himself. He doesn't need two other members of
23 counsel. It clearly gives him a right to declare a
24 special meeting in the event of an emergency. It clearly
25 gives him the right to call a special meeting when he

1 thinks it's in the best interest of the town, and in fact,
2 they had a number of special meetings. They had a special
3 meeting in January that the mayor called.

4 Now, if three members of counsel believe that a
5 special meeting is necessary, I think they get to call the
6 meeting. They get to set the agenda for that meeting.

7 The mayor doesn't have any control over 2.202 or
8 anywhere else in the code about what that agenda is going
9 to be, because the only provision about agendas is 2.206,
10 and the Freedom of Information Act says it has to be
11 posted.

12 So, in fact, we have complied with 2.202 to hold a
13 special meeting. We have complied with the Freedom of
14 Information Act to notice that meeting. We, in fact,
15 invited the mayor and Councilman White to the meeting, and
16 in fact, told the mayor through counsel that under 2.205,
17 he has the right to preside at the meeting, but he had to
18 file the agenda.

19 The mayor and Councilman White chose not to attend,
20 but a quorum is three, and three people were there. At
21 the meeting, as shown in Ms. Atkin's affidavit, the first
22 meeting we had two items on the agenda. We addressed
23 those two items, allowed the public to comment and
24 adjourned. We did not deviate from the agenda whatsoever,
25 the meeting, the notice that we sent.

1 At the second meeting, we had the second meeting
2 because we are amending 2.206, and it requires under the
3 ordinances two readings at least six days apart. So we
4 met on the 10th, and we met on the 17th.

5 We had a second reading. We noticed four items on
6 the agenda for the second meeting. We addressed those
7 four items. We invited public comment, and once that was
8 finished, we adjourned. The meetings took less than 30
9 minutes. The mayor was invited to both meetings. He was
10 invited to preside at both meetings. He chose not to do
11 so.

12 So we believe that the actions we took pursuant to
13 2.202 are in compliance with the ordinances and in
14 compliance with the Freedom of Information Act, and they
15 could not be in violation of your order because you didn't
16 order us not to do something.

17 In fact, I think by looking at the 2.206 provision,
18 you said, the door is closed to you with regard to getting
19 the agenda on a regular meeting changed or added to before
20 the meeting, so that door is closed, but you're not
21 without remedies.

22 Now, it's our position -- we might be wrong, but we
23 -- it's our position that under the Land Breeze (phonetic)
24 case, Land Breeze vs. Saluda County -- County Council that
25 you cannot add items to an agenda at a regular meeting

1 because that would violate the Freedom of Information Act.

2 Now, that is a Court of Appeals opinion. In May, I
3 believe May 7th, that case will be argued in the South
4 Carolina Supreme Court. So the Supreme Court will have
5 the final word, and if they say the Court of Appeals is
6 right, then I think my position is that that provision of
7 the Chapin Ordinances would violate Freedom of
8 Information.

9 If the court -- Supreme Court says, "No, that's not
10 what that means," then perhaps we can exercise that. But
11 we don't know when the Court is going to rule, and in the
12 meantime, there is town business to do.

13 So it's our position that number one, the meetings
14 were valid, the actions taken therein were valid and that
15 no conduct was at all in contempt of your order.

16 THE COURT: How about the proposed ordinance?

17 MR. SYRETT: The proposed ordinance? The amendment
18 is to 2.206, and it says that any member of council can
19 request -- that the mayor has to put on the agenda any
20 item requested by at least one member of council for the
21 council's consideration.

22 THE COURT: At? At?

23 MR. SYRETT: At a regular meeting.

24 THE COURT: It doesn't say that.

25 MR. SYRETT: No. The amendment is -- says -- we are

1 -- the special meetings were held. One of the purposes
2 was to amend 2.206, as it now stands, to change that
3 language to allow a single member of council to have an
4 item placed on the agenda on their -- on a single member's
5 request.

6 THE COURT: When? At?

7 MR. SYRETT: At a regular meeting.

8 THE COURT: It doesn't say that.

9 MR. SYRETT: The ordinance as it now stands doesn't
10 allow that. We are trying change that.

11 THE COURT: The proposed.

12 MR. SYRETT: Pardon?

13 THE COURT: The proposed ordinance says, "Matters to
14 be considered by the mayor or council at a called
15 meeting."

16 MR. SYRETT: All right.

17 THE COURT: It doesn't say regular.

18 MR. SYRETT: Okay. I guess we -- if you're going to
19 allow us to do -- if you're not going to prohibit us from
20 calling special meetings, we may have to do it again
21 because we may not have done it right.

22 THE COURT: Well, it just popped off the page.
23 That's all.

24 MR. SYRETT: I understand, and I did not draft that
25 ordinance.

1 THE COURT: All right.

2 MR. SYRETT: So...

3 THE COURT: Other than that, I understand what you're
4 saying.

5 MR. SYRETT: And if that's an error, we'll have to
6 fix it.

7 THE COURT: Well, sir.

8 MR. SYRETT: We -- I think the term "called meeting"
9 may refer to a regular meeting and a special meeting. I
10 don't know. I wasn't -- I wasn't --

11 THE COURT: You're getting into another lawsuit.

12 MR. SYRETT: I wasn't an expert in municipal law
13 before I started this, and I don't profess to be one now.

14 THE COURT: All right. Mr. Carroll?

15 MR. CARROLL: Your Honor, may I respond to a couple
16 of --

17 THE COURT: That's what I'm -- you know, this
18 ordinance has conflicting provisions in it.

19 My effort would always be and will be to try to
20 resolve this matter and allow counsel to proceed in an
21 orderly fashion to do town's business. That's -- but I
22 can't go outside the ordinances of the statutes.

23 MR. CARROLL: Certainly.

24 THE COURT: It's -- there's, obviously, some
25 confusion that's been generated, generated by this

1 lawsuit.

2 Yes. Respond, if you will, to Mr. Syrett's argument
3 that the -- what may become an amendment to the town
4 ordinance with regard to agendas is being done, was done,
5 at a special meeting under your --

6 MR. CARROLL: Sure.

7 THE COURT: -- 202? Yes, 202.

8 MR. CARROLL: Yes, sir. I'll be glad to, Your Honor.
9 I actually have got a couple of -- just a couple of
10 responses to that. Number one, if what they've done since
11 Your Honor issued your last order is -- is legitimate,
12 this whole lawsuit was just a complete waste of time.

13 They should have just done that in the first place
14 and not wasted my client's time, their own time, the
15 Court's time, now the Court of Appeals' time.

16 This whole thing is just a pointless exercise if what
17 they've done since you issued your order is totally
18 legitimate. They could have just done that on the front
19 end and made this whole thing go away, but they didn't
20 because they -- they didn't because that's not how the
21 ordinances allow them to proceed.

22 Section 2.202 indicates when a special meeting might
23 be called, and it gives three circumstances when a meeting
24 might be called.

25 It doesn't say one word about how you set the agenda

1 for a special meeting. In fact, Mr. Syrett just -- I
2 didn't transcribe it as he was saying it, but I heard him
3 say there is only one ordinance that talks about the
4 agenda, and that's -- that's our position, too. It's
5 2.206, the very ordinance that Your Honor has already
6 heard. 2.---

7 THE COURT: So you think 2.206(b) applies to special
8 meetings?

9 MR. CARROLL: It has to, Your Honor, because if it
10 doesn't, then there is no ordinance that talks about how
11 you set an agenda for a special meeting.

12 There is not. There is no other ordinance in the
13 entire Chapin Town Code of Ordinances that talks about how
14 you set the agenda --

15 THE COURT: Well, does it have to be an agenda for
16 section one of 202 or section two of 202?

17 MR. CARROLL: Sure. Yes. You have to -- you
18 can't --

19 THE COURT: I just want to understand your position.

20 MR. CARROLL: Absolutely. Yes, sir, under the
21 Freedom of Information Act 30-4-80, you have to have an
22 agenda before your meeting.

23 THE COURT: Twenty-four hours.

24 MR. CARROLL: Right. In the Chapin Town Code of
25 Ordinances there is one way to set an agenda, and it's the

1 very way the plaintiffs brought to the court this entire
2 lawsuit when they ask you saying that the mayor doesn't
3 have any authority, and you told them exactly the
4 opposite.

5 It's the second -- I have this in the footnote in our
6 memo that we filed yesterday, Your Honor, but this is the
7 exact same concept that we deal with under the State
8 Constitution where the governor has the authority to call
9 the General Assembly back into session under extraordinary
10 occasions, I think is the language.

11 However -- and Governor Haley can do this. Every --
12 all predecessors can do this. This is a -- this is a
13 provision or a constitution --

14 THE COURT: She has to tell them what it's about.

15 MR. CARROLL: She has to tell them what it's about,
16 but they don't have to -- they -- she can't -- she can't
17 direct what they do.

18 The Supreme Court in the McCall v. Haley case
19 from 2011, the majority opinion ended -- ended that
20 opinion with a footnote that says -- just as a reminder,
21 they said that Governor Haley improperly called the
22 General Assembly back to consider a few things, but the
23 majority opinion in that case ended with a footnote that
24 said, "Oh, by the way, Governor Haley called you back
25 improperly, but even if she had called you back properly,

1 she can't tell you what to consider, General Assembly.
2 That's your job."

3 It's the same concept here with special meetings. On
4 one -- on how you call a meeting on one hand versus how
5 you set the meeting's business on the other.

6 There are two separate ordinances. 2.202 says when
7 is the special meeting, can be called. 2.206(b) says that
8 the agenda for a meeting -- it doesn't say the agenda for
9 a regular meeting. It just says the agenda for a
10 meeting -- or maybe just the agenda has to be approved by
11 the mayor. This is exactly the issue that they brought to
12 you.

13 Again, if -- if I'm wrong and they're right, then
14 this entire lawsuit was just a total waste of time because
15 they could have just done that but they didn't.

16 I don't know if Your Honor had a copy of Ms. Atkin's
17 affidavit before just a few moments ago.

18 THE COURT: No.

19 MR. CARROLL: She indicates in here, she says in
20 paragraph five basically upon getting Your Honor's order,
21 I believe that trying to add matters to the agenda the way
22 you said they could would be improper.

23 Then in the next paragraph, she says, "I asked my
24 attorney to find another way." Well, there is no other
25 way.

1 There is only one ordinance that talks about how you
2 set the agenda. It's the very ordinance they put in their
3 complaint. They ask for a declaration that the mayor can
4 exercise its authority.

5 Again, Chapin is a strong mayor municipality. They
6 asked for an ordinance that says the mayor can't exercise
7 his authority under the ordinance. It's been on the books
8 time immemorial. He can't exercise his authority the
9 way -- the way he is doing.

10 Your Honor said that he absolutely could, and that
11 was -- that's -- respectfully, Judge, I think that's the
12 last word on the issue, because there is not another
13 ordinance that talks about how to set the agenda.

14 Especially 2.202 doesn't say one word about setting
15 the agenda for a special meeting. So either -- we are
16 either left with a situation where we have absolutely
17 nothing on top, and Your Honor has to craft a -- craft a
18 judicial rule that would fill that void, or you can look
19 at the plain language of 2.206(b) which simply says the
20 agenda -- you know what it says. The agenda shall be
21 approved by the mayor prior to being a --

22 THE COURT: So you say that 2.206 applies to any
23 meeting?

24 MR. CARROLL: 2.206(b) does. 2.206(a) is the -- is
25 the general way to comply with FOIA. We're going to post

1 things before a meeting, 24 hours.

2 2.206(a) is the -- we're going to comply with the
3 FOIA ordinance.

4 2.206(b) is, "Here is how we're going to conduct our
5 business. We are a strong mayor municipality. We are
6 going to give the mayor the opportunity to review the
7 agenda, and he was got to approve it before it goes out."

8 THE COURT: Mr. Syrett said that only applies to a
9 regular meeting.

10 MR. CARROLL: Mr. Syrett said that. The ordinance
11 doesn't say that, and Your Honor doesn't say that. Your
12 Honor, here is -- you can read their complaint. This
13 whole special meeting versus regular meeting dichotomy,
14 not one word of it in there.

15 You can read -- you can read Your Honor's order
16 interpreting the law. Not one -- not one word about this
17 special versus regular distinction because there is not
18 one under 2.206(b). It says the agenda which is the
19 agenda for the meeting shall be approved by the mayor
20 prior to distribution.

21 It doesn't say the agenda for the regular meeting but
22 not for special meetings or the agenda only for regular
23 meetings. It just says the agenda. Well, they have to
24 have an agenda for a meeting, and if -- for any meeting.

25 And if -- if you are to read 2.206(b) in this narrow

1 way and say, "Well, gee, that only covers regular
2 meetings," then you're left with a total vacancy as to how
3 you set the agenda for special meetings or any other kind
4 of meetings because 2.202 doesn't say anything about that,
5 which again, Your Honor, I go back to my first point.
6 They know it doesn't say anything about it, and that's why
7 they didn't do it before Your Honor issued the order.

8 That's why they came to court asking for a
9 declaration, "Hey, the mayor can't do anything to the
10 agenda. If I want something on the agenda, he's got to
11 put it on there."

12 They came to you to get a declaration that the mayor
13 doesn't have the authority to control the agenda, that the
14 Chapin Town Ordinances which -- and I think Your Honor is
15 aware of this, but my clients are newly elected.

16 They didn't have anything to do with putting these
17 ordinances on the books. These ordinances predate them.
18 They are taking the ordinances as they found them, but
19 2.206(b) is the only ordinance in the entire Chapin code.

20 If I brought it in, Your Honor would see it's a
21 pretty thick binder just like every other municipality's.
22 It's the only ordinance in the entire town code that talks
23 about how the agenda for any meeting is set up.

24 So I think -- we're not -- we're not trying to shut
25 down town business. They're trying -- they're trying to

1 move this. They brought this lawsuit. They got an
2 outcome they didn't like. They even said so in
3 Ms. Atkins' affidavit.

4 Now they're trying to undo everything that we've all
5 been working on for two months. We're just going to amend
6 the ordinance to take away all apparent authority. We're
7 going to do it for this special meeting even though
8 that's -- even though there's nothing that gives the
9 authority the notice -- or to set the agenda for a special
10 meeting.

11 We're just going to say we have it. Then we're going
12 to change the ordinance. When you come back to fight us
13 on it, we're just going to say, poof, the ordinance
14 2.206(b) is long gone. The mayor doesn't have any of
15 that.

16 They're trying to undo everything that we've all been
17 working on for the last couple of months for a mechanism
18 that's not really allowed under the code. We know it's
19 not allowed because one, it doesn't say so. Number two,
20 if it was, they just would have done that and not -- not
21 engaged the Court in the very first place.

22 Your Honor, I see -- do you have any other -- any
23 other questions that I can --

24 THE COURT: I want to hear what Mr. Syrett has to say
25 with regard to your position.

1 MR. SYRETT: Your Honor, I think that -- I think it
2 is clear that 2.206 applies only to a regular meeting and
3 that 2.206(b) refers back to 2.206(a) which is limited to
4 a regular meeting.

5 THE COURT: That's really the crux of this whole
6 case, isn't it?

7 MR. SYRETT: That is -- that is part of the crux of
8 this case, but in answer to his observation that we could
9 have used the special meeting procedure instead of doing
10 the lawsuit, I don't think that what my clients -- what
11 the plaintiffs would have wanted to do was to govern the
12 town by using special meetings.

13 They would have certainly preferred to have addressed
14 matters that they wanted to address to be placed on the
15 agenda at a regular meeting which is -- they wanted to do
16 it in the normal way rather than go through the exercise
17 of going through the special meetings, the way the
18 ordinance is written leave -- left them no choice.

19 They had to go ahead and do this second thing. Now,
20 we could have gone and just done that originally. We
21 wouldn't be here arguing contempt because there wouldn't
22 have been a prior order, but I think that Mr. Carroll is
23 wrong when he says that it would have been a total waste
24 of time.

25 We certainly want to govern your town in an ordinary

1 normal way, have regular meetings. You don't want to have
2 a special meeting every month to take care of town
3 business that the mayor has decided he doesn't want to be
4 on the agenda. So, you know, we've exercised,
5 essentially, a nuclear option because we had no other
6 choice.

7 Secondly, his comparison with the Haley vs. McConnell
8 case is totally inapt because the Governor is a member of
9 the Executive Branch. The legislature is the Legislative
10 Branch.

11 Chapin simply has a Town Council, and the mayor is a
12 member of the Town Council. He has one vote. There is no
13 separate executive. He also -- he does enjoy the right to
14 be the Chief Administrative Officer of the town, but he is
15 a member of council.

16 Governor Haley is not a member of the legislature.
17 She is a separate branch. There is separation of powers
18 under our state constitution, just like there is
19 separation of powers under our national constitution.
20 That does not exist on the municipal level. So that case
21 really has no application whatsoever.

22 Third, the special meeting procedure was followed to
23 the letter, and there is no reason why the action taken at
24 that special meeting is not completely valid and
25 enforceable.

1 Now, if Mr. Carroll believes -- or his client, the
2 mayor, believes that the actions taken were invalid, his
3 remedy is not to come here to this court and ask for an
4 adjudication of contempt or for supplemental orders
5 because the ten days for filing a 59(e) has long passed.

6 What he needs to do is to go back to the court, file
7 a declaratory judgment action, set out all of the things
8 that's he argued today and let a judge hear that case in
9 its entirety.

10 We litigated the issue of what -- how 2.206 applied
11 to a regular meeting. That's been done. We're here on
12 something entirely different. We're on 2.202, which as he
13 said, was never argued before you because it wasn't the
14 issue at the time. It is now.

15 This is an entirely new situation. He needs to go
16 back, file a declaratory judgment action and litigate it
17 that way, not by invoking contempt action.

18 We're asking this Court for an injunction now. That
19 case, your case that you decided, is over except -- unless
20 the Court of Appeals decides to change your order, either
21 remand it or have a -- or reverse it.

22 So that's the proper course of action here. He needs
23 to file a declaratory judgment action. In the meantime,
24 this court should issue a finding that the plaintiffs are
25 not in contempt and that you should defer making any

1 ruling on what has happened at the special meetings and
2 allow him to proceed with a declaratory judgment action.

3 THE COURT: All right. Anything further?

4 MR. CARROLL: Your Honor, I would -- I don't think
5 that would really be to the benefit of the town or the
6 administration to just go file another lawsuit just for a
7 couple of really small procedural points: Our first
8 post-judgment motion, the motion to enforce your
9 March 18th order and to enjoin further conduct, we filed
10 that before Your Honor ruled on the 59(e) motion.

11 It is -- the request for additional
12 declaratory/injunctive relief is completely proper and in
13 front of you, and I'm sorry to be reading this off of my
14 phone but let me read you the first sentence of South
15 Carolina Code 15-53-120 which is the -- it's the statute
16 that gives the Court authority to issue further relief to
17 enforce your declaratory judgment.

18 It says, "Further relief based on a declaratory
19 judgment or decree may be granted whenever necessary or
20 proper." There is no need for us to go file a second
21 lawsuit. You'll potentially get a different judge. He
22 will have no idea what -- he would have to be
23 completely -- he or she would have to be completely
24 brought up to speed when Your Honor has the full
25 authority, be it a contempt route, or under the

1 Declaratory Judgments Act to maintain dissent.

2 You've issued a ruling on this case. You told both
3 sides what the authority to prove or reject the agenda is.
4 It's under 2.206(b).

5 This -- this post hoc distinction is just as -- it's
6 an attempt to get around Your Honor's order. The
7 Declaratory Judgment Act pointblank gives the Court the
8 authority to issue whatever relief you believe is
9 necessary to give force and effect to your prior ruling,
10 and that's just what we would ask you to do.

11 We want you to -- we would respectfully ask that you
12 would invalidate the conduct that's happened between your
13 first order and today, maintain the status quo.

14 If the Court of Appeals disagrees with your
15 March 18th order, that's fine. We can deal with that
16 then, but in the absence of that, we're going to be in
17 this procedural thicket where nobody knows how an agenda
18 gets set. Your Honor has even identified problems with
19 this proposed --

20 THE COURT: If you're going to wait for the Court of
21 Appeals to review that order, I don't see how Town Council
22 can operate.

23 MR. CARROLL: Well, Your Honor, I don't think that
24 there's been anything -- there's been testimony on this,
25 but it's not as if -- there is allegation that the mayor

1 says, "We won't have anything on the agenda."

2 I can't recall if Mr. Syrett explained this during
3 our first hearing over in Lexington County or not, but I
4 seem to recall that he did but one of the plaintiffs --
5 one of the motivation of the plaintiffs is to put an item
6 on the agenda that would -- that would give them the
7 authority to say that the mayor is not quote, unquote,
8 qualified to be the mayor for -- we're going to attempt to
9 oust him from office through this -- and that's what this
10 whole control of the agenda thing is about.

11 Mayor Wilson is not keeping off the agenda the
12 legitimate business of the town. He is trying to keep the
13 -- he's trying to keep a mutiny, a coupe, off the agenda.
14 That's what this is really about.

15 So I think if we don't maintain the status quo, and
16 we let this kind of post March 18th whirlwind take over --

17 THE COURT: What is the status quo?

18 MR. CARROLL: The status quo is enforcing 2.206(b)
19 the way Your Honor already said that the agenda has to go
20 through the mayor for his approval or -- or rejection.

21 This is not -- this is not -- this is not some
22 situation where the Town of Chapin has just come to a
23 complete halt. They didn't just elect a new mayor and
24 then oop, no more business is being done. Business is
25 being done. There is just -- there is certain -- there is

1 certain political --

2 THE COURT: Is he occupying the -- applying --
3 operating under 5-9-30? The state statute gives him the
4 power to do almost anything.

5 MR. CARROLL: Yes.

6 THE COURT: He is still operating under that statute?

7 MR. CARROLL: Absolutely.

8 THE COURT: Okay.

9 MR. CARROLL: And that -- Your Honor, you actually
10 raise a good point with that question. Mr. Syrett tried
11 to distinguish this case from the Colony Hayes (phonetic)
12 situation. There is no such thing as separation of powers
13 under the municipal government. Well, that's not true.

14 Under the Strong Town -- the stronger mayor form of
15 government as Your Honor -- as Your Honor's order
16 indicated, the mayor is the town Chief Executive Officer.
17 He is the Chief Administrative Officer. He presides over
18 council meetings. The same as --

19 THE COURT: He can hire and fire?

20 MR. CARROLL: Absolutely. It's the same -- the
21 corollary in the governor versus general assembly posture
22 is the governor has the whole legislative process. She as
23 the veto power, but that's -- our force for being here --
24 that's part of the legislative process.

25 It's not -- just because the mayor here and Governor

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1 Haley over at the State House jumps in and out of the
2 legislative process based on statutory constitutional
3 authority, that doesn't mean that -- well, he is just the
4 mayor.

5 He might have the title of mayor, but he is no
6 different than any other councilman. He is the Chief
7 Executive Officer. He is the Chief Administrative
8 Officer, and he is trying to exercise the authority given
9 to him by the Town Ordinances that Your Honor has
10 already -- that you already ruled on and said that he has.

11 We are just trying to maintain that. Again, Your
12 Honor, if -- I don't think you are, but if you're wrong
13 and the Court of Appeals says so, well, then we'll deal
14 with that once they -- once they rule, but there is no --
15 there is no doom and gloom that would befall the Town of
16 Chapin if -- if 2.206(b) is allowed to remain in place and
17 be used just the way's written and the way Your Honor has
18 already said it should be interpreted.

19 Thank you, Your Honor.

20 MR. SYRETT: Your Honor, it's -- the fact of the
21 matter is that a lot of the town business is not being
22 done. In this lawsuit, the Town of Chapin is in default.
23 Why are they in default? Because the Town Clerk requested
24 the mayor to put on the agenda the hiring of an attorney
25 to present its position in court.

1 The mayor refused to put it on the agenda, so
2 Mr. Carroll only represents Mayor Wilson and Councilman
3 White. The town is unrepresented until the council at its
4 special meeting took action from January 1st until now.
5 The town has been without a town attorney. We took action
6 to appoint a town attorney.

7 The town has been unrepresented completely and has
8 had no representation whatsoever because the mayor refused
9 to place it on the agenda. So at that point, and the town
10 attorney, the attorney for the utility department, the
11 mayor has refused to pay him for four months and yet
12 demands that he come and meet with him.

13 In fact, he demanded that the utility attorney meet
14 with him at four o'clock on Friday afternoon to discuss a
15 matter, but yet he won't pay him.

16 The town council put that -- the majority put it on
17 the agenda at the special meeting so that he could get
18 paid. So in contrast to what's been asserted, the town's
19 own business is not being transacted.

20 Now they are having regular meetings, and there are
21 things on the agenda but only the things that the mayor
22 wants to be put on the agenda. So therefore, 2.202 is in
23 there as a safeguard against -- as using the language you
24 put in your order against the autocratic mayor.

25 I have asked Mr. Carroll a number of times if you

1 won't put it on the agenda upon request and you don't want
2 a special meeting procedure to be used, and putting it on
3 the agenda at a regular meeting is suspect -- at least
4 under Land Breeze and how it's interpreted, how then are
5 we to proceed?

6 Give us a road map, and we'll take it. So far, they
7 have never said, "Well, if you do it this way, we'll let
8 you proceed. The mayor is simply intending to be in total
9 control to be essentially an autocrat and a czar, a king,
10 and if that's the case, what do we need a Town Council
11 for?

12 THE COURT: All right.

13 MR. SYRETT: If he is totally in control of
14 everything --

15 THE COURT: All right. I understand.

16 MR. SYRETT: -- we need a town council.

17 THE COURT: Let me -- let me see you counsel in
18 chambers just a minute, please. I've got a procedural
19 matter I need to discuss with you.

20 Let's stand at ease for a minute.

21 (WHEREUPON, a short break was taken.)

22 THE COURT: All right. Counsel, I -- just for the
23 record, I met with counsel to just review some procedural
24 matters.

25 At this time, I'm going to take this matter under

1 advisement and ask both counsel to propose a -- send me
2 proposed orders within ten days. Is that satisfactory?

3 MR. SYRETT: Yes, Your Honor.

4 MR. CARROLL: Yes, Your Honor.

5 THE COURT: All right. Thank you very much. This
6 hearing is concluded.

7 Thank you very much.

8 MR. CARROLL: Thank you, Your Honor.

9 MR. SYRETT: Thank you.

10 (Whereupon, the proceedings were concluded.)
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 25th day of April,
2014.

July 15, 2014

Karen Ambroziak, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

2014 FEB 26 A 8:25

Vivian Atkins,
Robert P. Frick, and
Kay Hollis,
in their official capacity as
members of the Town Council
of the Town of Chapin,

Plaintiffs,

vs.

James R. Wilson, Jr. in his
official capacity as Mayor of the
Town of Chapin, Gregg White
in his official capacity as a
member of the Town Council of
the Town of Chapin and the
Town of Chapin,

Defendants.

DETH A. CASPER SPEEDY HEARING REQUESTED (RULE 57)
CLERK OF COURT
LEXINGTON

MOTION
Preliminary Injunction
2014-CP-32-

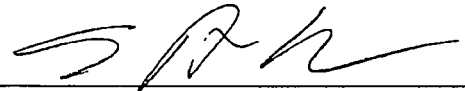
2014CP3200697

TO THE DEFENDANTS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE THAT the undersigned attorney, appearing on behalf of the Plaintiffs, will move before the presiding Judge of the Court of Common Pleas for the Eleventh Judicial Circuit, in his chambers in the Lexington County Judicial Center, Lexington, SC, on the tenth day after service hereof, at 10:00 A.M., or as soon thereafter as the counsel may be heard, for the following:

An Order of the Court ordering the Mayor to place any item requested by any member of Council on the agenda of the next occurring Council meeting after the request, without any delay,

The undersigned certifies that to the extent an effort is required to reach an agreement on this Motion, that effort has been made and no agreement has been reached.



Spencer Andrew Syrett SC BAR 05459
Attorney for the Plaintiffs
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FAX ONLY 803-765-995
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February 23, 2014

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Vivian Atkins, Robert P. Frick, and Kay) Civil Action No. 2014-CP-32-00697
Hollis, in their official capacities as)
members of the Town Council of the)
Town of Chapin,)

Plaintiffs,)

vs.)

MOTION TO DISMISS

James R. Wilson, Jr., in his official)
capacity as Mayor of the Town of)
Chapin; Gregg White, in his official)
capacity as a member of the Town)
Council of the Town of Chapin; and the)
Town of Chapin,)

Defendants.)

Pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendants Mayor Wilson, Councilman White, and the Town of Chapin move for an order dismissing this action. These individual defendants were elected in November 2013—both defeating decades-long incumbents—but have been unwelcomed by the remaining members of Town Council. This frivolous litigation is another needless distraction and a waste of Chapin's resources, and it should be dismissed.

For one, there is no reason for Councilman White to be a defendant in this matter, as none of the allegations in the Complaint are even addressed to him. The fact that he has been named a defendant suggests that this lawsuit is nothing beyond political theater. Additionally, each of the claims asserted are fundamentally defective for a host of reasons, as discussed below.

Claim Regarding Council Agenda: This claim, which inquires into the inner workings of a governmental body, presents a nonjusticiable political question and should be dismissed for lack of subject matter jurisdiction. Likewise, Chapin Town Ordinance § 2.206(b) and South Carolina Code § 5-9-30(3) vest Mayor Wilson, as Chapin's chief administrative officer and the presiding official over council meetings, with discretion as to what appears on the agenda, rendering this claim invalid on its face.

Claim Regarding Economic Development Director: This claim is completely belied by Town Council's unanimous decision on January 15, 2014, to hire a director for economic development who would answer to the Mayor. Put differently, Plaintiffs actually voted to approve the very action they now challenge in this litigation. Likewise, Chapin Town Ordinance § 8.103(a) expressly authorizes the Mayor to move funding within the Town's budget without seeking approval of counsel. This claim is baseless.

Claim Seeking Payment to "Utility Attorney": Plaintiffs do not have standing to try to enforce a contract on behalf of a third party. If the Town's "utility attorney" believes a contract has been breached, then he can present the issue on his own, but this litigation is not a proper vehicle for such a claim.

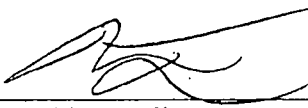
Claim for Attorneys' Fees: South Carolina Code § 15-77-300(A)(1) prohibits shifting attorneys' fees when the public official's challenged conduct is justified. As explained above, Plaintiffs have filed three facially-defective claims: the first is a nonjusticiable political question that is committed to the Mayor's sound discretion; the second simply ignores the fact that Plaintiffs previously authorized Mayor Wilson to take the exact actions that they now challenge as unlawful; and Plaintiffs do not have standing to present the third claim. As a matter of South Carolina law, Chapin's taxpayers do not

have to subsidize Plaintiffs' political gamesmanship, and the Court should dismiss this final claim as well.

This Motion shall be supported by written memoranda, arguments of counsel, and all other submissions permitted by the Court. Defendants further reserve the right to file a motion seeking relief pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act at the close of this litigation.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

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Attorneys for the Defendants

March 5, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Vivian Atkins,)
Robert P. Frick, and)
Kay Hollis,)
in their official capacity as)
members of the Town Council)
of the Town of Chapin,)
Plaintiffs,)

vs.)

RETURN TO MOTION TO DISMISS

James R. Wilson, Jr. in his)
official capacity as Mayor of the)
Town of Chapin, Gregg White)
in his official capacity as a)
member of the Town Council of)
the Town of Chapin and the)
Town of Chapin,)
Defendants.)

2014-CP-32-0697

The Plaintiffs respond to the Motion to Dismiss as follows:

Rule 6(d) provides that "a motion and notice of the hearing thereof, shall be served not later than ten days before the time specified for the hearing, unless a different period is fixed by these rules or by an order of the court." Defendant's motion was sent to the undersigned (by e-mail, a method not recognized by the Rules), on March 5, 2014. The motion is scheduled for March 10, 2014. Defendants' motion was not timely served to be heard on March 10, 2014.

Who does "Counsel for Defendants" represent?

The attorney has signed the Motion as "Attorney for the Defendants." While he may represent Mr. Wilson and Mr. White, he does not represent the Town of Chapin. Neither Mr. Wilson nor Mr. White have authority to engage counsel to represent the Town without the approval of the Town Council.

Currently there is no Town Attorney. Mr. David W. Knight, the previous attor

retired effective December 31, 2013. Although the Mayor attempted to appoint Nicole Howland as Town Attorney, that action required the approval of Council. Before Council could act, Ms. Howland withdrew her agreement to be Town Council.

The employment of outside counsel requires Council approval and approval of a modification of the Town Budget to fund the expenditure. The Mayor has indicated in his newspaper column that no change to the budget has been approved since he became Mayor. (See copy of article attached)

As shown by the affidavit of Adrienne Thompson, Town Clerk, she prepared a proposed agenda for the Council meeting to be held on March 4, 2014. Included on that proposed agenda was item 12 which proposed that the Town engage the services of an attorney to defend its interest in this action. The Mayor struck this and other items from the proposed agenda. Therefore the Town remains unrepresented and opposing counsel does not represent the Town.

In addition, the Town has not approved the expenditure of any funds to pay counsel engaged by the Mayor or Councilman White. Given the fact that the Plaintiffs represent a majority of counsel (and the Mayor and Councilman White would have to recuse themselves from any such vote), it is highly unlikely that the expenditure would be approved.

Herein, when this memorandum refers to the Defendants, the Court should understand that the Plaintiffs refer only to the Mayor and Councilman White.

Gregg White as Defendant

The Declaratory Judgment Act §15-53-10 et seq.) provides as follows:

§15-53-80 When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise the municipality shall be made a party and shall be entitled to be heard. If the statute, ordinance or franchise is alleged to be unconstitutional the Attorney General shall also be served with a copy of the proceeding and be entitled to be heard.

It is certainly arguable that Councilman White's has an interest which would be affected by the declaration sought. The Plaintiffs believe that Councilman White would decline to join the Plaintiffs and therefore named him as a Defendant.

Claim regarding Council Agenda

The Defendants claim that this matter is a political question and is therefore non-justiciable. This claim is patently false.

In Alexander v. Houston, 403 S.C. 615, 744 S.E.2d 517 (2013), the South Carolina Supreme Court addressed the question of what constitutes a political question:

"The fundamental characteristic of a nonjusticiable 'political question' is that its adjudication would place a court in conflict with a coequal branch of government." Id. at 122, 691 S.E.2d at 460 (quoting S.C. Pub. Interest Found., 369 S.C. at 142-3, 632 S.E.2d at 278). "In the instance of nonjusticiability, consideration of the cause is not wholly and immediately foreclosed; rather, the Court's inquiry necessarily proceeds to the point of deciding whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded." Id. (quoting *Baker v. Carr*, 369 U.S. 186, 198, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962)). Indeed, the political question doctrine "is one of 'political questions,' not one of 'political cases.'" *Baker v. Carr*, 369 U.S. 186, 217, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962). "The courts cannot reject as 'no law suit' a bona fide controversy as to whether some action denominated 'political' exceeds constitutional authority." Id. Therefore, "this Court is duty bound to review the actions of the Legislature when it is alleged in a properly filed suit that such actions are unconstitutionally [sic]" *Segars-Andrews*, 387 S.C. at 123, 691 S.E.2d at 460.

In this action, the Plaintiffs seek to determine the interpretation of Ordinance 2.206(b) as to whether or not the Ordinance grants unfettered power over the Council Meeting Agenda. The Plaintiff believe that 2.206(a) and 2.206(b) are in irreconcilable conflict. In the alternative, the Plaintiffs challenge the constitutionality of the Ordinance. Determination of the constitutionality of a statute or ordinance is by its very nature a judicial

function.

§5-9-30 grants to the Mayor the power to "preside at meetings of the council and vote as other councilmen."

If the Ordinance grants the Mayor unfettered power to determine the agenda, the result is absurd. As shown by the affidavits of the Plaintiffs, the Plaintiffs (a majority of Council) seek to have amendment of the Ordinance placed on the meeting agenda. The Mayor is trying to use the statute sought to be amended to prevent consideration of the amendment. The Freedom of Information Act (30-4-10 et seq.) prevents the Council from considering any matter which is not on the agenda. The Mayor's position creates a "chicken and egg" situation which is wholly at odds with the concept of representative democracy.

The First Amendment (made applicable to the State and its subdivisions by the Fourteenth Amendment) to the U.S. Constitution grants to the people the right to peaceably assemble to petition the government for redress of grievances. In the Town situation, that has to mean the right to have issues placed before Council for consideration and action.

In addition the Fifteenth Amendment prohibits the State and its subdivisions from infringing on the right to vote. This right extends to having the elected representatives able to conduct the people's business. The ordinance as written if interpreted as the Mayor contends would grant to a single person the right to prevent this from happening. Thomas Jefferson in the Declaration of Independence essentially accused King George III of the same thing.

Quite simply put, it is impossible to have a democratic political process when the minority uses an inartfully worded rule to prevent debate and then prevents the majority from amending the rule to allow it.

Claim regarding Economic Development Director

The Defendants have misrepresented the actions taken (and not taken) at the January 15, 2014, meeting. While Council created the position, it did not agree to hire anyone for the position nor empower the Mayor to hire anyone. The Town has an employment policy (copy attached) which the Mayor has ignored.

In addition, Council took no action to amend the budget to fund the position. While

the Mayor has power to reallocate funds amend budgeted items, he has no power to take funds away from a budgeted item to pay a non-budgeted item. If the Mayor has this power, it would render the entire budget process completely ineffectual. Again the position argued by the Mayor results in a absurd situation.

In addition, the agenda for the January 15, 2014, meeting does not have an item giving the public notice that this matter was to be considered. Therefore the action taken by the Council could not accomplish the result the Mayor seeks.

Claim seeking Payment to "Utility Attorney"

The Plaintiffs have sought to have the issue of payment added to the Agenda, but the Mayor has not done so. The Plaintiffs have an obligation to make sure that the Town has representation for one of its most important functions: the operation of the water and sewer system. The Mayor's actions has placed this in jeopardy. The Plaintiffs believe that legal action by Mr. Knight is imminent and the Mayor's refusal to sign Mr. Knight's checks will subject the Town to unnecessary legal expenses and damage the Town's ability to engage the services of professionals to assist the Town in performing other services.

Claim for Attorney Fees

§15-77-300 et seq. is clearly applicable. The Mayor's actions have forced the Plaintiffs to seek declaratory relief

§ 15-77-300. Allowance of fees.

(A) In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:

(1) the court finds that the agency acted without substantial justification in pressing its claim against the party; and

(2) the court finds that there are no special circumstances that would make the award of attorney's fees unjust.

The agency is presumed to be substantially justified in pressing its claim against the party if the agency follows a statutory or constitutional

mandate that has not been invalidated by a court of competent jurisdiction.

Case law allows the award of attorney fees when a Plaintiff challenges governmental action.

As argued above, the matters raised in the Complaint raised justiciable matters including a challenge to the constitutionality of Ordinance 2.206. It is not a political question because the Plaintiff do not seek to have the Court determine the outcome of any policy matters but rather assert their right to be able to have a means to discuss the policy matters and make a decision thereon.

CONCLUSION

The action is meritorious and presents issues which the Court can and should determine. The temporary relief sought in Plaintiff's motion should be granted. The Court should decline to hear the Defendants' Motion to Dismiss at this time.



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March 6, 2014

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)
2014 MAR 10)
BETH A. GARRIGUE)
CLERK OF COURT)
LEXINGTON, SC)

Vivian Atkins, Robert P. Frick and Kay Carrigg Civil Action No. 2014-CP-32-00697
Hollis, in their official capacities as
members of the Town Council of the
Town of Chapin,

Plaintiffs,

vs.

James R. Wilson, Jr., in his official
capacity as Mayor of the Town of
Chapin; Gregg White, in his official
capacity as a member of the Town
Council of the Town of Chapin; and the
Town of Chapin,

Defendants.

COPY

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS AND IN
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
RELIEF

Defendants respectfully submit this memorandum in support of dismissal of this case and in opposition to Plaintiffs' request for preliminary relief. This case is a frivolous use of public resources, and it should be dismissed.

BACKGROUND

Mayor Wilson was elected Mayor of Chapin in November 2013, and was seated in early January 2014 after a failed election protest by the incumbent. Likewise, Councilman White was elected to the Town Council of Chapin during the same election cycle, and he also defeated a long-serving incumbent. In less than two months since assuming their seats, these two elected officials have faced continued political opposition from the three plaintiffs, all members of Town Council who served with the incumbents Mayor Wilson and Councilman White defeated. This lawsuit is nothing but an improper use of Chapin's resources to score political points against these newly-elected officials.

STANDARD OF REVIEW

I. Failure to State a Claim

Rule 12(b)(6), SCRPC, tests the legal sufficiency of a complaint. Under this rule, the Court should dismiss a claim if it fails “to state facts sufficient to constitute a cause of action.” *Id.* When evaluating a motion under this rule, the Court is not to read unalleged facts into the pleadings, *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005), nor need it credit the claimant’s legal conclusions or predicate act labels, *Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 512, 563 S.E.2d 352, 358 (Ct. App. 2002). The Court is free to take judicial notice of matters of public record when reviewing a motion under Rule 12(b)(6). *See, e.g.*, Rule 201(b), SCRE (explaining that courts can take judicial notice of facts that are “not subject to reasonable dispute”); *id.* 201(f) (“Judicial notice may be taken at any stage of the proceeding.”); *Sec’y of State for Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007) (“In reviewing the dismissal of a complaint under Rule 12(b)(6), we may properly take judicial notice of matters of public record.”).

II. Mandamus/Preliminary Injunction

Plaintiffs have filed a motion for a preliminary injunction. However, they are not asking the Court to order any of the Defendants to cease taking any affirmative conduct; rather, they ask the Court to “order[] the Mayor to place on the agenda of the next Council meeting, without any delay, any item requested by any member of Council.” (Compl. ¶ 12.) Accordingly, their request is actually in the form of a mandamus petition.

Mandamus is “the highest judicial writ known to the law.” *Willimon v. City of Greenville*, 243 S.C. 82, 86, 132 S.E.2d 169, 170 (1963). Because it involves one branch

of government ordering another branch to undertake specific actions, mandamus is proper only in the narrow circumstance where an officer is under a duty to perform a “ministerial act,” the petitioners’ legal rights are affected by the officer’s failure to perform that task, and the petitioners lack any other legal remedy. *Sanford v. S.C. State Ethics Comm’n*, 385 S.C. 483, 494, 685 S.E.2d 600, 606 (2009). When there is any doubt about the officer’s legal obligations, or if he is vested with any discretion in performing those duties, then mandamus must be rejected. *See, e.g., id.* (denying mandamus request due to the absence of any “ministerial act to be performed”); *Redmond v. Lexington County Sch. Dist. No. 4*, 314 S.C. 431, 438, 445 S.E.2d 441, 445 (1994) (denying mandamus request because the school board’s challenged conduct involved the exercise of “discretionary authority”).

Nevertheless, in the event the Court believes Plaintiffs’ motion is properly styled as one for injunctive relief, Plaintiffs must show the following elements in order for a preliminary injunction to issue: (1) they will suffer irreparable harm without an injunction that preserves the status quo, (2) they are likely to succeed on the merits of the underlying case, and (3) they do not have any other adequate legal remedies. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010).

ARGUMENTS AND AUTHORITIES

- I. **The Complaint presents a nonjusticiable political question regarding the Town Council’s inner workings that, in any event, are committed to the Mayor’s sound discretion.**

The first claim alleged in the Complaint generally complains about how Mayor Wilson has set the agenda for Town Council in his first two months in office, and asks the Court to issue an order requiring the Mayor to turn over all control regarding the

agenda to every other councilmember. (Compl. ¶ 12.) The Court should reject this claim for two reasons; along with Plaintiffs' accompanying request for preliminary relief. First, any inquiry about how a governmental body sets its agenda presents a political question that is beyond the Court's jurisdictional scope. Second, even if this claim does present a justiciable issue, it should be resolved in Mayor Wilson's favor, as the Chapin Town Ordinances unambiguously vest the Mayor with sole control over the agenda.¹

A. The Judiciary does not involve itself in the inner workings of other political branches.

The Supreme Court has been clear that, because of separation-of-powers concerns, the Judiciary should not attempt to resolve questions that could place courts in conflict with other branches of government. *See Segars-Andrews v. Judicial Merit Selection Comm'n*, 387 S.C. 109, 121–22, 691 S.E.2d 453, 460 (2010) (“The fundamental characteristic of a nonjusticiable ‘political question’ is that its adjudication would place a court in conflict with a coequal branch of government.” (quoting *S.C. Pub. Int. Found. v. Judicial Merit Selection Comm'n*, 369 S.C. 139, 142–43, 632 S.E.2d 277, 278 (2006))). Accordingly, “courts will not rule on questions that are exclusively or predominantly political in nature rather than judicial.” *Id.*

Nothing is more “political in nature” than a governmental body's agenda and order of business. Mayor Wilson has prioritized the issues for the Town of Chapin; Plaintiffs disagree with his political judgment. The Court should decline to override

¹ There does not appear to be any reason why either Councilman White or the Town of Chapin itself have been named as defendants in this case. The allegations of the Complaint focus solely on alleged conduct of Mayor Wilson in the first two months of his administration; there are no claims or allegations made against either of the other two defendants. The fact that Plaintiffs have named Councilman White as a defendant based on nothing more than a perceived political alliance between the two newly-elected officials highlights the fact that this case appears to be nothing more than political sport.

Mayor Wilson's political decisions and dismiss Plaintiffs' first claim, as requiring a mayor or any other elected official to take up "any item requested by any member of Council" as part of the Town's official business improperly infuses the Court into local political decisions.

B. Under Chapin's Town Ordinances, the Mayor is vested with complete discretion as to what items appear on Town Council's agenda.

If the Court believes that the issues presented in Plaintiffs' first claim may be adjudicated, it should still dismiss the claim—along with Plaintiffs' pending motion for preliminary relief—because the Chapin Town Ordinances vest discretion in the Mayor as to what matters appear on the Town Council agenda. The thrust of Plaintiffs' claim is that they are not being permitted to dictate the terms of the Town Council's agenda, and they want the Court to change that. Respectfully, Plaintiffs are simply wrong.

Chapin has a mayor-council form of government. Chapin Town Ord. § 2.101.²

Under this "strong mayor" system, Mayor Wilson is:

- Chapin's Chief Executive Officer, *id.* § 2.105;
- Chapin's Chief Administrative Officer, S.C. Code Ann. § 5-9-30 and Chapin Town Ord. § 2.402; and
- The presiding officer over all meetings of Council, S.C. Code Ann. § 5-9-30(3) and Chapin Town Ord. § 2.205.

As part of his authority regarding Council meetings, Ordinance § 2.206(b) provides as follows: "The agenda shall be approved by the Mayor, prior to distribution."

This "approval" authority is unambiguous—the Mayor must sign off on the agenda prior to its distribution to Council, and there is no requirement that the Mayor place items on the agenda that he believes do not merit Council's consideration. Plaintiffs

² Copies of all cited Chapin Town Ordinances are attached hereto as Exhibit A.

certainly have not identified any legal authorities that require “any item requested by any member of Council” to be included on a Council agenda, nor are the below-signed counsel aware of any such authorities.

In fact, case law is uniform that the authority to “approve,” such as that vested in Mayor Wilson by Ordinance § 2.206(b), includes the discretion to deny or reject. *See Paslay v. Brooks*, 198 S.C. 345, 354, 17 S.E.2d 865, 869 (1941) (“Undoubtedly, the power to approve a claim as the one before us carries with it the discretion to disapprove.”); *see also State ex rel. Pilkinton v. Bush*, 198 S.W.2d 1004, 1005 (Ark. 1947) (“The very act of approval, unless limited by the context of the statute providing therefor, imports the act of passing judgment, the use of discretion and a determination as a deduction therefrom.” (quoting *Fuller v. Bd. of Univ. & Sch. Lands*, 129 N.W. 1029, 1032 (N.D. 1911))); *People v. Riggs*, 87 P.3d 109, 114 (Colo. 2004) (“The term ‘approval’ itself implies knowledge and the exercise of discretion after knowledge.”); *Morse v. Curtis*, 200 S.E.2d 832, 835 (N.C. Ct. App. 1973) (“Indeed, Black’s Law Dictionary defines it: “the act of approval” imports the act of passing judgment, the use of discretion and determination as a deduction therefrom.” (quoting *Brice v. Robertson House Moving Wrecking & Salvage Co.*, 105 S.E.2d 439, 446 (N.C. 1958))).

Because Ordinance § 2.206(b) vests Mayor Wilson with discretion regarding what is and is not approved for the Town Council’s agenda—authority that is consistent with the strong-mayor form of government that Chapin has chosen—Plaintiffs’ first claim should fail. And because this is a discretionary power given to the Mayor, mandamus should be denied. *See Paslay*, 198 S.C. at 354, 17 S.E.2d at 869 (“It is universally held that in all matters requiring the exercise of official judgment, or resting on the sound

discretion of a person to whom a duty is confided by law, mandamus will not lie to control the exercise of that discretion.”); *State ex rel. Williams v. Heirs*, 51 S.C. 388, 392, 29 S.E. 89, 91 (1898) (“Because the power conferred upon the respondent to approve the claim gave him the right to exercise his discretion in the premises, and where an officer is clothed with discretionary powers mandamus is not the proper remedy.”) (emphasis supplied by *Williams* Court).³

II. Mayor Wilson properly hired Chapin’s Economic Development Director.

Plaintiffs’ second claim is that Mayor Wilson wrongly failed to get full approval from the Town Council prior to hiring and paying Karen Owens to be Chapin’s Director of Economic Development. This, too, should fail based on unambiguous Town Ordinances and the law governing the mayor-council form of government.

There is no dispute that the Town Council voted unanimously during its January 15, 2014 meeting to “hire an Economic Development/Administrative Assistant to the Mayor.” (Ex. B, Chapin Town Council Meeting Minutes, at 1 (Jan. 15, 2014).)⁴ Once the

³ In the Complaint, Plaintiffs allege, without any supporting authority, that this plain-language understanding of Ordinance § 2.206(b) “is unconstitutional under the First, Fourteenth and Fifteenth Amendments to the United States Constitution and the Constitution of the State of South Carolina.” (Compl. ¶ 10.) These amendments are irrelevant to this case. The First, Fourteenth, and Fifteenth Amendments to the United States Constitution all deal with individual civil rights designed to protect the citizenry from the government: the rights to free speech and free exercise of religion, due process and equal protection rights, and the right to the franchise. None have anything to do with how a municipal government sets the agenda for town business, and none can be enforced by Plaintiffs, who have brought suit in their official capacities. Likewise, the First Amendment to the South Carolina Constitution provides for the condemnation and draining of swampland, which is completely unrelated to this case. There is not a Fourteenth or Fifteenth Amendment to the South Carolina Constitution. In short, the Court should not credit the passing constitutional references in the Complaint.

⁴ Because these meeting minutes are public records, the Court may consider them when resolving this Motion. *See, e.g., Sec’y of State for Defence*, 484 F.3d at 705 (“In

Town Council created the position, the South Carolina Code vested Mayor Wilson with the authority to fill the position on his own.

Indeed, the mayor's hiring authority is a key distinguishing characteristic of the mayor-council form of government. *See* S.C. Code Ann. § 5-9-30(1) (giving the mayor the power and duty "to appoint . . . all municipal employees"); *id.* § 5-9-30(2) (vesting the mayor with the authority "to direct and supervise the administration of all departments, offices and agencies" unless otherwise indicated by law); *id.* § 5-9-40 ("All departments, offices and agencies under the direction and supervision of the mayor shall be administered by an officer appointed by and subject to the direction and supervision of the mayor."). Chapin's Ordinances reinforce this power. *See* Chapin Town Ord. § 2.403 (indicating that, with exceptions that are irrelevant here, "all officers and employees of the town shall be appointed by the Mayor"). Mayor Wilson's hiring of Ms. Owens is squarely within his authority.

Likewise, Plaintiffs' complaint that Mayor Wilson is paying Ms. Owens a salary without Council approval is an empty one. Town Ordinance § 8.103(a) gives the Mayor the authority to "transfer funds within and between departments" when necessary to fulfill the Council's goals. Under this system, Town Council sets the budget, but it has vested the Mayor with authority and discretion to move funds within the budget—as long as he does not exceed the budget—when circumstances change during a fiscal year. There are no allegations that Mayor Wilson exceeded the current fiscal year's budget when paying Ms. Owens's salary, nor could there be, as her salary was cobbled together

reviewing the dismissal of a complaint under Rule 12(b)(6), we may properly take judicial notice of matters of public record.").

from various items within the existing budget. Accordingly, the Court should dismiss Plaintiffs' second claim.

III. Plaintiffs lack standing to assert a contract claim on behalf of a third party.

Plaintiffs' third claim fails on its face because they are improperly attempting to allege a breach-of-contract claim on behalf of someone who is not a party to this litigation. They do not have standing to bring a contract claim on behalf of a third party. *See Park v. Safeco Ins. Co.*, 251 S.C. 410, 415, 162 S.E.2d 709, 711 (1968) (indicating that a litigant who is not a party to a contract lacks "primary standing" to assert a breach-of-contract claim). If the actual contracting party believes that Mayor Wilson or the Town of Chapin has breached an agreement, then he should bring suit himself. Until that time, though, this claim should be dismissed.

IV. Plaintiffs' request for attorneys' fees should fail because even if they become prevailing parties, all of Mayor Wilson's challenged conduct was reasonable.

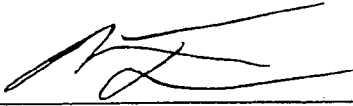
Plaintiffs' request for attorneys' fees should be denied on its face because fees are permitted under South Carolina Code § 15-77-300(A) only when the defendant official lacks justification for the challenged conduct. Here, as catalogued above, every action taken by Mayor Wilson has been consistent with the South Carolina Code, the Chapin Town Ordinances, or both. Accordingly, Plaintiffs have no basis for seeking attorneys' fees, and their claim should be dismissed at the outset of this case.

CONCLUSION

There is no basis in law or fact for any of the claims alleged in this case. Defendants respectfully submit that they should be dismissed, and that they be permitted to get back to the business of governing Chapin without the distraction of a political-strike suit lingering further.

Respectfully submitted,

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Attorneys for the Defendants

March 10, 2014
Columbia, South Carolina

Exhibit A

Chapin Town Ordinances Cited in Defendants' Memorandum

CHAPTER 2. ADMINISTRATION

Editor's Note. This chapter derives, as amended, from Section 2, Article 1 of the 1980 Chapin Code of Ordinances, entitled "GENERAL PROVISIONS", with additions.

ARTICLE I. IN GENERAL

2.101. FORM OF GOVERNMENT.

The form of government for The Town of Chapin shall be the Mayor-Council form.

(1976 SC Code §5-5-10(a), §5-9-10 et seq.)(Appendix C)(CQ 3)

2.102. COUNCIL. COMPOSITION.

The Council shall be composed of a Mayor and four (4) members.

2.103. SAME. TERMS.

The term of office for Mayor and for the office of Council shall be two (2) years and until their successors shall be duly elected and have qualified.

(CQ 3)

2.104. SAME. ELIGIBILITY.

To be eligible for the office of Mayor or Council member, a candidate shall be a qualified elector of the municipality, as provided by the Constitution of this state and statutes thereof.

* 2.105. MAYOR AS CHIEF EXECUTIVE OFFICER.

The Mayor shall serve as the Chief Executive Officer and shall be vested with all authority granted by §5-9-40 of the 1976 South Carolina Code, as amended.

(Editor's Note. See also §2.402, this code.)

~~MEMO~~

~~Town of Chapin Council~~

Re: Proposed amendments to Ordinances designating powers of Mayor and Council
2.105 and 2.122

I. An Ordinance designating source of authority of Mayor.

Section 2.105. Mayor as Chief Executive Officer.

The Mayor shall serve as the Chief Executive Officer and shall be vested with all authority granted by Section 5-9-30 (not 40) South Carolina Code of Laws, 1976 as amended, and as further provided in Chapter 2 of the Chapin Town Code of Ordinances of 1997. All authority not specifically authorized therein shall be reserved to Mayor and council pursuant to Section 2.122 (below).

II. An Ordinance designating Authority of Mayor and Council.

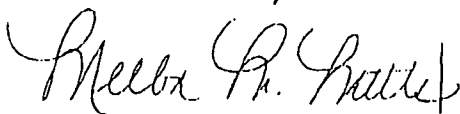
2.122 The Mayor and Council shall execute appropriate authority as provided in Section 5-7-30 et seq. and Section 5-9-40 South Carolina Code of Laws, 1976 as amended, and as further provided in Chapter 2 of the Chapin Town Code of Ordinances of 1997.

a. Such authority shall include the commencement and/or settlement of litigation and all other legal matters, including matters involving the SC Department of Health and Environmental Control and other administrative agencies.

b. Such authority shall include establishing administrative protocols for all offices, departments, and sections of the Town as established pursuant to Section 2.401 including Police and Utility Departments.

Section 2: All ordinances in conflict with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 3: This Ordinance shall become effective upon final adoption.



1st reading Jan. 15, 2001
2nd reading Jan 15, 2001

ARTICLE II. MEETINGS OF COUNCIL

2.201. MEETINGS. REGULAR. PLACE.

a. The regular meetings of Council shall be held at the Town Hall on the first Tuesday of each month, at 7:30 p. m., unless otherwise set by the Mayor. If so, a reasonable notice shall be given to each available Council member and a notice posted on the town's bulletin board at Town Hall at least twenty-four (24) hours prior to the meeting.

b. In the event an official town holiday falls on the first Tuesday, the regular meeting will be held on the following Tuesday.

2.202. SAME. SPECIAL.

Special meetings may be held:

1. whenever called by the Mayor in cases of emergency, or;
2. when, in the judgment of the Mayor, the good of the municipality requires it, or;
3. by a majority of the members of Council.

2.203. SAME. NOTICE OF CHANGE.

Notice of all changed meetings and special meetings shall be given to all available members and the news media by the Clerk/Treasurer.

2.204. SAME. OPEN TO PUBLIC.

All Council meetings shall be open to the public, as required by the Freedom of Information Act.

2.205. SAME. MAYOR TO PRESIDE.

The Mayor shall preside at all Council meetings. In the absence of both the Mayor and Mayor Pro tempore the duties of the Mayor shall be performed by such member of the Council as the Council may designate.

(1976 SC Code §5-7-190 §5-7-250, §30-4-80)(Ord. #18 6-15-92)(CQ 6,7)

2.206. AGENDA.

a. Matters to be considered by the Mayor and Council at a regular meeting shall be placed on a written agenda and publicly posted at least twenty-four (24) hours prior to the meeting. Matters not on the agenda may be considered upon request of a member unless at least two (2) members object.

(1976 SC Code §30-4-80)(CQ 8)

b. The agenda shall be approved by the Mayor, prior to distribution. It shall be prepared under the supervision of the Clerk/Treasurer.

2.207. MINUTES OF COUNCIL MEETINGS.

a. The Clerk/Treasurer shall attend all meetings of the Council and keep the minutes of all public meetings of the Council which shall be a matter of permanent public record. At each regular Council meeting, the minutes of the previous meeting or meetings shall be presented for approval. Minutes shall not be considered the official record of a meeting until approved by the Mayor and Council.

b. Any member of Council desiring to express a position in the minutes on a matter voted upon by Council may do so by presenting the position in writing to Council not later than the next regular meeting.

c. No person shall make any change in the minutes or remove same from Town Hall, without prior approval of the Mayor and Council.

(1976 SC Code §30-4-90)

2.208. QUORUM.

a. A majority of the Council shall constitute a quorum for the conduct of business at any meeting.

(1976 SC Code §5-7-160)

2.209. RULES OF ORDER. PARLIAMENTARIAN.

a. Except as otherwise provided by state law or this code, all proceedings of Council shall be governed by Robert's Rules of Order.

b. The Municipal Attorney shall act as parliamentarian. In his absence, all questions of order shall be decided by the Mayor or, in his absence, the presiding officer, without debate, subject to an appeal to the Council.

ORDINANCE NO.: 7/203

AN ORDINANCE TO CHANGE THE REQUIREMENTS FOR
OBJECTION TO ADDITION TO AGENDA BY COUNCIL MEMBER

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF CHAPIN,
SOUTH CAROLINA:

Section 1. Subsection a. of Section 2.206 of the Chapin Town Code is hereby amended by deleting the words "at least two (2) members object" and inserting in lieu thereof the words "a majority of council objects", so that as amended a majority vote is required to block an item from the agenda.

Section 2. All ordinances in conflict with this ordinance are hereby repealed to the extent of such inconsistency.

Section 3. This Ordinance shall become effective upon its final adoption.

First Reading May 2, 2002

Second Reading June 6, 2002

[Signature]
Mayor

ATTEST: [Signature]
Clerk/Treasurer

ARTICLE IV. OFFICERS AND DEPARTMENTS

2.401. AUTHORITY TO ESTABLISH OFFICES AND DEPARTMENTS.

The Mayor and Council may create and establish such town offices, departments and sections as they may deem proper for the orderly and efficient government of the town.

(1976 SC Code §5-9-40)

2.402. MAYOR TO BE CHIEF ADMINISTRATIVE OFFICER.

The Mayor shall be the chief administrative officer of the town.

(1976 SC Code §5-9-30)

(Editor's Note. See also §2.105, this code.)

2.403. APPOINTMENT. SUSPENSION.

Except as otherwise provided by this code, all officers and employees of the town shall be appointed by the Mayor. They shall be subject to suspension by the Mayor, who shall report any suspension of an officer or employee at the next meeting of the Council.

(1976 SC Code §5-9-30)(Article IV, this chapter.)
(Appendix C, this code.)

2.404. SAME. COMPENSATION.

The compensation, as appropriate, of all appointed officers and employees of the town shall be fixed by the Mayor and Council and incorporated in the annual budget.

2.405. RESISTING OR INTERFERING WITH OFFICIALS OR EMPLOYEES.

It shall be unlawful for any person to resist or interfere with any municipal officer or employee in the discharge of his official duties.

2.406. ENFORCEMENT OF ORDINANCES, LAWS, ETC.

All officers and employees shall enforce obedience to all state statutes, provisions of this Code or any resolution, rules and regulations or orders issued thereunder by lawful authority by instituting such procedures as may be necessary to such enforcement.

2.407. RIGHT OF ENTRY.

Subject to lawful entry requirements, whenever any officer or employee is required to enter any premises or vehicle as authorized by statute, the provisions of this Code or any ordinance, resolution, rule, regulation or order issued thereunder, he shall have the right to enter any such premises or vehicle at any reasonable time.

CHAPTER 8. FINANCE, BUDGET AND TAXATION

ARTICLE I. BUDGET AND FINANCE

Editor's Note. This article derives, as amended, from Section 3, Article I, entitled "ADOPTION OF BUDGET AND PROPERTY TAX LEVY," of the 1980 Chapin Code of Ordinances, and pertinent additions by the editor, consistent with practices currently followed by other towns in this state.

8.101. FISCAL YEAR.

The fiscal year shall begin on the first day of January of each year and shall end on the last day of the following December.

(CQ 33)

8.102. BUDGET AND ACCOUNTING YEAR.

The fiscal year shall constitute the budget and accounting year.

8.103. ANNUAL BUDGET. CAPITAL PROJECTS. SUMMARY. TAX RATE.
CLERK TO NOTIFY COUNTY.

a. Before the beginning of the budget year, the Mayor shall submit a proposed budget to the Council for the ensuing year. When adopted the Mayor may transfer funds within and between departments as necessary to achieve the goals of the budget.

(1976 SC Code §5-9-30.5)(CQ 34)

b. For such purpose, the Mayor may submit to the Council estimates of expenditures and such other supporting data as may be needed together with estimates of all capital projects pending or which he believes should be undertaken within the budget year and within the next five (5) succeeding years.

(1976 SC Code §5-9-30)

c. The budget summary shall be in sufficient detail and summarized as to income and expenditures in such a manner as to present to Council and to the taxpayers a simple and clear summary of the budget.

d. The annual budget ordinance shall state the tax rate which shall be sufficient to produce revenue necessary to fund the general operations and debt service requirements of the municipality.

e. It shall be the duty of the Clerk/Treasurer to notify the appropriate county officials of any change in the tax millage rates.

Exhibit B

Chapin Town Council Meeting Minutes (Jan. 15, 2014)

CHAPIN TOWN COUNCIL
SPECIAL MEETING
JANUARY 15, 2014 7:00
MINUTES

1. Mayor Skip Wilson called the special meeting of the Town Council to order at 7:05. This Meeting was called to focus on working on the "Penny Sales Tax Projects". All members were present which included Vivian Atkins, Gregg White, Kay Hollis, Robbie Frick and Mayor Skip Wilson. The Freedom of the Press Act was complied with and Mayor Skip Wilson began the meeting with prayer.

2. Vivian Atkins moved to approve the minutes from the January 7th meeting. There was some confusion if the minutes being approved were the Jan 7th or the Dec. 3rd minutes which were revised. Council Member Atkins thought the Dec. 3rd minutes were still incorrect as Lealand Teal was not present. Clerk Thompson advised her file cabinet which had been locked in the move got a new key and Leland Teal was indeed present and the Dec. 3rd min. are now correct. Mayor Wilson advised that on the Jan. 7th minutes the deadline date for the "Penny Sales Tax" submissions is Jan. 30th and not the 31st. Also Mayor Wilson wished to change the wording in Item 12 concerning the Clark St. Recommendation from the Planning Commission. He advised that ""It was the Planning Commissions decision to advise Council to go ahead with the project" be replaced with, "the planning commission advised the project be presented to the council." Clerk Thompson agreed to make the changes. With these changes Mayor Wilson called for a vote which was affirmed by all and all minutes were declared accepted.

3. Mayor Wilson made the motion to go into Executive Session. This was seconded by Gregg White and approval was given by majority, Mayor Wilson, Gregg White, and Vivian Atkins. The Council was in executive session from 7:10 to 8:05. Prior to adjournment of Executive Session, Councilman Robbie Frick walked out of the meeting.

With the Town Clerk out of the room, Mayor Wilson advised the people in attendance that the Town Council discussed a couple of topics, and felt it was in the best interest of the community to go forward and hire an interim Council to represent the City. Mayor Wilson called for a motion from Council. Vivian Atkins moved to hire an interim attorney to represent the City. This was seconded by Gregg White and approved by all.

Mayor Wilson also advised that the Council Members agreed that to go forward with the growth of the community, a person be hired for communication and economic development. This person would be a special assistant to the Mayor, and would do many of the duties of the Mayor but would also help with Council and Town Council functions. This position would be advertised in the paper or online. The applications will be screened, reviewed and then the decision would be made. Mayor Wilson called for a motion. The motion to hire an Economic Development/Administrative Assistant to the Mayor was made by Gregg White. The entire Council approved.

Mayor Wilson advised it would also be in the best interest of the Town to have public

meetings and workshops that would be open to the public for education on ordinances etc. This would be provided by the Municipal Association. There was some confusion as to whether these sessions would be open to the public and Mayor Wilson advised they would. Council Member Atkins questioned if for the workshops they could go into Executive Session for a workshop. Mayor Wilson advised only if it involves legal, personal or contract issues pertinent to the Town. Vivian moved to schedule workshops with the Municipal Associations. This was seconded by Kay Hollis and approved by all.

Clerk Thompson returned to the room. The above proceedings are from reviewing the recording.

4. Planning Commission Nominations were next on the agenda. Mayor Wilson had provided information on Gregg Ross and asked for other nominations. Kay Hollis nominated Wendy Svoboda. Mayor Wilson questioned if we had a resume or anything else that stated what her qualification would be. Vivian Atkins seconded the nomination. Mayor Wilson said he is just asking for information. Wendy was in upper management and did restructuring of markets. Mayor Wilson asked for specific tasks. Council member Gregg White questioned if we had advertised this position. Mayor Wilson advised we did not, however we are being respectful of nominations from the floor. Mayor Wilson added this position requires experience, exposure knowledge of ordinances, and Commercial Real Estate. Ms. Svoboda questioned if current members of the Planning Commission have these qualifications. Mayor Wilson advised that just because we do not have these currently is no reason not to start. Ms. Svoboda advised she is also president of the Homeowners association with 155 members and lives in Town. Mayor Wilson stated it is critical that this person know what the plan is for the Town. Ms. Svoboda advised she knows the Town Plans better than most. Mayor Wilson advised all present of Gregg Ross's extensive knowledge of Real Estate and his work with developers. There was more discussion on the matter and Mayor Wilson advised, "if the best qualified was not chosen then we are not doing our job." Ms. Svoboda advised she sees Mr. Ross's profession as a conflict of interest. There was more discussion. Councilman White advised he just found out about Wendy today and wants more time. Mayor Wilson advised Council "we will table it", after which Mayor was advised he cannot table this with a motion and second on the floor. Motion had been made by Councilman Atkins and seconded by Councilman Hollis. Councilman White said he would like to consider more people and Mayor Wilson agreed to defer the vote. Mayor Wilson was advised that he could not do this, he had to call for the vote. The vote was three to two with Robbie Frick, Vivian Atkins and Kay Hollis in favor of appointing Ms. Svoboda and Gregg White and Mayor Wilson opposed. Councilman White advised there may be more members of the Planning Commission to be leaving and he hopes more thought would go into the replacement decisions.

5. Penny for Progress was next on the agenda. Each Council member was given a list of proposed projects, and Mayor Wilson asked each member of Council to rank the projects and take on a project to process the application. Mayor Wilson agreed to take on Hwy. 48. Council member Atkins agreed to take on the Old Lex. Ave. Sidewalks project. Council woman Hollis agreed to take on the Martin Chapin Parkway. Clerk Thompson questioned the 9.04 mile pathway and the 2.6 mile parkway under Martin Chapin Parkway. Mayor Wilson advised this was bike path info. and not Martin Chapin Parkway. Martin Chapin Parkway did not have an amount listed. Robbie Frick agree to take the bike paths. Roads to be paved was taken by Gregg White. Some of the sewer projects were stated as pretty much done. The Northern Bypass was

questioned by Council member Atkins as it is not in town. Mayor Wilson advised we still had to submit this and he would handle this project. Council Member White agreed to take on the Lex Ave. and Chapin Road Intersection. Members were again asked to rank the projects right now. Columbia Ave. was #1. Council man White requested more time to rank the projects. Mayor Wilson agreed the members could rank the projects and email their rankings to him by Friday. Clerk Thompson requested that since she is keeper of the records that she needs to receive copies of all information given Council in order to properly archive the records. Mayor Wilson answered, "absolutely".

6. Clark St. Development project update. Mayor Wilson advised that they are not taking a vote tonight, but just getting information to go forward. Mr. Roberts was present to request that Council put this project on the agenda for a public hearing and get Public input for the redirection of Clark Street. Mayor Wilson questioned if it was all properly zoned. Mr. Roberts advised all but one parcel. Mayor Wilson advised this would have to go through Planning Commission to be rezoned before this can go forward. Zoning Administrator Thompson explained that when the parcels were joined together as one parcel it would be assigned a zoning on the entire parcel. Council Member White advised since these parcels were divided by a road they could not be joined and had to be treated separately until the Planning Commission could agree to join the parcels. Mr. Roberts explained that the road would be redirected. Both Mayor Wilson and Council member White advised this is not a road but a pathway. Mr. Roberts stated it is a road and would like to have a dedicated Right of Way to the Town and eventually deed the Road to the Town and be granted a perpetual easement back to the developer once the project was complete. (Council He advised all the legalities would be worked out to the satisfaction of the Town, but at this point he is just seeking a Public Hearing for input from the public. Procedure for this was discussed, and would be according to DOT standards. Kay Hollis moved to place the Clark St request to be placed on the agenda for a public hearing. Councilman White seconded the motion just to engage in discussion. Council member White advised he wanted more information. He wants a traffic count, he is not sure what will be happening and not sure what business would be there. Council member White advised that due diligence has not been done and does not like the idea of closing a road. Mr. Roberts advised more information will come in detail as the project goes forward. All information to the point of progress has been given and more will come after the public hearings. The motion was amended to establish a Public Hearing at the next Council Meeting Feb. 4th. This was seconded by Vivian Atkins and approved by all. Council Member White requested more information will be necessary. Council man White advised he wanted growth that would benefit the Town.

7. Public Comment:

Wendy Orr - no comment

Kay Gorden - not a resident but a reporter, questioned if the position offered tonight was the same as offered before. Title will be Director of Communications and Economic Development and Assistant to the Mayor.

Lil Mood - not in Town Limits but on 20/16 committee.

Lil Mood questioned if the Theater is the culture center they mentioned, as 20/16 has been

working on the Theater. Mayor Wilson advised the Theater is not part of this as it is not our property. The Cultural Center would be on the Town Hall Property. Lil also is interested in the bike paths. Mayor Wilson advised the projects would be ranked by the commission which is a different ranking then the one requested by the Mayor. Ms. Mood suggested the purchase price be included in a project for the Theater and it be included in the list of projects. Mayor Wilson advised the School is not interested in selling the property.

Bobby Hale - watched traffic on Clark St. for an hour and counted 12 cars, 4 of them the telephone company vehicles.

Zoning Administrator Adrienne Thompson asked to make a statement. Ms. Thompson advised these are all great projects for Chapin, but not all of them will make the list. We are talking Community development and what the Town needs. Even if some do make the list if the referendum does not pass, none of these projects will be done. However we have a \$30 million dollar project proposed with us controlling the details at someone else's expense and every one is saying no no don't let it go ahead - stall stall stall - This project is good Economic Development and that is what this town needs. Council Member White asked Clerk Thompson if this was fact or opinion and Clerk Thompson replied fact. Mayor Wilson and Councilman White state their opinion that Clerk Thompson's remarks are her opinion.

Mayor Wilson adjourned this meeting at 8:50.

Sincerely,


Adrienne Thompson
Clerk/Treasurer/Zoning Administrator

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Vivian Atkins, Robert P. Frick, and Kay)
Hollis, in their official capacities as)
members of the Town Council of the)
Town of Chapin,)

Plaintiffs,)

vs.)

James R. Wilson, Jr., in his official)
capacity as Mayor of the Town of)
Chapin; Gregg White, in his official)
capacity as a member of the Town)
Council of the Town of Chapin; and the)
Town of Chapin,)

Defendants.)

REPLY MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS
AND IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY RELIEF

Defendants respectfully submit this Reply Memorandum to address a handful of points that were raised in Plaintiffs' "Return to Motion to Dismiss." Though that document indicates it was filed on the morning of March 7, 2014, Plaintiffs never provided a copy of it to Defendants until after the March 10, 2014 hearing on this matter had adjourned. Accordingly, Defendants have identified three issues discussed in that brief that warrant a reply.

• Timing of Dismissal Hearing: Though they did not object to the Court hearing arguments on Defendant's Motion to Dismiss during the March 10th hearing, Plaintiffs' return brief states that Rule 6(d), SCRCP, did not permit the Court to hear Defendants' motion. This is incorrect. Rule 6(d) specifically authorizes trial courts to truncate the normal ten-day notice period, which the Court did here by email from Chambers to all counsel on March 6th. Accordingly, Plaintiffs' objection, which was not

preserved at the actual hearing, should fail. *See Jackson v. Speed*, 326 S.C. 289, 310, 486 S.E.2d 750, 760 (1997) (rejecting an appellant's objection to a trial court hearing a motion with less notice than typically required under Rule 6 because the trial court had decided to hold the hearing in less than ten days after service of the motion).¹

• Mayor's Authority Over Agenda: In their return brief, Plaintiffs repeatedly suggest that allowing the Mayor to exercise his authority to approve the Town Council's agenda, codified in Chapin Town Ordinance § 2-206(b), would lead to an "absurd" result that is "wholly at odds with the concept of representative democracy." (Pls.' Return Br. at 4.) Missing from their brief, from their Complaint, and from their oral argument to the Court is any authority to support such a bold suggestion. This, of course, is because there is no such authority.

Rules of procedure dictate virtually everything government does. There has to be some organization to how government conducts its business, or a governmental institution would entirely break down. Imagine the chaos that would follow if either chamber of the General Assembly were required to take up "any matter" suggested by "any member" without any officer having the discretion to rein in or control the chamber's business. Thus, by its very nature, the issue presented in Plaintiffs' first claim is necessarily a political question that the Court should abstain from considering.

¹ Plaintiffs argue in their return brief that Defendants did not properly serve Plaintiffs with their motion to dismiss because the below-signed counsel emailed it to Plaintiffs' counsel. This, too, is incorrect. The below-signed counsel did email a copy of Defendants' motion to counsel for Plaintiffs as a courtesy, but—as the certificate of service accompanying Defendants' motion unambiguously states—it was properly served on Plaintiffs via United States mail. The Court should not credit Plaintiffs' misleading argument to the contrary.

In Chapin, the Town avoids this potential for disruption through Ordinance § 2.206(b), which vests discretion to control Town Council's agenda exclusively with the Mayor. Lost in all of Plaintiffs' filings and rhetoric are two simple facts that should be dispositive here. First, by passing Ordinance § 2.206(b) many years ago, Chapin Town Council gave the Mayor the very authority that Plaintiffs now argue is improper.

Second, the Mayor was democratically elected by the citizens of Chapin to be the Town's Chief Executive Officer, the Town's Chief Administrative Officer, and the presiding officer over all meetings of Town Council. If the voters do not care for the way he conducts the Town's business, they will have an opportunity to express themselves at the ballot box when he is up for reelection. Until that time, though, he is vested with certain responsibilities and discretionary authority under the South Carolina Code's framework for a strong-mayor municipality and the Chapin Town Ordinances. An elected official exercising his lawful authority is precisely how representative democracy works.

There is nothing ambiguous about the Mayor's "approval" authority under Ordinance § 2.206(b)—indeed, beyond simply saying so, Plaintiffs have not identified anything at all to indicate any type of ambiguity or inherent conflict in the ordinance—nor have Plaintiffs identified any authority whatsoever that would support a finding that the Mayor's discretionary power is in any way unconstitutional.² Accordingly, Defendants respectfully move for dismissal of this cause of action.

² At times in oral argument, Plaintiffs suggested that their own First Amendment rights were somehow impacted by the Mayor's "approval" authority under Ordinance § 2.206(b). But Plaintiffs have brought this suit in their official capacity as councilmembers, and the Supreme Court has been clear that the government itself does not have any First Amendment rights. See *Pleasant Grove City v. Summum*, 555 U.S. 460, 467 (2009) ("The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech."). The Court should reject this argument.

• **Notice of Council's Personnel Decision:** Finally, in their return brief, Plaintiffs argue that Town Council's unanimous decision to create the position of Director of Economic Development should be stricken because "the agenda for the January 15, 2014 meeting does not have an item giving the public notice that this matter was to be considered." (Pls.' Return Br. at 5.) Again, this is incorrect.

For one, this belated argument is not actually part of any of Plaintiffs' claims in this case. Plaintiffs should not be permitted to broaden the Complaint's scope by virtue of a sentence in an opposition brief.

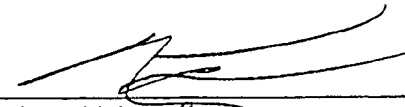
Moreover, Plaintiffs' position is belied by public records, which the Court may consider when resolving a motion to dismiss. *Sec'y of State for Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007). Attached is a copy of the agenda for the January 15, 2014 meeting. Item 3 states that Council would take up the following: "Executive Session: Administration/Personnel Issues." Under South Carolina Code § 30-4-70(a)(1), a public body is authorized to hold an executive session to discuss employment and personnel matters. Accordingly, Plaintiffs are incorrect in their argument that the Council's unanimous personnel decision was improper because it was not on the agenda. This claim, too, should be dismissed.

CONCLUSION

For the reasons discussed above, as well as those discussed in their opening brief and at oral argument, Defendants respectfully submit that this case should be dismissed, and they should be permitted to undertake the responsibilities for which the citizenry elected them without a cloud of litigation hanging over the Town of Chapin.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 

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Attorneys for the Defendants

March 14, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS FOR THE
ELEVENTH JUDICIAL CIRCUIT

Vivian Atkins,)
Robert P. Frick, and)
Kay Hollis,)
in their official capacity as)
members of the Town Council)
of the Town of Chapin,)

Plaintiffs,)

vs.)

James R. Wilson, Jr. in his)
official capacity as Mayor of the)
Town of Chapin, Gregg White)
in his official capacity as a)
member of the Town Council of)
the Town of Chapin and the)
Town of Chapin,)

Defendants.)

ADDITIONAL
RETURN TO MOTION TO DISMISS
AND REPLY MEMORANDUM
2014-CP-32-0697

The Plaintiffs respond to the Reply Memorandum as follows:

TIMING OF DISMISSAL HEARING:

The Plaintiffs concede that the Court had the right but not the duty to hear the Defendants' Motion on an expedited basis.

MAYOR'S AUTHORITY OVER THE AGENDA:

The Defendants state that there is no authority cited for the Plaintiffs' position that the Mayor's position is at odds with representative democracy. The Plaintiffs have cited the Constitutions of both the United States and the State of South Carolina. Plaintiffs doubt that any presiding officer has ever taken such an extreme position. The position of the Mayor of Chapin is simply not analogous to the Speaker of a representative body. Even so, if the majority of the U.S. House of Representatives signs a "discharge petition" the Speaker must bring the matter to the floor for vote. It is clear that the Plaintiffs represent a majority of Council and their will which is being flouted by the minority.

NOTICE OF COUNCIL'S PERSONNEL DECISION:

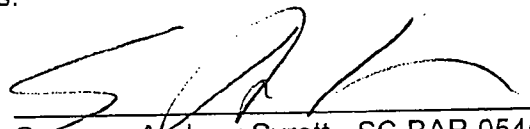
The Agenda for the January 15 meeting refers to an Executive Session for "personnel matters." This does not give the public adequate notice that the creation of a new position was to be discussed. Moreover, action taken in executive session must be confirmed in open session. The position may have been created but it was not funded. The procedure for hiring someone was not followed.

CHAPIN ORDINANCES

Attached hereto are additional relevant Chapin Ordinances which are relevant to this action. §2.209 was cited by the Defendants. Defendants did not include 2.212.

CONCLUSION

The action is meritorious and presents issues which the Court can and should determine. The temporary relief sought in Plaintiff's motion should be granted. The Court should deny the Defendants' Motion to Dismiss.



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March 18, 2014

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT
2014 MAR 31 P 2:03

Vivian Atkins,
Robert P. Frick, and
Kay Hollis,
in their official capacity as
members of the Town Council
of the Town of Chapin,

Plaintiffs,

vs.

James R. Wilson, Jr. in his
official capacity as Mayor of the
Town of Chapin, Gregg White
in his official capacity as a
member of the Town Council of
the Town of Chapin and the
Town of Chapin,

Defendants.)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

COPY

MOTION TO RECONSIDER

2014-CP-32-0697

TO TODD CARROLL, ATTORNEY FOR THE DEFENDANTS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE THAT the undersigned attorney, appearing on behalf of the Plaintiffs, will move before the Honorable G. Thomas Cooper, Judge of the Court of Common Pleas for the Eleventh Judicial Circuit, at such place as the Court may direct, on the tenth day after service hereof, at 10:00 A.M., or as soon thereafter as the counsel may be heard, for the following:

1. Reconsideration of the Court's Order dated March 19, 2014, a copy of which is attached hereto.
2. Reversal of the Court's Order dismissing the action.
3. Issuance of a Writ of Mandamus in response to the Plaintiffs' Motion for Injunction.
4. Reinstatement of the First and Fourth Causes of Action.

This motion will be based on the following grounds:

It is unclear of the Court's Order is a Dismissal under Rule 12(b)(6) or if the Court

converted the Motion to Dismiss to a Motion for Summary Judgment pursuant to Rule 56

In considering a motion to dismiss pursuant to Rule 12(b)(6), the Court must consider all of the Plaintiffs' allegation in a light most favorable to the Plaintiff. The Court should not make any findings of fact and should confine its consideration to the pleadings.

In its Order, the Court made a finding on Page 6, that "there is little, if any, evidence in the record that Plaintiffs invoked this section of Ordinance 2.206." This finding is not appropriate in considering a Motion under Rule 12(b)(6).

In dismissing the action, the Court stated as follows:

However, should Mayor Wilson choose not to place a matter on the agenda as requested by other Councilmembers, Ordinance 2.206 still provides that "matters not on the agenda may be considered upon request of a member unless [a majority of the Council] object.

It is a given that the remedy cited by the Court would only be necessary if a Councilmember, the Clerk (§2.206b) or a citizen (§2.212) had requested an item to be placed on the agenda prior to its preparation and the Mayor has refused.

The Town has adopted Robert's Rules of Order (§2.209) and an Ordinance sets forth the Order of Business (§2.211) at a meeting.

The Mayor is the presiding officer at the meeting (§2.205).

Assuming that the Mayor is opposed to the item to be presented, the Mayor, as presiding officer, will simply refuse to recognize the Councilmember to present the motion. The Mayor will also simply omit the calling of new business or conduct that portion of the meeting in such a way as to prevent the motion from being presented.

Counsel for the Plaintiffs have already asked the Mayor to provide the opportunity provided in the Order. The response is evasive at best.

Assuming that the Mayor does allow a matter to be raised at the meeting, the Freedom of Information Act, as interpreted by the Court of Appeals in Lambries v. Saluda County Council, 398 S.C. 501, 728 S.E.2d 488 (Ct. App. 2012), would bar any consideration of any matter not on the agenda:

The remaining question is whether a published agenda for a regularly scheduled meeting can be amended during the meeting without violating FOIA. This is a close question, because no provision appears to prohibit

such action. However, to allow an amendment of the agenda regarding substantive public matters undercuts the purpose of the notice requirement in section 30-4-80. A narrow construction of FOIA may support the position that so long as regularly scheduled meetings are open to the public, they are conducted in compliance with FOIA. However, such a construction would be inconsonant with the agenda notice requirement for regularly scheduled meetings and would go against the instruction that FOIA is to be liberally construed...

We recognize our decision may be inconvenient in some instances, but the purpose of FOIA is best served by prohibiting public bodies governed by FOIA from amending their agendas during meetings.

The procedure suggested by the Court, although apparently provided in the Town Ordinance, would violate FOIA. Town Ordinances in conflict with State Statutes are invalid.

Perhaps, however, the Court was suggested that the motion (if entertained) would provide for the matter to be placed on the agenda for the NEXT meeting. FOIA would require that the item be placed on the agenda. It is ludicrous to conclude that the Mayor, having already prevented consideration on several occasions, would suddenly agree to place the item on the next agenda. If not placed on the agenda at the subsequent meeting, FOIA would again prevent consideration.

The law should never require someone to undertake a pointless exercise:

"Whether administrative remedies must be exhausted is a matter within the trial judge's sound discretion and his decision will not be disturbed on appeal absent an abuse thereof." *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 582-83 (1994). "The general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule." *Id.* at 208, 442 S.E.2d at 583. "A commonly recognized exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of administrative remedies would be a vain or futile act. *Brown v. James*, 389 S.C. 41, 54, 697 S.E.2d 604, 611 (Ct.App.2010). *Storm M.H. V. Bd. Of Trustees*, 400 S.C. 478, 735 S.E.2d 492 (2012)

If the Court reinstates the First Cause of Action, the Plaintiffs believe that if they succeed in the prosecution of the First Cause of Action, they can obtain relief through the political process on the Second and Third Causes of Action. The Plaintiffs do not, however, concede that dismissal of the Second and Third Causes of Action is appropriate.

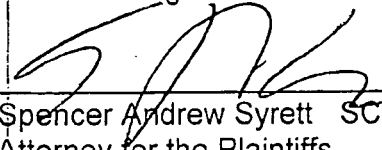
They are the majority of Council. They have a duty to see that the laws and ordinances of the Town are faithfully executed. Section 2.406. They are being prevented from doing so by the Mayor's intransigence.

Section 2.404 provides that "compensation of ... employees of the Town shall be fixed by the Mayor and Council and incorporated in the annual budget." Although Council created the position that Ms. Owens now apparently occupies, there is nothing in the minutes and other parts of the record that shows that the compensation was incorporated in the budget. If the budget process is to have any validity, the Town has to have no ability to spend budgeted funds on non-budgeted items.

It should also be noted that on page 5 of the Order, the Court cites the prior version of 2.206 (2 members objecting bars consideration) but correctly cites the provision on Page 6 (item to be considered unless a majority object).

If the Court reinstates the First Cause of Action or Second Cause of Action, then it follows that the Court should also reinstate the Fourth Cause of Action.

The undersigned certifies that to the extent an effort is required to reach an agreement on this Motion, that effort has been made and no agreement has been reached.



Spencer Andrew Syrett SC BAR 05459
Attorney for the Plaintiffs
712 Richland Street, Suite E
P.O. Box 7403
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803-765-2110
FAX ONLY 803-765-995
syrettlaw@sc.rr.com

March 31, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Vivian Atkins, Robert P. Frick, and Kay Hollis, in their official capacities as members of the Town Council of the Town of Chapin,	)	Civil Action No. 2014-CP-32-00697
	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>MOTION TO ENFORCE ORDER AND TO ENJOIN CONTRARY CONDUCT</u>
	)	
James R. Wilson, Jr., in his official capacity as Mayor of the Town of Chapin; Gregg White, in his official capacity as a member of the Town Council of the Town of Chapin; and the Town of Chapin,	)	
	)	
	)	
Defendants.	)	

Defendants come before the Court and respectfully move for an order enforcing the Court's Order of March 18, 2014, that dismissed this case and upheld the Mayor's unambiguous authority to approve or disapprove items on the Town Council's agenda. In support of this Motion, Defendants state as follows:

1. In its March 18, 2014 Order, the Court interpreted Chapin Town Ordinance § 2.206(b) as follows:

As part of his authority regarding Council meetings, Ordinance § 2.206(b) provides as follows: "The agenda shall be approved by the Mayor, prior to distribution." This "approval" authority is unambiguous—the Mayor must sign off on the agenda prior to its distribution to Council, and there is no requirement that the Mayor place items on the agenda that he believes do not merit Council's consideration.

(Order Denying Pls.' Mot. for Injunctive Relief and Granting Defs.' Mot. to Dismiss at 3-4 (Mar. 18, 2014) (emphasis added).) In the Court's view, "Ordinance § 2.206(b)

grants Mayor Wilson the authority and discretion to approve and, inherently, to deny any item requested to be on the agenda for a Council meeting.” (*Id.* at 6.)

2. Despite the Court’s ruling on this issue, Plaintiffs apparently directed the Chapin Town Clerk to notice a “special” meeting with an agenda that was never presented to Mayor Wilson for his review and approval under Ordinance § 2.206(b). The meeting is noticed for Thursday, April 10, 2014, at 7:00 pm. A copy of the notice and agenda are attached as Exhibit A.

3. Because Plaintiffs are disregarding the Court’s March 18th Order with respect to the Mayor’s authority to approve or reject agenda items under Ordinance § 2.206(b), Defendants move for an order enforcing the Court’s prior ruling and enjoining Plaintiffs from taking any action contrary to that ruling, including going forward with the improperly-noticed meeting described in Exhibit A.

4. Because the improperly-noticed meeting is scheduled for April 10th, Defendants respectfully request that the Court shorten the notice for a hearing under Rule 6(d), SCRCP.

5. The below-signed counsel corresponded with counsel for Plaintiffs prior to filing this Motion in a good-faith effort to seek a resolution without further involvement of the Court. However, Plaintiffs indicate that they believe they are not bound by the Court’s prior ruling if they designate a meeting to be a “special” meeting, though nothing in the Chapin Town Ordinances exempts any meeting from the Mayor’s authority previously addressed by the Court’s March 18th Order. A copy of that correspondence is attached as Exhibit B. Copies of Ordinance § 2.202, which indicates

when a "special" meeting may be noticed, and Ordinance § 2.206(b), which prescribes the Mayor's authority to approve meeting agendas, are attached as Exhibit C.

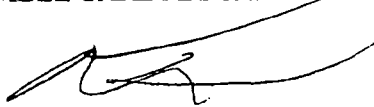
6. Alternatively, Plaintiffs' effort to notice a "special" meeting without first giving the public notice of that decision-making process constitutes a violation of the South Carolina Freedom of Information Act. Any communications Plaintiffs exchanged—whether in person, telephonic, or over email—discussing whether to issue the notice and agenda attached as Exhibit A would constitute a "meeting," as the term is statutorily defined in South Carolina Code § 30-4-20(d). No notice was provided for such a meeting of Plaintiffs, nor are Defendants aware of any minutes associated with such a meeting, both of which are required by the Freedom of Information Act. Accordingly, the notice and agenda attached as Exhibit A should be invalidated as being the product of deliberations inconsistent with the Freedom of Information Act. *See, e.g., Bus. License Opposition Comm. v. Sumter County*, 311 S.C. 24, 27–28, 426 S.E.2d 745, 747–48 (1992) (affirming invalidation of county ordinance that was considered in a manner inconsistent with the Freedom of Information Act).

For the reasons stated above, Defendants respectfully move for an order enforcing the Court's March 18th Order and enjoining Plaintiffs' attempt to bypass that ruling through noticing a "special" meeting.

SIGNATURE PAGE ATTACHED

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 

M. Todd Carroll
South Carolina Bar 74000
todd.carroll@wcsr.com
1727 Hampton Street
Columbia, South Carolina 29201
(803) 454-6504

Attorneys for the Defendants

April 7, 2014
Columbia, South Carolina

Exhibit A

Plaintiffs' Notice and Agenda of Meeting

ANNOUNCEMENT OF SPECIAL MEETING
OF THE TOWN COUNCIL OF THE TOWN OF CHAPIN

TO THE CITIZENS OF THE TOWN OF CHAPIN

As provided in Section 2.202 of The Code of Ordinances for the Town of Chapin, there will be a Special Meeting of the Chapin Town Council on April 10, 2014, at 7:00 P.M. at the Chapin Town Hall 157 Northwest Columbia Avenue, Chapin, SC.

The agenda for the Special Meeting is as follows:

1. First Reading of an amendment to Section 2.206 of The Code of Ordinances for the Town of Chapin, a copy of which is attached hereto.
2. As provided in Section 2.601 of The Code of Ordinances for the Town of Chapin, the appointment of a Municipal Attorney for the Town of Chapin.

As provided in Section 2.107 of The Code of Ordinances for the Town of Chapin, the Mayor pro tempore, will preside at the meeting, should the Mayor not be in attendance.

The Town Clerk is directed to post this notice at the Town Hall, publish the agenda on the Town website, notify Mayor Wilson and Councilman White and notify the news media (including but not limited to The State Newspaper, the Lexington Chronicle, the Lake Murray News, the Chapin Times, WIS-TV, WLTX-TV, WOLO-TV and WACH-TV)

Vivian P. Atkins

Vivian "Bibi" Atkins

April 6, 2014, at 6:00 p.m.

Robert P. Frick

Robert P. Frick

April 5, 2014, at 3:30 a.m.

Kay A. Hollis

Kay Hollis

April 6, 2014, at 1:00 p.m.

ORDINANCE OF THE TOWN OF CHAPIN
Amending Municipal Ordinance 2.206

ORDINANCE # _____

WHEREAS, There appears to be an irreconcilable conflict between Section a. and Section b. of Town Code 2.206, which may be interpreted to give the Mayor veto power over agenda ordinances proposed by members of Council in conflict with SC Code Section 5-9-30(3), judicial and Attorney General rulings, the US and SC Constitutions; and Section a. also appears to be in conflict with the ruling of the SC Court of Appeals in Lambries vs. Saluda Co. Council (728 SE2d 488).

NOW THEREFORE, be it Ordained by the Town Council of The Town of Chapin, South Carolina in Council assembled by authority thereof, Town Code Section 2.206 is hereby amended as follows:

2.206 AGENDA.

Matters to be considered by the Mayor and Council at any called meeting (except emergency meetings) shall be placed on a written agenda prepared by the Municipal clerk and publically posted at least twenty-four (24) hours prior to the meeting. The agenda shall include the date, time, and place of the meeting, with notice to the media and others requesting such notice as required by the South Carolina Freedom of Information Act (SC Code Section 30-4-80). Any member of Council may request, before the 24 hour deadline, an item to be placed on the agenda by the Clerk for consideration by Council. Any such requested item, and any item proposed by electors, pursuant to SC Code 5-17-10, shall be placed on the agenda for consideration by Council.

So Ordained:

TOWN OF CHAPIN

Town Clerk

By _____
Its Mayor

First Reading _____

Public Hearing _____ N/R _____

Second Reading _____

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Exhibit B

Correspondence Between Counsel
Regarding Notice and Agenda of Meeting

Carroll, Todd

From: Carroll, Todd
Sent: Monday, April 07, 2014 3:19 PM
To: 'Andy'
Subject: RE: meeting agenda in Town of Chapin

Thanks, Andy. As I read it, the special-meeting ordinance simply says when such a meeting might be called. I don't see anything in that ordinance that exempts the meeting agenda from the mayor's authority that Judge Cooper addressed last month. Despite our disagreement, I very much appreciate your quick response. Have a good afternoon,

Todd

-----Original Message-----

From: Andy [<mailto:syrettlaw@sc.rr.com>]
Sent: Monday, April 07, 2014 1:42 PM
To: Carroll, Todd
Subject: Re: meeting agenda in Town of Chapin

Dear Todd:

If you will read the ordinance, you will find that the Mayor's authority over the agenda is specifically limited to regular meetings only. A special meeting, which this is, can be called by a majority of council (3 out of 5) and the agenda is set forth in the announcement.

We will not be cancelling the meeting.

Andy

Spencer Andrew Syrett
712 Richland Street Suite E
Columbia, SC 29201

Reply to
P.O. Box 7403
Columbia, SC 29202-7403

803-765-2110
FAX 803-765-9950

On 4/7/2014 1:36 PM, Carroll, Todd wrote:

- > Good afternoon, Andy. I wanted to relay along a copy of a meeting
- > notice/agenda that was apparently circulated by the Chapin Town Clerk
- > this morning announcing a meeting this Thursday. This agenda wasn't
- > presented to Mayor Wilson for his approval, and it appears to be
- > contrary to Judge Cooper's order of March 18th. As you can imagine,
- > I'd prefer not to have to spend the Court's time dealing with this
- > again if we can avoid it, so please let me know if your clients will
- > ask the Clerk to recall this notice and cancel the meeting. Given the
- > time-sensitivity here, I'd appreciate you letting me know this
- > afternoon, if possible. Thanks very much for your help,

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>
> Todd
>
> TODD CARROLL
> ATTORNEY AT LAW
>
> WOMBLE CARLYLE SANDRIDGE & RICE, LLP
> 1727 Hampton Street | Columbia, SC 29201 T 803 454 7730 | F 803 381
> 9130 | todd.carroll@wcsr.com Firm Website | My Bio | VCard

>
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> _____
>
>

> IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

>
> CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by a lawyer. It may contain information that is confidential, privileged, proprietary, or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy or disseminate this message, any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

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Exhibit C

Relevant Chapin Town Ordinances

ARTICLE II. MEETINGS OF COUNCIL

2.201. MEETINGS. REGULAR. PLACE.

a. The regular meetings of Council shall be held at the Town Hall on the first Tuesday of each month, at 7:30 p. m., unless otherwise set by the Mayor. If so, a reasonable notice shall be given to each available Council member and a notice posted on the town's bulletin board at Town Hall at least twenty-four (24) hours prior to the meeting.

b. In the event an official town holiday falls on the first Tuesday, the regular meeting will be held on the following Tuesday.

2.202. SAME. SPECIAL.

Special meetings may be held:

1. whenever called by the Mayor in cases of emergency, or;
2. when, in the judgment of the Mayor, the good of the municipality requires it, or;
3. by a majority of the members of Council.

2.203. SAME. NOTICE OF CHANGE.

Notice of all changed meetings and special meetings shall be given to all available members and the news media by the Clerk/Treasurer.

2.204. SAME. OPEN TO PUBLIC.

All Council meetings shall be open to the public, as required by the Freedom of Information Act.

2.205. SAME. MAYOR TO PRESIDE.

The Mayor shall preside at all Council meetings. In the absence of both the Mayor and Mayor Pro tempore the duties of the Mayor shall be performed by such member of the Council as the Council may designate.

(1976 SC Code §5-7-190 §5-7-250, §30-4-80)(Ord. #18 6-15-92)(CQ 6,7)

2.206. AGENDA.

a. Matters to be considered by the Mayor and Council at a regular meeting shall be placed on a written agenda and publicly posted at least twenty-four (24) hours prior to the meeting. Matters not on the agenda may be considered upon request of a member unless at least two (2) members object.

(1976 SC Code §30-4-80)(CQ 8)

b. The agenda shall be approved by the Mayor, prior to distribution. It shall be prepared under the supervision of the Clerk/Treasurer.

2.207. MINUTES OF COUNCIL MEETINGS.

a. The Clerk/Treasurer shall attend all meetings of the Council and keep the minutes of all public meetings of the Council which shall be a matter of permanent public record. At each regular Council meeting, the minutes of the previous meeting or meetings shall be presented for approval. Minutes shall not be considered the official record of a meeting until approved by the Mayor and Council.

b. Any member of Council desiring to express a position in the minutes on a matter voted upon by Council may do so by presenting the position in writing to Council not later than the next regular meeting.

c. No person shall make any change in the minutes or remove same from Town Hall, without prior approval of the Mayor and Council.

(1976 SC Code §30-4-90)

2.208. QUORUM.

a. A majority of the Council shall constitute a quorum for the conduct of business at any meeting.

(1976 SC Code §5-7-160)

2.209. RULES OF ORDER. PARLIAMENTARIAN.

a. Except as otherwise provided by state law or this code, all proceedings of Council shall be governed by Robert's Rules of Order.

b. The Municipal Attorney shall act as parliamentarian. In his absence, all questions of order shall be decided by the Mayor or, in his absence, the presiding officer, without debate, subject to an appeal to the Council.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Vivian Atkins, Robert P. Frick, and Kay) Civil Action No. 2014-CP-32-00697
Hollis, in their official capacities as)
members of the Town Council of the)
Town of Chapin,)

Plaintiffs,)

vs.)

MOTION FOR CIVIL CONTEMPT

James R. Wilson, Jr., in his official)
capacity as Mayor of the Town of)
Chapin; Gregg White, in his official)
capacity as a member of the Town)
Council of the Town of Chapin; and the)
Town of Chapin,)

Defendants.)

Defendants respectfully move the Court for an order holding Plaintiffs in civil contempt of court for their willful disregard of the Court's March 18, 2014 Order; the Court's subsequent denial of Plaintiffs' motion to reconsider that order; and the Court's letter of April 8, 2014, that reiterated the Court's March 18th holding.

Defendants do not file this Motion lightly, and do so only after consultation with Plaintiffs. Nevertheless, because Plaintiffs continue to disregard the Court's prior rulings in this case, and in order to preserve the record in the event of an appeal, Defendants do not feel that they have any choice but to seek further intervention of the Court.

In support of this Motion, Defendants state as follows:

1. Plaintiffs filed this suit on February 24, 2014, seeking *inter alia* a ruling that the Chapin Town Ordinances are "unenforceable" to the extent they vest Mayor Wilson with "any control over the agendas for council meetings." (Compl. ¶ 11.)

2. On March 18, 2014, the Court dismissed Plaintiffs' lawsuit. With respect to the Mayor's authority over agenda items, the Court held: "This 'approval' authority is unambiguous—the Mayor must sign off on the agenda prior to its distribution to Council, and there is no requirement that the Mayor place items on the agenda that he believes do not merit Council's consideration." (Order Denying Pls.' Mot. for Injunctive Relief and Granting Defs.' Mot. to Dismiss at 3–4 (Mar. 18, 2014) (emphasis added).)

3. On March 31, 2014, Plaintiffs filed a motion requesting that the Court reconsider its March 18, 2014 Order.

4. On April 7, 2014, despite the Court's prior ruling, Plaintiffs apparently directed the Chapin Town Clerk to issue notice of a "special" meeting for April 10, 2014, with an agenda that was never presented to Mayor Wilson for his review and approval. Because this action is directly contrary to the Court's March 18th ruling, Defendants filed a motion to enforce the Court's earlier order.

5. On April 8, 2014, the Court issued a letter to the parties that resolved both Plaintiffs' motion to reconsider and Defendants' motion to enforce the Court's March 18, 2014 Order. In that letter, the Court gave the parties notice that Plaintiffs' motion to reconsider was denied. It further indicated that if Plaintiffs were to move forward with their proposed April 10th meeting, that meeting "could be illegal and of no force and effect." The Court concluded its letter by reminding Plaintiffs of their appellate rights if they disagreed with the Court's rulings. A copy of this letter is attached as Exhibit A.

6. Prior to filing this Motion, the below-signed counsel corresponded with counsel for Plaintiffs in a good-faith effort to resolve this dispute. That correspondence

indicated that Defendants would seek a finding of civil contempt if Plaintiffs continued to disregard the Court's rulings. A copy of this correspondence is attached as Exhibit B.

7. Disregarding the Court's unambiguous rulings and subsequent warning, Plaintiffs went forward and held a meeting that was "illegal and of no force and effect." Defendants, therefore, are left with no choice but to file this Motion.

Accordingly, Defendants seek an order holding Plaintiffs in civil contempt of court and issuing all relief that the Court determines is appropriate to enforce its prior rulings, including invalidating any actions that Plaintiffs purportedly took at any meeting that they attempted to convene in contravention of this Court's rulings and awarding Defendants their costs and attorneys' fees associated with this litigation, along with all other relief the Court finds to be necessary to enforce its rulings.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: _____
M. Todd Carroll
South Carolina Bar 74000
todd.carroll@wcsr.com
1727 Hampton Street
Columbia, South Carolina 29201
(803) 454-6504

Attorneys for the Defendants

April 10, 2014
Columbia, South Carolina



State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

G. THOMAS COOPER, JR.
JUDGE

1701 MAIN STREET, ROOM 323
POST OFFICE BOX 192
COLUMBIA, SOUTH CAROLINA 29202-0192
TELEPHONE: (803) 578-1783
FAX: (803) 578-1741
E-MAIL: gcooper@sccourts.org

April 8, 2014

Mr. Todd Carroll (via e-mail)
todd.carroll@wcsr.com

Mr. Spencer Andrew Syrett (via e-mail)
syrettlaw@sc.rr.com

RE: Defendants' Request for Hearing on Motion to Enforce Order of March 18, 2014

Counsel:

At this time I am involved in a Criminal Sexual Conduct trial in Columbia that is expected to last through tomorrow. I also have a full schedule of criminal motions once the trial is completed and will not be able to take up Mr. Carroll's request for a hearing prior to the proposed Chapin meeting on April 10.

It would be my opinion that any actions taken by the three (3) members of the Town Council in contravention of the Court's March 18, 2014 Order, and possibly in violation of the Freedom of Information Act, could be illegal and of no force and effect.

My denial of Plaintiffs' 59(e) Motion will be filed tomorrow, and the Plaintiffs can obviously appeal if they disagree with my Order.

With kindest regards, I am

Very truly yours,

G. Thomas Cooper, Jr.
Retired/Active Judge, Fifth Judicial Circuit

GTCJr:btr

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STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS FOR THE
ELEVENTH JUDICIAL CIRCUIT

2014 APR 21 A 11:11

Vivian Atkins,)
Robert P. Frick, and)
Kay Hollis,)
in their official capacity as)
members of the Town Council)
of the Town of Chapin,)
Plaintiffs,)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

vs.)

MOTION TO CANCEL HEARING

James R. Wilson, Jr. in his)
official capacity as Mayor of the)
Town of Chapin, Gregg White)
in his official capacity as a)
member of the Town Council of)
the Town of Chapin and the)
Town of Chapin,)
Defendants.)

2014-CP-32-0697

TO M. TODD CARROLL, ATTORNEY FOR THE DEFENDANTS, JAMES R. WILSON, JR. AND GREGG WHITE, ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE THAT the undersigned attorney, appearing on behalf of the Plaintiffs, will move before the Administrative Judge of the Court of Common Pleas for the Eleventh Judicial Circuit, in his chambers in the Lexington County Judicial Center, Lexington, SC, as soon thereafter as the counsel may be heard, for the following Orders. In the event that the Motion cannot be heard before April 25, 2014, the Plaintiffs will present the Motion to Judge Cooper.

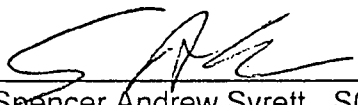
1. An Order requiring that the Motion filed by the Plaintiffs be heard in Lexington County.
2. An Order requiring that the Motion be heard during a regular Non-Jury term of the Lexington County Court.

This Motion will be based upon the following:

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1. The Motion has been scheduled to be heard by the Honorable G. Thomas Cooper, Jr. on April 25, 2014, in Richland County.
2. The Plaintiffs have not consented for the Motion to be heard in Richland County.
3. While Judge Cooper issued the Order which at issue in the Plaintiffs' Motion, Judge Cooper has issued his Order, left the Circuit and denied the Motion to Reconsider (Rule 59e, SCRCP) filed by the Plaintiffs. Judge Cooper no longer has jurisdiction to consider any subsequent matter nor to issue any further orders. Cox v. Fleetwood Homes of Georgia, Inc., 329 S.C. 157, 494 S.E.2d 462 (Ct. App. 1997)

The undersigned certifies that to the extent an effort is required to reach an agreement on this Motion, that effort has been made and no agreement has been reached.


Spencer Andrew Syrett SC BAR 05459
Attorney for the Plaintiffs
712 Richland Street, Suite E
P.O. Box 7403
Columbia, SC 29202
803-765-2110
FAX ONLY 803-765-995
syrettlaw@sc.rr.com

April 21, 2014

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After a hearing and multiple memoranda submitted by all parties, the Court dismissed Plaintiffs' complaint and directed as follows:

As part of his authority regarding Council meetings, Ordinance § 2.206(b) provides as follows: "The agenda shall be approved by the Mayor, prior to distribution." This "approval" authority is unambiguous—the Mayor must sign off on the agenda prior to its distribution to Council, and there is no requirement that the Mayor place items on the agenda that he believes do not merit Council's consideration.

(Order Denying Pls.' Mot. for Injunctive Relief and Granting Defs.' Mot. to Dismiss at 3–4 (Mar. 18, 2014) (emphasis added).)

The Court reiterated this directive elsewhere in its Order. (*See, e.g., id.* at 4 ("Because Mayor Wilson has the discretionary authority to approve or deny items to be placed on the Town Council's agenda, Plaintiffs cannot demonstrate that Mayor Wilson has a duty to place any item requested on the agenda.")) (emphasis supplied by the Court); *id.* at 6 ("[A]s stated in Section I(b) above, Ordinance 2.206(b) grants Mayor Wilson the authority and discretion to approve and, inherently, to deny any item requested to be on the agenda for a Council meeting.").)

Despite the Court's ruling, Plaintiffs indicated that they would proceed with noticing Council meetings without the Mayor's review and approval of meeting agendas. When Defendants became aware of this proposed conduct, they filed a Motion to Enforce Order and to Enjoin Contrary Conduct. The following day, the Court sent the parties a letter warning that actions taken by Plaintiffs in contravention of the Court's March 18th Order "could be illegal and of no force and effect." (Ex. A to Motion for Civil Contempt, Letter from The Honorable G. Thomas Cooper, Jr., to Counsel (Apr. 8, 2014).)

Plaintiffs still did not comply. As explained in Mayor Wilson's Affidavit (filed April 14, 2014) and Supplemental Affidavit (filed April 21, 2014), Plaintiffs have called two "special" meetings after the Court issued its March 18th Order, both with agendas that were never presented to Mayor Wilson for his review and approval. Moreover, Plaintiffs have attempted to take action on the items contained in both of those unlawful agendas despite the Court's warning that any such action could be "illegal."

Defendants do not file this Motion lightly. They have done all that they can to avoid re-engaging the Court on these issues, but they do not see any choice but to seek an additional ruling to undo Plaintiffs' efforts to disregard the Court's March 18th Order.

STANDARD OF REVIEW

South Carolina Code § 15-53-120 vests the Court with authority to grant any relief "whenever necessary or proper" to enforce a declaratory ruling. Likewise, the Court has inherent authority to hold a party in contempt for disregarding an order. *See, e.g., Browning v. Browning*, 366 S.C. 255, 262, 621 S.E.2d 389, 392 (Ct. App. 2005) ("The power to punish for contempt is inherent in all courts and is essential to preservation of order in judicial proceedings.' Contempt results from a party's willful disobedience of a court order." (quoting *In re Brown*, 333 S.C. 414, 420, 511 S.E.2d 351, 355 (1998))).

In order to find a party in contempt, the movant must show (1) the existence of an order and (2) the non-movant's failure to comply with that order. *Davis v. Davis*, 372 S.C. 64, 82, 641 S.E.2d 446, 455 (Ct. App. 2006). The burden then shifts to the non-movant to demonstrate her "defense and inability to comply with the order." *Id.* (quoting *Widman v. Widman*, 348 S.C. 97, 120, 557 S.E.2d 693, 705 (Ct. App. 2001)). A contempt finding is committed to the Court's sound discretion. *Id.*

ARGUMENTS AND AUTHORITIES

I. Judge Cooper has jurisdiction to hear this motion in Richland County.

Plaintiffs have moved to cancel the hearing that has been scheduled on Defendants' Motion for Civil Contempt, arguing that Judge Cooper "no longer has jurisdiction to consider any subsequent matter nor to issue any further orders" in this case. (Pls.' Mot. to Cancel Hr'g at 2 (filed Apr. 21, 2014).) They also argue that the pending post-judgment motions cannot be heard in Richland County. (*Id.* at 1-2.) Plaintiffs' procedural arguments are incorrect.

On April 23, 2014, the Supreme Court issued an order vesting Judge Cooper with jurisdiction to hold a nonjury term of the Court of Common Pleas for the Eleventh Judicial Circuit on April 25, 2014, the same day on which he is scheduled to hear the pending contempt motion while seated in Richland County. A copy of this order is attached as Exhibit A. This order fully rebuts Plaintiffs' arguments that Judge Cooper lacks jurisdiction to hear Defendants' contempt motion, and that Judge Cooper must be physically present in Lexington County in order to hear Defendants' post-judgment motions.

Moreover, the Court of Appeals has rejected the exact same arguments made by Plaintiffs. In *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 601, 567 S.E.2d 514, 516 (Ct. App. 2002), the parties entered into a settlement agreement to resolve two cases pending in Lexington County, and they placed that agreement on the record before Judge Goode. The defendants failed to comply with the settlement agreement, and Judge Goode subsequently conducted a rule to show cause hearing in Fairfield County that led to a contempt holding against the defendants. *Id.*

During the contempt hearing in Fairfield County, the *Cloyd* defendants raised the same procedural objections that Plaintiffs have raised here. *Id.* at 602, 567 S.E.2d at 516-17. In response, Judge Goode obtained an order from the Supreme Court giving him jurisdiction to “hear and dispose of common pleas matters for Lexington County” for the day of the hearing. *Id.*

On appeal, the Court of Appeals affirmed the contempt finding and held that, despite sitting in Fairfield County, Judge Goode was vested with jurisdiction to resolve matters pending in Lexington County on the day of the contempt hearing. *Id.* at 602, 567 S.E.2d at 517. It continued: “We find the order does not require Judge Goode to travel to Lexington to hear the Lexington County matter.” *Id.*

The administrative order that vested Judge Goode with jurisdiction in *Cloyd* is virtually identical to the one issued to Judge Cooper in this matter, and *Cloyd* should fully resolve Plaintiffs’ procedural objections. Moreover, Plaintiffs’ suggestion that the motion cannot be heard in Richland County without their consent is rebutted both by *Cloyd* itself, as well as emails exchanged by Plaintiffs’ counsel with the Court agreeing to be available for a hearing with Judge Cooper in Richland County on April 25, 2014. A copy of this email exchange is attached as Exhibit B. Accordingly, the Court should reject Plaintiffs’ procedural objection to proceeding with the scheduled hearing.¹

¹ Notably, the only case cited in Plaintiffs’ motion challenging Judge Cooper’s ability to hear Defendants’ motion was actually reversed by the South Carolina Supreme Court on the very point for which Plaintiffs cited the case. (Pls.’ Mot. to Cancel Hr’g at 2 (filed Apr. 21, 2014) (citing *Cox v. Fleetwood Homes of Ga., Inc.*, 329 S.C. 157, 494 S.E.2d 462 (Ct. App. 1997), *rev’d* 334 S.C. 55, 512 S.E.2d 498 (1999)).) In that case, the Supreme Court specifically noted that circuit court judges retain jurisdiction “to consider timely post-trial motions even though no longer assigned to the circuit.” *Cox*, 334 S.C. at 58, 512 S.E.2d at 500.

II. Plaintiffs have willfully disregarded the Court's March 18th Order with respect to how meeting agendas are established, and the Court should cure this misconduct either through a remedial order under the Declaratory Judgments Act, a contempt finding, or both.

The facts relevant to this Motion are not in dispute, and they are recounted below chronologically:

March 18th: The Court issued an order directing that, under Chapin's ordinances, "the Mayor must sign off on the agenda prior to its distribution to Council," and the Court declared that this authority is "unambiguous." (Order Denying Pls.' Mot. for Injunctive Relief and Granting Defs.' Mot. to Dismiss at 4 (Mar. 18, 2014).) Plaintiffs sought reconsideration of that ruling, which the Court denied.

April 7th: Plaintiffs noticed a "special" meeting of Town Council for April 10th with an agenda that was never submitted to the Mayor for his review and approval. (Ex. C to Motion for Civil Contempt, Aff. James R. Wilson, Jr. ¶ 5 (Apr. 14, 2014).) After consultation with counsel for Plaintiffs, Defendants filed a motion with the Court to enforce the March 18th Order and to enjoin Plaintiffs' contrary conduct.

April 8th: Judge Cooper emailed the parties a letter warning that any meeting held by Plaintiffs in violation of the March 18th Order "could be illegal and of no force and effect." (Ex. A to Motion for Civil Contempt, Letter from The Honorable G. Thomas Cooper, Jr., to Counsel (Apr. 8, 2014).) Approximately 36 minutes after the Court sent this email, counsel for Plaintiffs wrote counsel for Defendants an email stating that Plaintiffs "intend to proceed with the special meeting." (Ex. B to Motion for Civil Contempt, Email from Andrew Syrett, Counsel for Plaintiffs, to Todd Carroll, Counsel for Defendants (Apr. 8, 2014).)

April 10th: Counsel for Defendants emailed counsel for Plaintiffs to again request that Plaintiffs follow the March 18th Order and cancel the “special” meeting scheduled for that evening. Attached to that email was a draft of a motion for civil contempt that Defendants planned to file if Plaintiffs insisted on disregarding the Court’s rulings. (Ex. B to Motion for Civil Contempt, Email from Todd Carroll, Counsel for Defendants, to Andrew Syrett, Counsel for Plaintiffs (Apr. 10, 2014).)

Counsel for Plaintiffs responded that “the Court did not actually order us to do or not do anything,” so Plaintiffs intended to move forward with the “special” meeting. (Ex. B to Motion for Civil Contempt, Email from Andrew Syrett, Counsel for Plaintiffs, to Todd Carroll, Counsel for Defendants (Apr. 10, 2014).) Plaintiffs then proceeded forward with their meeting and attempted to take action on the items on the agenda issued without the Mayor’s review or approval. (Ex. C to Motion for Civil Contempt, Aff. James R. Wilson, Jr. ¶ 9 (Apr. 14, 2014).)

April 14th: Defendants filed a Motion for Civil Contempt. Plaintiffs noticed another meeting for April 17th with another agenda that was not presented to the Mayor for his approval. (Ex. C, Supplemental Aff. James R. Wilson, Jr. ¶ 3 (Apr. 21, 2014).)

April 15th: Judge Cooper’s clerk emailed counsel for both parties to inquire if it would be acceptable to hold a hearing on the pending motions on April 25th in Richland County. In less than an hour, all counsel responded that they could be available for such a hearing. (Ex. B, Emails Exchanged Among Counsel and Brandon T. Reeser, Law Clerk for The Honorable G. Thomas Cooper, Jr. (Apr. 15, 2014).)

April 16th: Counsel for Defendants sent a letter to counsel for Plaintiffs requesting that Plaintiffs not hold their second improperly-noticed meeting in order to

maintain the status quo until the Court had an opportunity to review the matter. (Ex. A to Supplemental Affidavit of James R. Wilson, Jr., Letter from Todd Carroll, Counsel for Defendants, to Andrew Syrett, Counsel for Plaintiffs (Apr. 16, 2014).) Counsel for Plaintiffs responded via email that the contempt motion is “frivolous” and indicated that it should be withdrawn. (Ex. D, Email from Andrew Syrett, Counsel for Plaintiffs, to Todd Carroll, Counsel for Defendants (Apr. 16, 2014).)

April 17th: Plaintiffs proceeded with their second “special” meeting and attempted to take action on the items on the second improperly-issued agenda. (Ex. C, Supplemental Aff. James R. Wilson, Jr. ¶ 6 (Apr. 21, 2014).)

April 21st: Plaintiffs filed a motion to cancel the hearing on Defendants’ Motion for Civil Contempt.

April 22nd: Plaintiffs filed a notice of appeal of Judge Cooper’s March 18th Order and subsequent denial of their motion to reconsider.

* * * * *

These facts are not disputed, but they demonstrate a knowing disregard of the Court’s March 18th declaration of the law. In fact, in opposition to Defendants’ motions, Plaintiff Atkins has submitted an affidavit in which she concedes that, upon receiving the Court’s March 18th Order, she believed that it “would be a problem” for Plaintiffs to add matters to the agenda while also complying with the Court’s ruling. (Aff. of Vivian Atkins ¶ 5 (Apr. 23, 2014).) Rather than comply with the March 18th Order, she directed her counsel to “find another way” to bypass the Mayor’s authority. (*Id.* ¶ 6.)

But there is not “another way.” If there was, Plaintiffs would have simply used the “other way” to circumvent the Mayor’s authority over the agenda without ever filing suit.

According to their email correspondence, Plaintiffs now argue that their post-judgment conduct is excused because they have noticed “special” meetings, and—according to Plaintiffs—the Court’s ruling “did not reach the issue of a special meeting.” (Ex. D, Email from Andrew Syrett, Counsel for Plaintiffs, to Todd Carroll, Counsel for Defendants (Apr. 16, 2014).) This *post hoc* explanation for Plaintiffs’ behavior turns this entire lawsuit on its head. If, as Plaintiffs now suggest, the Town Ordinances authorized them to call a “special” meeting and set an agenda without any involvement of the Mayor, then this litigation would have been a pointless exercise and a waste of the Court’s and the parties’ time and resources.

The Town Ordinances, of course, do not authorize Plaintiffs’ misconduct. Ordinance § 2.202, on which Plaintiffs exclusively base their post-judgment behavior, identifies when a “special” meeting, rather than a “regular” meeting, may be called. That ordinance does not speak to what business may be considered at a “special” meeting, nor does it contain any language to suggest that an agenda for a “special” meeting is set any differently than for all other types of meetings.²

Instead, there is a single provision in the entire Chapin Town Ordinances that prescribes how a meeting agenda is set: Ordinance § 2.206(b), which is titled “Agenda,”

² This “when versus what” distinction is commonplace with respect to irregular meetings of public bodies. For instance, the South Carolina Constitution, like the United States Constitution and the constitutions of numerous other states, authorizes the Governor to convene a session of the Legislature “on extraordinary occasions.” S.C. Const. art. IV, § 19. However, the authority to convene a legislative session does not also authorize the Governor to establish what the Legislature may consider during that session. See *McConnell v. Haley*, 393 S.C. 136, 139 n.1, 711 S.E.2d 886, 888 n.1 (2011) (“Although the Governor may convene the extra session, she may not dictate the manner in which the General Assembly proceeds at that session or the topics considered.”). Similarly here, Chapin Town Ordinance § 2.202 indicates when a “special” meeting may be called, but it does not indicate that the method for setting the agenda for such a meeting in any way differs from the procedure prescribed by Ordinance § 2.206(b).

and which is the very ordinance that Judge Cooper's March 18th Order enforced against Plaintiffs. At bottom, Plaintiffs cannot avoid the consequences of the Court's March 18th Order by labelling their post-judgment meetings as "special" instead of "regular."

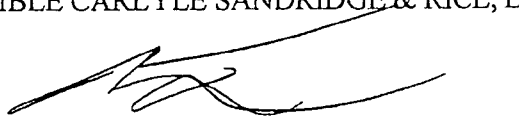
CONCLUSION

Because Plaintiffs continue to disregard the Court's March 18th directive, Defendants request that the Court order the following relief, through either the Court's authority under South Carolina Code § 15-53-120, a contempt finding, or both:

- Declaring that Plaintiffs' April 10th and April 17th meetings were held illegally and invalidating all actions Plaintiffs attempted to take during those meetings;
- Enjoining Plaintiffs from continuing to conduct meetings in a manner contrary to the Court's March 18th Order;
- Awarding Defendants their litigation costs, fees, and expenses associated with enforcing the Court's March 18th Order, as permitted by *Ex parte Cannon v. Georgia Attorney General's Office*, 397 S.C. 541, 548, 725 S.E.2d 698, 702 (2012); and
- Issuing any other relief that the Court finds to be necessary or proper to enforce its previous rulings.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 

M. Todd Carroll
South Carolina Bar 74000
todd.carroll@wcsr.com
1727 Hampton Street
Columbia, South Carolina 29201
(803) 454-6504

Attorneys for the Defendants

April 24, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Vivian Atkins,)
Robert P. Frick, and)
Kay Hollis,)
in their official capacity as)
members of the Town Council)
of the Town of Chapin,)
Plaintiffs,)

vs.)

RETURN TO MOTION
FOR CONTEMPT
2014-CP-32-0697

James R. Wilson, Jr. in his)
official capacity as Mayor of the)
Town of Chapin, Gregg White)
in his official capacity as a)
member of the Town Council of)
the Town of Chapin and the)
Town of Chapin,)
Defendants.)

The Plaintiffs, reserving rights under Motion to Cancel Hearing, respond to the Motion for Contempt as follows:

THE STATUS OF THE CASE

On March 18, 2014, Judge Cooper issued the Order upon which the Motion is based. The Order denied the Plaintiffs the relief they requested and granted the Defendants' Motion to Dismiss the Action. A dismissal ends the action in its entirety. There is therefore no pending action in which further relief could be granted.

CONTEMPT

Contempt is the willful disobedience of a Court Order. Civil Contempt is intended to coerce the alleged contemnor to comply with the Court's Order.

The first question that must be answered is: What did the Court order? The Conclusion in the Order in its entirety reads as follows:

For the reasons set forth herein, This Court DENIED Plaintiffs' Motion for

Injunctive relief and GRANTS Defendants' Motion to Dismiss.

The Court did not order the Plaintiffs to take any action. The Court did not Order the Plaintiffs to refrain from taking any action. The Court merely stated that the Mayor was within his authority to control the agenda at a regular meeting.

The Plaintiffs have proceeded by holding special meetings. The application of the Court's order is limited to the agenda at a regular meeting.

There cannot therefore be any finding of contempt.

JUSTIFICATION FOR A SPECIAL MEETING

Chapin has the Mayor-Council form of government. The powers of the Mayor are set forth in §5-9-30 of the Code of Laws. This section grants the Mayor power to preside at all Council meetings. It does not grant the Mayor any control over the agenda for any meeting.

§2.206 Agenda

- a. Matters to be considered by the Mayor and Council **at a regular meeting** shall be placed on a written agenda and publicly posted at least twenty-four hours prior to the meeting. Matters not on the agenda may be considered upon request of a member unless a majority of Council objects.
- b. **The agenda** shall be approved by the Mayor, prior to distribution. It shall be prepared under the supervision of the Clerk/Treasurer.

Emphasis supplied.

Clearly §2.206 applies only to the agenda for a regular meeting. Section a clearly limits its application to a regular meeting. The term "the agenda" in Section b must refer the term agenda used in Section a. The Code provides for regular meetings in §2.201.

There is a separate ordinance which provides for special meetings.

§2.202 Same. Special

Special meetings may be held:

1. whenever called by the Mayor in cases of emergency, **or**;
 2. when, in the judgment of the Mayor, the good of the municipality requires it, **or**;
 3. **by a majority of the members of Council**
- emphasis supplied

Clearly §2.202 provides three separate ways in which a special meeting may be held. Section 3 does not require the participation of the Mayor. In addition, it makes no sense for the Mayor to control the agenda which the majority of Council (not necessarily including the Mayor) decide is necessary.

In its Order, the Court found a portion of §2.206 to provide a "safeguard against autocratic mayoral action that may otherwise rise to a constitutional deprivation of basic rights." As stated above, the Court's Order applied only to the agenda for a regular meeting. §2.202 1 also provides such a safeguard against autocratic action. The Plaintiffs believe that the safeguard provided in §2.206 and cited by the Court may violate the Freedom of Information Act. §30-4-10, et seq. Properly implemented, §2.202 does not. The Plaintiffs believe that they complied with the requirements of the Freedom of Information Act and the ordinances of the Town

FREEDOM OF INFORMATION ACT

The act prohibits meetings of Council which are unannounced to the public. The unannounced joint meeting of three members of a five member council could violate the Act. There is, however, no prohibition against two members of a five member council to meet to discuss town matters as no Council action can be taken without a quorum. If two members meeting would constitute a violation, the Mayor and Councilman White meeting together to discuss matters would be a violation.

As stated in Mayor pro tempore Atkins' affidavit, she asked her attorney (the undersigned) to prepare a Notice for a Special Meeting. She then consulted with Councilman Frick and obtained his signature. She then consulted with Councilman Hollis and obtained her signature. Note that the Notice contained not only the signature of each councilman but also the date and time the Notice was signed by each. At no time did the three meet together. In fact, the three Plaintiffs have not even met together with the undersigned at any time to discuss this lawsuit.

After the Notice was signed by all three councilmen, she delivered it to the Town Clerk/ Treasurer. The Clerk/Treasurer complied with the instructions in the Notice and notified the Mayor, Councilman White, the public and the news media.

At least thirty members of the public, a reporter from the Lexington Chronicle and

a reporter and cameraman from WIS-TV attended the first special meeting. At least forty members of the public, reporters from the Lexington Chronicle, the State newspaper, the Chapin times and reporters and cameramen from WIS-TV and WLTX-TV attended the second special meeting.

In addition, the undersigned specifically advised the attorney for the Defendants that as provided by §2.205, the Mayor, if he chose to attend, could preside. Because the Mayor did not attend, the Mayor pro tempore presided. Three members of Council attended the meeting which constitutes a quorum. Council transacted only business set forth on the published agenda.

There can be no doubt that there was compliance with the Freedom of Information Act.

COURT'S LETTER OF APRIL 8, 2014

While the Plaintiffs read and considered the Court's letter of April 8, 2014, this letter could not be considered an Order of the Court. The Court did not have an opportunity to consider the matters set forth herein and certainly did not threaten the Plaintiffs with an adjudication of contempt. The Court's Order did not address the procedure for a special meeting and, as set forth herein, no action taken by the Plaintiffs violated the Court's Order.

CONCLUSION

The Plaintiffs did not and could not violate the Court Order for two basic reasons:

The Court Order simply dismissed the action.

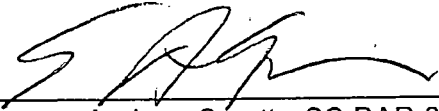
The Court Order did not order the Plaintiffs to do anything nor did it prohibit them from doing anything. The Defendants do not identify any provision of the Court's Order that they allege the Plaintiffs violated. Even when read in its broadest sense, the Order simply confirmed that §2.206, as written at the time of the filing of the Complaint, gave the Mayor control over the agenda for a regular meeting.

At no time did the Court address the provisions of §2.202 and did not make any ruling on the calling or conduct of a special meeting. §2.206 does not apply to a special meeting

This Court therefore has no authority to invalidate the special meetings nor to grant

relief in any form to the Defendants. It certainly cannot find the Plaintiffs in contempt.

If the Defendants believe that the special meetings called by a majority of Council pursuant to §2.202 and the actions taken by Council at those special meetings are illegal or invalid, they are certainly entitled to file a new action for a declaratory judgment.



Spencer Andrew Syrett SC BAR 05459
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P.O. Box 7403
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803-765-2110
FAX ONLY 803-765-995
syrettlaw@sc.rr.com

April 24, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

FILED

2014 MAR -7 A 8:32

Vivian Atkins,
Robert P. Frick, and
Kay Hollis,
in their official capacity as
members of the Town Council
of the Town of Chapin,

Plaintiffs,

vs.

James R. Wilson, Jr. in his
official capacity as Mayor of the
Town of Chapin, Gregg White
in his official capacity as a
member of the Town Council of
the Town of Chapin and the
Town of Chapin,

Defendants.)

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

COPY

AFFIDAVIT OF VIVIAN ATKINS

2014-CP-32-0697

PERSONALLY BEFORE ME, DAVID W. KNIGHT, A NOTARY PUBLIC FOR THE
STATE OF SOUTH CAROLINA, APPEARED VIVIAN ATKINS, WHO, BEING DULY
SWORN, SAYS AND DEPOSES:

1. I am one of the above named Plaintiffs.
2. I have served as a member of the Chapin Town Council since 1999.
3. During the first 14 years of my service Stan Shealy served as Mayor.
4. In November, 2013, James R. Wilson, Jr. was elected Mayor and his term commenced on January 7, 2014.
5. Before he was sworn in as Mayor, Mr. Wilson announced that he had hired Karen Owens to serve as "Director of Communication and Economic Development."
6. Council has never voted to create the position and it has not been made a part of the budget. I am aware that Mr. Wilson has paid Ms. Owens' salary by diverting budgeted funds to fund this non-budgeted expense.

7. In addition, in December, 2013, Council approved a contract to engage David W. Knight as attorney for the Chapin Utility Department and approved a monthly retainer of \$1,500.00.
8. Despite several requests, Mr. Wilson has refused to sign checks to pay Mr. Knight for his services for January and February.
9. On January 16, 2014, Mr. Wilson signed an agreement to engage the services of Nicole Howland as Town Attorney. This contract was not submitted to Council for approval and Council has not approved the contract.
10. On February 6, 2014, I requested that Mr. Wilson place the following items on the Town Council meeting agenda:
 - a. Update on current budget and status of current accounts.
 - b. New deadline for Statement of Economic Interest.
 - c. Review of Contract for cleaning service and decide on service.
 - d. Consider motion to annul the contract of January 16, 2014 for municipal attorney services.
 - e. Consider motion to approve an interim attorney.
 - f. Consider motion to annul the agreement of January 26, 2014, for the Director of Communication and Economic Development.
 - g. Consider a motion to schedule a hearing to determine the qualifications of Mr. Wilson since becoming Mayor of Chapin.
 - h. First reading of an ordinance to amend Ordinance 2.206 to eliminate conflict between paragraphs A&B.
11. Mr. Wilson did not place any of the items on the agenda of any council meeting which has occurred since February 6, 2014.
12. On February 19, 2014, I again requested Mr. Wilson to schedule a special meeting of council to consider several of these items on either February 26 or February 27 because I would be unavailable to attend the regular Council meeting scheduled for March 4, 2014. He did not schedule a special meeting.
13. Mr. Wilson has told members of Council that he interprets Ordinance 2.206 to give him as Mayor the absolute right to set the agenda for all council meetings and the

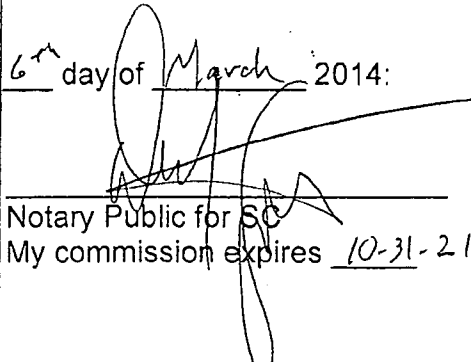
absolute right to exclude any matters from the agenda even if requested by a member of Council.

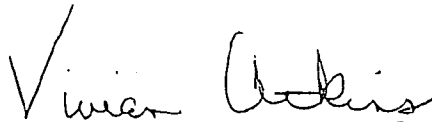
14. Sec. 30-4-80 SC Code of Laws provides that a Council may not consider any matter which is not published on the Agenda because citizens are entitled to prior notice of action that their government officials are considering.
15. I believe that the refusal of Mayor Wilson to place relevant items on the agenda is an abuse of power, and prevents Council from taking action on matters deemed important to the Town, and deprives Chapin citizens of their rights under the First, Fourteenth, and Fifteenth Amendments to the Constitution of the United States.
16. I have asked Mayor Wilson to place consideration of an Amendment to Town Code Section 2.206 "AGENDA" to conform it to the law and the Constitution, but he has refused.
17. I pray that this Honorable Court issue its Order invalidating Mayor Wilson's interpretation of Town Ordinance 2.206 b., or in the alternative, to issue an Order declaring Ordinance 2.206 Subsections a. & b. to be in irreconcilable conflict and unconstitutional.
18. I pray that this Honorable Court issue its Order requiring Mayor Wilson to allow the Town Clerk to place any matter requested by a member of Town Council on the agenda for the next meeting of Council pursuant to the South Carolina Freedom of Information Act, including an Ordinance amending Town Code 2.206.

The foregoing facts are true to the best of my knowledge, except that as to those matters based on information and belief, I believe them to be true.

Sworn to before me this

6th day of March 2014:


Notary Public for SC
My commission expires 10-31-21


VIVIAN ATKINS

therefore, I can't offer any reply..

Skip

From: Bibi atkins [mailto:bibiaticins@att.net]

Sent: Thursday, February 06, 2014 2:53 PM

To: Adrienne Thompson; Wilson, Skip; Gregg White; bibiaticins@att.net; Kay Hollis; Robbie Frick

Subject: agenda

Skip

You asked me to give you items for the agenda for the meeting on Wednesday February 12.

Along with the regular items as call to order and executive session here is my list:

- Update on current budget and status of current accounts
- New deadline for Statement of Economic Interest
- Review of Contracts for Cleaning service and decide on service
- Consider motion to annul the contract of 1/16/2014 for municipal attorney services
- Consider motion to approve an interim attorney
- Consider motion to annul the the agreement of January 26, 2014 for the Director of Communications and Economic Development
- Consider a motion to schedule a hearing to determine the qualifications of Mr. Wilson since becoming Mayor of Chapin and appoint/employ special counsel Danny Crowe to conduct the hearing. (SC code 5-7-200 & 5-7-210)
- 1st reading of an ordinance to amend ordinance 2.2.06 to eliminate the conflict between paragraph A & B

Bibi Atkins

~~178~~ 171

2/18/2014

David Knight

From: "Bibi Atkins" <bibi@atkins.net>
Date: Wednesday, February 19, 2014 7:02 PM
To: "Skip Wilson" <skip@wilsonfinancial.com>
Cc: <bibi@atkins.net>
Subject: meeting

Skip

Can we possibly reschedule our canceled meeting of last Wednesday (Feb. 12) to next week either Wednesday (Feb. 26) or Thursday (Feb.27)

I also think the agenda items listed below need to be added and discussed at this meeting

- Update on current budget and status of current accounts
- Review of Contracts for Cleaning service and decide on service.
- Consider motion to annul the contract of 1/16/2014 for municipal attorney services
- Consider motion to approve an interim attorney
- Consider motion to annul the the agreement of January 26, 2014 for the Director of Communications and Economic Development
- Consider a motion to schedule a hearing to determine the qualifications of Mr. Wilson since becoming Mayor of Chapin and appoint/employ special counsel Danny Crowe to conduct the hearing. (SC code 5-7-200 & 5-7-210)

Bibi Atkins

172

2/20/2014

FILED

2014 MAR -7 A 8:32

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON CLERK OF COURT ELEVENTH JUDICIAL CIRCUIT
LEXINGTON SC

Vivian Atkins, Robert P.)
Frick, and Kay Hollis,)
Plaintiffs)
vs.

2014-CP32-697

James R. Wilson Jr, Gregg)
White, and the Town of)
Chapin,)
Defendants)

AFFIDAVIT

COPY

PERSONALLY APPEARED Before me, a Notary Public for South Carolina, **KAY HOLLIS**, who being first sworn, deposes and says:

1. I have served as a member of Chapin Town Council since 2004.
2. On Monday morning March 3, 2014 I presented a written request to Town Clerk Adrienne Thompson for 6 items to be placed on the Agenda for consideration by Council at the regular meeting on March 4.
3. On information and belief, the Town Clerk printed the proposed agenda of 18 items, including the six I had requested, and submitted it to Mayor Wilson.
4. When I received the "official" version of the Agenda that evening, all but one of my requested items had been deleted; only a review of a cleaning contract remained.
5. At the Council meeting on March 4, I attempted to ask Mayor Wilson why he had deleted 5 of the items I requested; he refused to grant me the floor.
6. I have read the article in the Metro section of the State newspaper for March 5 by reporter Tim Flach. The last sentence stated "Wilson wants a new lawyer but has not been able to find one acceptable to council

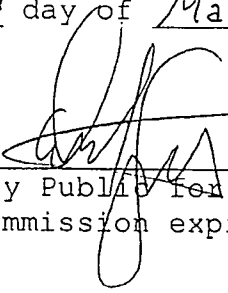
members". This statement is untrue, as council has not been asked to approve any attorney to represent Mr. Wilson, individually, or the Town, and since he asserts complete control over council actions, he could have placed such request on the March 4 agenda, but did not do so (see Item 12 on the proposed agenda).

The foregoing facts are true to the best of my knowledge, except that as to those matters based on information and belief, I believe them to be true.

Sworn to before me this

6th day of March 2014:

Kay Hollis
Kay Hollis



Notary Public for SC
My commission expires 10-31-21

To: Adrienne Thompson

From: Kay Hollis

Date: March 3 2014

REQUEST to include certain matters on the AGENDA for the
NEXT COUNCIL MEETING (MARCH 4, 2014) for consideration by
Council:

1. Update on 2014 budget and status of current accounts.
2. Review contracts for cleaning service and decide on provider.
3. Consider a Motion to appoint interim Municipal Attorney.
4. Consider a Motion to void the contract of employment with "Director of Communications and Economic Development".
5. Consider a Motion to schedule a hearing to determine qualifications of Mr. Wilson since becoming mayor of Chapin and to appoint and employ Danny Crowe Esq. to conduct the hearing.
6. 1st reading on Ordinance to amend Town Code Section 2-206 AGENDA, due to conflict between Section a. and Section b. Also due to conflict with 2012 SC Court of Appeals case- Lambries vs. Saluda County Council.

PROPOSED AGENDA

CHAPIN TOWN COUNCIL
MARCH 4, 2014 7:00
AGENDA

1. CALL TO ORDER, DETERMINE QUORUM, PRAYER, PLEDGE TO THE FLAG
2. REVIEW MINUTES FROM FEBRUARY 4TH MEETING AND APPROVAL
REVIEW REPORTS PRESENTED IN WRITING.
 1. Clerks request to be reimbursed for Court Room Chairs.
3. POLICE REPORT
4. ATTORNEY REPORT (PRESENTED IN WRITING)
5. UTILITY REPORT
Utility request for Street Machine for reading meters. \$2942.50
- 6.. JOHNNY JEFFCOAT TO UPADATE COUNCIL ON CHAPIN TECHNOLOGY PARK AND
COUNTY INFORMATION.
7. CLEANING CONTRACT FOR TOWN HALL
8. FIRST READING : ZONING CHANGE RS-1 (SINGLE FAMILY RESIDENTIAL) TO
GC (GENERAL COMMERCIAL). TMS# 000717-02-023, CONTAINING 1.3 ACRES M/S.
KNOWN AS 945 CHAPIN ROAD, AND SURROUNDED BY OTHER GC PROPERTIES.
PLANNING COMMISSION RECOMMENDS TO COUNCIL, THE ZONING CHANGE BE
APPROVED.
9. FIRST READING ON ORDINANCE TO AMEND TOWN CODE SECTION 2-206
AGENDA, DUE TO CONFLICT BETWEEN SECTION a. and Section b. ALSO DUE TO CONFLICT
WITH 2012 SC. COURT OF APPEALS CASE - LAMBRIES VS. SALUDA COUNTY COUNCIL.
10. DISCUSS AND PLAN FOR THE NEXT STEPS INVOLVING CLARK STREET PROJECT.
11. MASHBURN CONSTRUCTION - RICK ALEXANDER UPDATE ON TOWN HALL
PROJECT.
12. Consider appointment of Attorney to represent Town in upcoming Law Suit.
13. Consider a Motion to appoint interim Municipal Attorney

14. Consider a Motion to void the contract of employment with "Director of Communications and Economic Development."

15. Consider a Motion to schedule a hearing to determine qualifications of Mr. Wilson since becoming Mayor of Chapin and employ Danny Crowe Esq. To conduct the hearing.

16.. Update on 2014 budget and status of accounts. \

17. UPDATE ON BEAUFORT STREET

18. REMINDER OF 2014 STATEMENT OF ECONOMIC INTEREST FORM DUE ON
MARCH 30TH

FINAL AGENDA

CHAPIN TOWN COUNCIL
MARCH 4, 2014 7:00
AGENDA

1. CALL TO ORDER, DETERMINE QUORUM, PRAYER, PLEDGE TO FLAG
2. REVIEW MINUTES FROM FEBRUARY 4TH MEETING AND APPROVAL
3. CLERK'S REQUEST TO BE REIMBURSED FOR COURT ROOM CHAIRS
4. EXECUTIVE SESSION- ECONOMIC DEVELOPMENT- JOHNNY JEFFCOAT TO BE PRESENT
4. POLICE REPORT
5. UTILITY ATTORNEY REPORT- EA SERVICES REPORT
 - A. REQUEST FOR STREET MACHINE FOR READING METERS \$2942.50
6. REVIEW CLEANING CONTRACT FOR TOWN HALL
7. REVIEW OF MEDIA RELATIONS POLICY
8. FIRST READING: ZONING CHANGE : RS -1 TO GC TMS# 000717-02-023, CONTAINING 1.3 ACRES M/L KNOWN AS 945 CHAPIN ROAD, AND SURROUNDED BY OTHER GC PROPERTIES. PLANNING COMMISSION RECOMMENDS THIS CHANGE TO COUNCIL.
9. APPROVAL OF MATTHEW BROWN CPA TO AUDIT 2013.
10. ADJOURN

FILED

COPY

2014 MAR -7 A 8:33

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON CLERK FOR THE ELEVENTH JUDICIAL CIRCUIT
LEXINGTON SC

Vivian Atkins, Robert P.)
Frick, and Kay Hollis,) 2014-CP32-697
Plaintiffs)

vs.

James R. Wilson Jr, Gregg) AFFIDAVIT
White, and the Town of)
Chapin,)
Defendants)

PERSONALLY APPEARED Before me, a Notary Public for South Carolina, **ADRIENNE THOMPSON**, who being first sworn, deposes and says:

1. I have served as the Municipal Clerk/Treasurer for the Town of Chapin for 14 years.
2. During my term I have had the statutory duties as prescribed by South Carolina Code Section 5-7-220, and additional duties assigned by Council as Treasurer, preparing annual budgets, receiving and paying all invoices for services by third party contractors, and employee salaries and budgeted expenses, except for the Police Department and the Utility Department. Among my duties is the responsibility to prepare agendas, attend all meetings of Council and record the minutes.
3. Before the Council meetings in January and February, 2014 council members requested that I include several items on the agendas for consideration. I included those items on the proposed agendas and submitted them to the Mayor. However, Mayor Wilson deleted the requested items, as more fully set forth herein.
4. I attach herewith Agendas (as prepared and modified), and Minutes of meetings of Council for January 7, January 15, and February 4 2014. The January 7 Agenda included #12: "Update on Clark Street (project) from Planning Commission". Mr. Wilson refused to consider that item. #13 "Penny Tax projects & Resolution"- Mr. Wilson

refused to consider that item while having the Resolution in his possession.

5. The February 4th agenda prepared by me as Town Clerk included 21 items for consideration by Council. Mr. Wilson reduced it to 14 items.
6. On information and belief, on February 6, 2014, Councilwoman Vivian Atkins asked Mr. Wilson to add 9 omitted items to the Agenda for a Special meeting set for February 12. He refused, but the meeting was cancelled due to snow.
7. On further information and belief, on February 19, Ms. Atkins asked Mr. Wilson to reschedule the cancelled Special Meeting for February 26 or 27, and to include most of the same items requested for February 12 on the agenda. Mr. Wilson failed to acknowledge the request or schedule another meeting.
8. On further information and belief, on March 3, 2014, Councilwoman Kay Hollis requested that the Town Clerk include 6 items on the agenda for the March 4th regular Council meeting (including the items previously requested by Ms. Atkins). Mr. Wilson refused to include any of the items, except for a discussion about a cleaning contract, and reduced the number of items from 18 to 9. Also, I requested that the agenda include the authorization to appoint an attorney to represent the Town as a Defendant in this lawsuit. Mr. Wilson refused.

The foregoing facts are true to the best of my knowledge, except as to those matters based on information and belief, I believe them to be true.

Sworn to before me this
6TH Day of MARCH 2014:

Mary Winn

Notary Public for SC
My commission expires 12-05-2018

Adrienne Thompson
Adrienne Thompson
Chapin Clerk/Treasurer

certified copy
[Signature]

CHAPIN TOWN COUNCIL
JANUARY 7, 2014 7:00 PM
MINUTES

1. 7:00 Judge Gary Rinehart was present to officiate the Oath of Office to be taken by:

Robert Frick, Gregg White and J. Robert Wilson, Jr. The Oaths were administered as scheduled.

2. 7:15 Newly elected Mayor J. Robert Wilson, Jr. called the regularly scheduled Chapin Town Council meeting to order with all members present which included, Vivian Atkins, Robbie Frick, Kay Hollis, Gregg White and Mayor J. Robert (Skip), Wilson. The Freedom of the Press Act was complied with and there were members of the Press present as well as a room full of the Public from many different areas. Mayor Wilson began the meeting with prayer and advised he will endeavor to serve the Town of Chapin to the best of his ability.

3. Clerk Thompson asked to remove the review of the Dec. 3rd meeting from the agenda as the notes were locked in a file cabinet without a key and she wished to make sure they were correct prior to review. The December 30th minutes were reviewed and Vivian Atkins moved for approval with Kay Hollis seconding the motion. Gregg White and Mayor Wilson abstained from voting, as they were not present for the meeting. Vivian Atkins, Kay Hollis and Robbie Frick moved to accept the minutes as submitted. This was a majority vote.

4. For the Office of Mayor Pro Temp., Mayor Wilson called for a verbal vote. Robbie Frick voted for Vivian Atkins, Vivian Atkins voted for Vivian Atkins, Gregg White advised he had no nomination, Kay Hollis voted for Vivian Atkins, and Mayor Wilson voted for Gregg White. The majority ruled and Vivian Atkins was selected as Mayor Pro. Temp.

5. Planning Board Replacement: Clerk Thompson advised that for the past 13 years, all members replaced lived in Town Limits and she is not sure if that has to be the criteria. Past-Attorney David Knight had provided Ordinance Information from 1987 with a handwritten statement saying "who are residents of the Town". Councilman White objected to receiving the information so late, (just prior to the meeting), and asked where it came from. Clerk Thompson advised she had asked former Town Attorney David Knight if he knew if this was a criteria for a Planning Commission member, as David Knight had been our Attorney since the 1980's. This matter was being researched and up until the meeting no sure decision was reached. Councilman White admonished Clerk Thompson and former Attorney Knight for presenting this information so late. Clerk Thompson advised she did not know this would be an issue until the afternoon prior to the council meeting and just did not have the time to do the complete research. Councilman White advised he did not want to see information presented last minute in the future meetings. Mayor Wilson requested all information for Council be included in the packets prior to the meetings. Vivian Atkins moved to table this item until Legal Council could be obtained. This was seconded by Gregg White with all members in favor.

6. Chief Troy Crump gave the Police Report in writing just prior to the meeting and was advised

that from now on his report should be submitted by Thursday prior to the meeting. Chief Crump advised he is working with other groups as a roundtable on the homeless situation, and involved in other Community endeavors. Chief Crump recognized the Explorer group headed by Officer Bayers as giving over 100 hours in Service to help the department. They were also very helpful in the move from Old Town Hall. He presented the eight volunteer Explorers with certificates of appreciation.

7. There was no Fire Dept. Report.

8. The Attorney report was in writing and in the packets. This was accepted as information.

9. The Utility report was submitted by Bill Watkins and Mr. Watkins added that we got through the big rain with no overflows. He agreed to submit all future reports in time for Council Packets.

10. Mayor Wilson advised the second reading for the Lease for 103 Columbia Avenue would be delayed until receiving back information on changes he had requested.

11. Second reading was given the Ordinance to de-annex a portion of 700-01-003 for the Lexington County Technical Park as agreed previously. Gregg White moved to approve second reading which was seconded by Kay Hollis and approved by all.

12. As an update on Clark St., former Planning Commission Chairman and now Council Member Gregg White was called on to report on the out come of the Planning Commission Meeting. Council Member White first stated that he is personally opposed to closing any roads in Chapin however it was the Planning Commissions decision that the project be presented to Council for the next step which will be to schedule Public Hearings. Clerk Thompson advised the plan had been revised and the new concept was to redirect Clark St. and not close it. Councilman White advised that it would not be owned by the Town if the Project went forward and that was the same as closing it. Developer Arnold Roberts and his partner attempted to explain the developments in the matter but were stopped and advised this could not be discussed as the matter was not on the agenda. Clerk Thompson advised the next step would be to proceed with scheduling Public Hearings, however Mayor Wilson and Councilman White advised they would be looking for submitted plans prior to public hearings. Clerk Thompson advised the proper steps were already taken to proceed, and complete plans would not be developed until the results of the Public meetings were known. However, Mayor Wilson did not recognize this as able to go forward at this time.

13. Mayor Wilson gave a description of the Penny Tax program and advised the projects that this would fund had to be submitted by January 30st to be considered. A panel has already been chosen to review the projects and select the ones to be placed on the Ballet referendum at the next County election. If the referendum is passed the projects selected would cover an eight year span, and expected to bring in around \$240 million dollars which could be advanced to jump start the projects. Mayor Wilson advised he is getting information together on at least eight projects to submit. Former Attorney David Knight had prepared a Resolution which was said to be necessary for the Town to pass, however Mayor Wilson advised he received it too late to be presented.

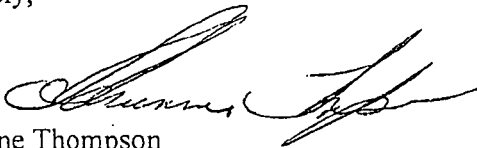
Mayor Wilson asked for questions from the people present. Kim Murphy questioned who would pay for the upkeep to maintain these proposed facilities. Mayor Wilson advised the costs would be figured into the project amounts. Pat Wilson commented on the Planning Board selections stating she has been a Business Owner for 25 years but lives outside Town Limits and would like to see Business Owners considered for the Planning Commission even if they live outside of Town. Several attending questioned the continuing of Channel 2. and Mayor Wilson called on Clerk Thompson who advised at this time it is being moved to this new location and decision on this are yet to be made. However, Councilwoman Atkins has agreed to continue the Birthdays, Anniversaries, and public announcements as soon as it is set up. Mayor Wilson advised he is calling a special meeting of Town Council to discuss the Penny Sales Tax Projects.

14. Character Service Day is scheduled for April 12th this year and Clerk Thompson gave a description of what is accomplished on the day. She advised we have had over a thousand volunteers on one day doing projects for the Town and the people. "There is nothing as successful in any other Town in South Carolina as far as a service work day.

15. Mayor Wilson advised Council members of the training for new Officials offered by the MASC Feb. 4th and the Legislative Action Day. All members were encouraged to participate.

16. The next meeting is scheduled for January 15th at 7:00 mainly to work on the Penny Sales Tax projects. This meeting was adjourned at 8:00.

Sincerely,



Adrienne Thompson
Town Clerk/Treasurer

AGENDA ITEMS JAN. 7, 2014
TOWN COUNCIL

1. OATH OF OFFICE:

J. ROBERT WILSON, JR.
ROBBIE FRICK
GREGG WHITE

2. CALL TO ORDER, DETERMINE QUORUM, PRAYER

3. REVIEW MINUTES FROM DEC. 3 MEETING AND DEC. 30 APPROVE

4. MAYOR PRO- TEMP SELECTION

5. PLANNING BOARD MEMBER REPLACEMENT

6. POLICE REPORT : recognize Explorers

7. FIRE DEPT. REPORT

8. ATTORNEY REPORT

9. UTILITY REPORT

10. SECOND READING - LEASE 103 COLUMBIA AVENUE

11. SECOND READING - ORDINANCE TO DE-ANNEX A PORTION OF 799-01-003 FOR
LEXINGTON COUNTY TECH. PARK

12. UPDATE ON CLARK STREET FROM PLANNING COMMISSION

13. PENNY TAX PROJECTS & RESOLUTION

14. SET DATE FOR SERVICE DAY - APRIL 12

15. ENCOURAGE ELECTED OFFICIALS TO ATTEND MASC TRAINING FEB. &
LEGISLATIVE ACTION DAY

16. SET NEXT MEETING AND ADJOURN

184

Coastal
Wet
Jeff

CHAPIN TOWN COUNCIL
SPECIAL MEETING
JANUARY 15, 2014 7:00
MINUTES

1. Mayor Skip Wilson called the special meeting of the Town Council to order at 7:05. This Meeting was called to focus on working on the "Penny Sales Tax Projects". All members were present which included Vivian Atkins, Gregg White, Kay Hollis, Robbie Frick and Mayor Skip Wilson. The Freedom of the Press Act was complied with and Mayor Skip Wilson began the meeting with prayer.
2. Vivian Atkins moved to approve the minutes from the January 7th meeting. There was some confusion if the minutes being approved were the Jan 7th or the Dec. 3rd minutes which were revised. Council Member Atkins thought the Dec. 3rd minutes were still incorrect as Lealand Teal was not present. Clerk Thompson advised her file cabinet which had been locked in the move got a new key and Leland Teal was indeed present and the Dec. 3rd min. are now correct. Mayor Wilson advised that on the Jan. 7th minutes the deadline date for the "Penny Sales Tax" submissions is Jan. 30th and not the 31st. Also Mayor Wilson wished to change the wording in Item 12 concerning the Clark St. Recommendation from the Planning Commission. He advised that "It was the Planning Commissions decision to advise Council to go ahead with the project" be replaced with, "the planning commission advised the project be presented to the council." Clerk Thompson agreed to make the changes. With these changes Mayor Wilson called for a vote which was affirmed by all and all minutes were declared accepted.
3. Mayor Wilson made the motion to go into Executive Session. This was seconded by Gregg White and approval was given by majority, Mayor Wilson, Gregg White, and Vivian Atkins. The Council was in executive session from 7:10 to 8:05. Prior to adjournment of Executive Session, Councilman Robbie Frick walked out of the meeting.

With the Town Clerk out of the room, Mayor Wilson advised the people in attendance that the Town Council discussed a couple of topics, and felt it was in the best interest of the community to go forward and hire an interim Council to represent the City. Mayor Wilson called for a motion from Council. Vivian Atkins moved to hire an interim attorney to represent the City. This was seconded by Gregg White and approved by all.

Mayor Wilson also advised that the Council Members agreed that to go forward with the growth of the community, a person be hired for communication and economic development. This person would be a special assistant to the Mayor, and would do many of the duties of the Mayor but would also help with Council and Town Council functions. This position would be advertised in the paper or online. The applications will be screened, reviewed and then the decision would be made. Mayor Wilson called for a motion. The motion to hire an Economic Development/Administrative Assistant to the Mayor was made by Gregg White. The entire Council approved.

Mayor Wilson advised it would also be in the best interest of the Town to have public

meetings and workshops that would be open to the public for education on ordinances etc. This would be provided by the Municipal Association. There was some confusion as to whether these sessions would be open to the public and Mayor Wilson advised they would. Council Member Atkins questioned if for the workshops they could go into Executive Session for a workshop. Mayor Wilson advised only if it involves legal, personal or contract issues pertinent to the Town. Vivian moved to schedule workshops with the Municipal Associations. This was seconded by Kay Hollis and approved by all.

Clerk Thompson returned to the room. The above proceedings are from reviewing the recording.

4. Planning Commission Nominations were next on the agenda. Mayor Wilson had provided information on Gregg Ross and asked for other nominations. Kay Hollis nominated Wendy Svoboda. Mayor Wilson questioned if we had a resume or anything else that stated what her qualification would be. Vivian Atkins seconded the nomination. Mayor Wilson said he is just asking for information. Wendy was in upper management and did restructuring of markets. Mayor Wilson asked for specific tasks. Council member Gregg White questioned if we had advertised this position. Mayor Wilson advised we did not, however we are being respectful of nominations from the floor. Mayor Wilson added this position requires experience, exposure knowledge of ordinances, and Commercial Real Estate. Ms. Svoboda questioned if current members of the Planning Commission have these qualifications. Mayor Wilson advised that just because we do not have these currently is no reason not to start. Ms. Svoboda advised she is also president of the Homeowners association with 155 members and lives in Town. Mayor Wilson stated it is critical that this person know what the plan is for the Town. Ms. Svoboda advised she knows the Town Plans better than most. Mayor Wilson advised all present of Gregg Ross's extensive knowledge of Real Estate and his work with developers. There was more discussion on the matter and Mayor Wilson advised, "if the best qualified was not chosen then we are not doing our job." Ms. Svoboda advised she sees Mr. Ross's profession as a conflict of interest. There was more discussion. Councilman White advised he just found out about Wendy today and wants more time. Mayor Wilson advised Council "we will table it", after which Mayor was advised he cannot table this with a motion and second on the floor. Motion had been made by Councilman Atkins and seconded by Councilman Hollis. Councilman White said he would like to consider more people and Mayor Wilson agreed to defer the vote. Mayor Wilson was advised that he could not do this, he had to call for the vote. The vote was three to two with Robbie Frick, Vivian Atkins and Kay Hollis in favor of appointing Ms. Svoboda and Gregg White and Mayor Wilson opposed. Councilman White advised there may be more members of the Planning Commission to be leaving and he hopes more thought would go into the replacement decisions.

5. Penny for Progress was next on the agenda. Each Council member was given a list of proposed projects, and Mayor Wilson asked each member of Council to rank the projects and take on a project to process the application. Mayor Wilson agreed to take on Hwy. 48. Council member Atkins agreed to take on the Old Lex. Ave. Sidewalks project. Council woman Hollis agreed to take on the Martin Chapin Parkway. Clerk Thompson questioned the 9.04 mile pathway and the 2.6 mile parkway under Martin Chapin Parkway. Mayor Wilson advised this was bike path info. and not Martin Chapin Parkway. Martin Chapin Parkway did not have an amount listed. Robbie Frick agree to take the bike paths. Roads to be paved was taken by Gregg White. Some of the sewer projects were stated as pretty much done. The Northern Bypass was

questioned by Council member Atkins as it is not in town. Mayor Wilson advised we still had to submit this and he would handle this project. Council Member White agreed to take on the Lex. Ave. and Chapin Road Intersection. Members were again asked to rank the projects right now. Columbia Ave. was #1. Council man White requested more time to rank the projects. Mayor Wilson agreed the members could rank the projects and email their rankings to him by Friday. Clerk Thompson requested that since she is keeper of the records that she needs to receive copies of all information given Council in order to properly archive the records. Mayor Wilson answered, "absolutely".

6. Clark St. Development project update. Mayor Wilson advised that they are not taking a vote tonight, but just getting information to go forward. Mr. Roberts was present to request that Council put this project on the agenda for a public hearing and get Public input for the redirection of Clark Street. Mayor Wilson questioned if it was all properly zoned. Mr. Roberts advised all but one parcel. Mayor Wilson advised this would have to go through Planning Commission to be rezoned before this can go forward. Zoning Administrator Thompson explained that when the parcels were joined together as one parcel it would be assigned a zoning on the entire parcel. Council Member White advised since these parcels were divided by a road they could not be joined and had to be treated separately until the Planning Commission could agree to join the parcels. Mr. Roberts explained that the road would be redirected. Both Mayor Wilson and Council member White advised this is not a road but a pathway. Mr. Roberts stated it is a road and would like to have a dedicated Right of Way to the Town and eventually deed the Road to the Town and be granted a perpetual easement back to the developer once the project was complete. Council He advised all the legalities would be worked out to the satisfaction of the Town, but at this point he is just seeking a Public Hearing for input from the public. Procedure for this was discussed, and would be according to DOT standards. Kay Hollis moved to place the Clark St request to be placed on the agenda for a public hearing. Councilman White seconded the motion just to engage in discussion. Council member White advised he wanted more information. He wants a traffic count, he is not sure what will be happening and not sure what business would be there. Council member White advised that due diligence has not been done and does not like the idea of closing a road. Mr. Roberts advised more information will come in detail as the project goes forward. All information to the point of progress has been given and more will come after the public hearings. The motion was amended to establish a Public Hearing at the next Council Meeting Feb. 4th. This was seconded by Vivian Atkins and approved by all. Council Member White requested more information will be necessary. Council man White advised he wanted growth that would benefit the Town.

7. Public Comment:

Wendy Orr - no comment

Kay Gorden - not a resident but a reporter, questioned if the position offered tonight was the same as offered before. Title will be Director of Communications and Economic Development and Assistant to the Mayor.

Lil Mood - not in Town Limits but on 20/16 committee.

Lil Mood questioned if the Theater is the culture center they mentioned, as 20/16 has been

working on the Theater. Mayor Wilson advised the Theater is not part of this as it is not our property. The Cultural Center would be on the Town Hall Property.

Lil also is interested in the bike paths. Mayor Wilson advised the projects would be ranked by the commission which is a different ranking then the one requested by the Mayor.

Ms. Mood suggested the purchase price be included in a project for the Theater and it be included in the list of projects. Mayor Wilson advised the School is not interested in selling the property.

Bobby Hale - watched traffic on Clark St. for an hour and counted 12 cars, 4 of them the telephone company vehicles.

Zoning Administrator Adrienne Thompson asked to make a statement. Ms. Thompson advised these are all great projects for Chapin, but not all of them will make the list. We are talking Community development and what the Town needs. Even if some do make the list if the referendum does not pass, none of these projects will be done. However we have a \$30 million dollar project proposed with us controlling the details at someone else's expense and every one is saying no no don't let it go ahead - stall stall stall - This project is good Economic Development and that is what this town needs. Council Member White asked Clerk Thompson if this was fact or opinion and Clerk Thompson replied fact. Mayor Wilson and Councilman White state their opinion that Clerk Thompson's remarks are her opinion.

Mayor Wilson adjourned this meeting at 8:50.

Sincerely,



Adrienne Thompson

Clerk/Treasurer/Zoning Administrator

CHAPIN TOWN COUNCIL
SPECIAL MEETING
JANUARY 15, 2014 7:00
AGENDA

1. CALL TO ORDER DETERMINE QUORUM - PRAYER
2. REVIEW MINUTES FROM JAN. 7, 2014 & APPROVAL
3. EXECUTIVE SESSION: ADMINISTRATION/PERSONNEL ISSUES
4. PLANNING COMMISSION NOMINATION
5. PENNY FOR PROGRESS: PROJECTS IDENTIFIED AND PRIORITIZED
6. CLARK STREET DEVELOPMENT PROJECT UPDATE
7. PUBLIC COMMENT:

ALL INDIVIDUALS WHO WANT TO OFFER COMMENTS MUST SIGN IN BY PRINTING AND SIGNING THEIR NAME, LIST THEIR TELEPHONE NUMBER, STATE THEIR TOPIC OF DISCUSSION AND INDICATE IF THEY ARE A RESIDENT WITHIN THE TOWN LIMITS OF CHAPIN

PLEASE STATE ON THE TOP OF THE SIGN-IN SHEET:

TIME PERMITTING, EVERY EFFORT WILL BE GIVEN TO ADDRESS ALL ISSUES LISTED ON THE PUBLIC COMMENT SIGN-IN SHEET.

PROPOSED AGENDA

CHAPIN TOWN COUNCIL
FEBRUARY 4, 2014 7:00
AGENDA

1. CALL TO ORDER, DETERMINE QUORUM, PRAYER
2. REVIEW MINUTES FROM JANUARY 15TH MEETING AND APPROVAL
3. POLICE REPORT
4. FIRE DEPT. REPORT
5. ATTORNEY REPORTS
6. UTILITY REPORT
7. AMERICAN LEGION REPORT AND UPDATE ON BUILDING
8. 2ND READING ON LEASE FOR 103 COLUMBIA AVENUE
9. MUNICIPAL ASSOCIATION INFORMATION/TRAINING
10. AUDIT REPORT 2012 - BUDGET UPDATE
11. APPOINTMENT OF MAYOR TO CENTRAL MIDLANDS COUNCIL OF GOVT. BOARD
12. PENNY FOR PROGRESS RANKING AND SUBMISSION
13. CLARK STREET INFORMATION
14. RENTAL AGREEMENT FOR COMMUNITY ROOM
15. RENEWAL OF PINNACLE LANDSCAPING CONTRACT FOR INTERSTATE & TOWN SQUARE.
16. REVIEW CONTRACTS FOR CLEANING SERVICE AND DECIDE.
17. NEW DEADLINE FOR STATEMENT OF ECONOMIC INTEREST - MUST FILE ON LINE
18. UPDATE ON STREETScape
19. UPDATE ON DAMAGE TO BEAUFORT STREET.
20. T D BANK RESOLUTION
21. PUBLIC COMMENTS: MUST SIGN IN PRIOR TO MEETING

David Knight

From: "Adrienne Thompson" <townclerk@chapinsc.com>
Date: Sunday, February 02, 2014 5:16 PM
To: <lmaw1@bellsouth.net>
Subject: FW: Agenda for Approval

From: Skip Wilson [mailto:swilson@skipwilsonfinancial.com]
Sent: Sunday, February 02, 2014 4:03 PM
To: Adrienne Thompson
Subject: RE: Agenda for Approval

Adrienne,

Delete the following items on the proposed agenda for February 4, 2014:
14,15,16,17,18,19,20.

Modify

Item 10 to read: 2012 Audit Report Recommendations and Budget update

Item 12 to read: Penny for Progress Ranking and Council Approval

Item 13 to read: Clark Street Update: Information update from Council

Amend the Jan.15, 2014 minutes to reflect that Council went into

The items above have neither been discussed with me or very little discussion has occurred.

No item is to be placed on the agenda unless it has been discussed with me, well in advance of the Town Council meeting.

Adrienne, I encourage you to plan and communicate more efficiently than what is currently taking place.

Please modify the agenda to reflect the corrections.

488 191

FINAL AGENDA

CHAPIN TOWN COUNCIL
FEBRUARY 4, 2014 7:00
AGENDA

1. CALL TO ORDER, DETERMINE QUORUM, PRAYER
2. REVIEW MINUTES FROM JANUARY 15TH MEETING AND APPROVAL
3. POLICE REPORT
4. ATTORNEY REPORTS
- 5.. UTILITY REPORT
- 6.. AMERICAN LEGION REPORT AND UPDATE ON BUILDING
7. 2ND READING ON LEASE FOR 103 COLUMBIA AVENUE
8. MUNICIPAL ASSOCIATION INFORMATION/TRAINING
- 9.. 2012 AUDIT REPORT RECOMMENDATIONS AND BUDGET UPDATE
10. APPOINTMENT OF MAYOR TO CENTRAL MIDLANDS COUNCIL OF GOVT. BOARD
12. PENNY FOR PROGRESS E-MAIL AND COUNCIL APPROVAL
13. CLARK STREET UPDATE: INFORMATION UPDATE FROM COUNCIL
14. PUBLIC COMMENTS: MUST SIGN IN PRIOR TO MEETING

159 192

DRAFT - FEB. 4, 2014 CHAPIN TOWN COUNCIL

MINUTES

PLEASE BE ADVISED THAT DUE TO THE NATURE OF THE FEBRUARY TOWN COUNCIL MEETING AND THE LENGTH, IT WAS A VERY DIFFICULT TASK TO COMPILE THE MINUTES.

I HAVE DONE MY BEST AND THERE ARE SECTIONS THAT ARE VERBATIM AND SECTIONS THAT ARE SUMMARIZED.

THE TRAINING SESSION IS OUTLINED TO USE AS A REFERENCE TO SOME AREAS WHERE YOU MAY SEEK GENERAL INFORMATION, AND YOU CAN USE THIS AS A GUIDE.

THE PENNY FOR PROGRESS PROJECTS ARE A PART OF THE FEB. 4TH PACKET SO I DID NOT LIST THEM IN THE MINUTES, BUT THEY ARE AVAILABLE UPON REQUEST.

IF YOU WOULD LIKE A DVD COPY OF THE ENTIRE MEETING PLEASE ADVISE.

Adrienne Thompson
Town Clerk

DEAF

CHAPIN TOWN COUNCIL
FEBRUARY 4, 2014 7:00
MINUTES

1. Mayor called the regularly scheduled Town Council meeting to order at 7:04. All members were present which included Vivian Atkins, Kay Hollis, Robbie Frick, Gregg White and Mayor Skip Wilson. The Freedom of the Press Act was complied with and Mayor Wilson began the meeting with prayer.
 2. Minutes were reviewed from the January 15th meeting. Councilman Gregg White advised on # 6, it states Mr. Roberts said it would be deeded back to the Town, and Mr. White advised it would be an easement back to the Town. On page one 4th paragraph 1, it should be hire an "interim" attorney. Clerk Thompson agreed to make the changes. Gregg White moved to accept the minutes as corrected which was seconded by Vivian Atkins and approved by all.
 3. Mayor Wilson advised he had a general comment concerning the Police Dept. Mayor Wilson had heard rumors that he had an agenda to dissolve the Police Force. Ms. Atkins advised this was not on the agenda. Mayor advised "Yes mam" it is Police Report. Mayor Wilson assured all that it is not his intension to change the Police force personnel or do anything to change the Police Force. Chief Crump submitted his report in writing and advised on Feb. 15th he is participating in the Lake Murray Plunge. Chief hopes to raise \$500. for special Olympics. No major issues during snow storm except for roads not being cleared.
 4. Under Attorney report,
Mayor Wilson advised we have an interim Town Attorney.
Councilwoman Vivian Atkins said I rise to a Point of Order.
Mayor Wilson acknowledged.
Ms. Atkins - On Ms. Howland no nominations were made, no vote was taken, or no contract terms or compensations were made and the approval was not brought before the Council. Ms. Atkins - I move that we table this. She stated, "We agreed to an interim, but we never agreed to who, what, where, compensations or anything else."
Mayor Wilson - We discussed the interim attorney specifically by name in Executive session.
V- She was never put on agenda
Mayor- It was in Executive Session
- Ms. Atkins - She was never put on agenda for approval by council, the contract was never approved, her compensation never approved, never brought to Council
- Mayor Wilson called on MASC field rep. Jeff. Shacker for his guidance on this.
Mr. Shacker - not clear on what actions were taken or not taken. If the discussion occurred in executive Session and no action was taken following the executive session then an appointment was not made.
V A- Thats Correct
Jeff S - if discussion occurred in executive session Council returned to open session and a vote took place to appoint the Attorney then that appointment would be valid
VA- no- a vote was put to session to hire an interim attorney, no names were mentioned, or

compensations or contracts or anything else . No names were mentioned

Jeff S -We are not in practice of giving legal advise but in the future generally speaking I would want the motion for an action like the appointment of a public official to be very specific and go thru the proper procedure I think having it listed on executive session is sufficient in terms of the agenda, there is an implication there that you would return to vote to open session and possibly take action- but in the future following executive session,when taking actions following executive session, the motion should be explicit.

Mayor Wilson - -no the motion was explicit in hiring an attorney, interim attorney and we did that, we went forward with that.

VA - So is that your ruling?

Mayor -Yes Mam.

Ms. Atkins - we need to have a vote

Mayor - I am not calling for a vote.

VA- I moved that

Mayor - I am not calling for a vote

VA - However according to Roberts Rules -

Mayor - Presiding officer calls for votes

VA - Exactly but I have a - a point of order and you have to rule on a point of order.

Mayor - The point of order is that we are tabling the request at this point

VA - so we are tabling the hiring,

Mayor - no ma'm we are tabling your issue for further discussion

VA - I appeal

Kay Hollis - second

Mayor - you can appeal it

VA - we just did and we have a second

VA - All in favor of

Mayor -Excuse me we do not have a second

KH - I seconded

Mayor - OK Excuse me I am deferring the vote I have not called a vote

VA - But your ruling is that the hiring stands and I am appealing the ruling. so your ruling is that the hiring stands

Mayor - you can appeal the ruling

VA - so we can vote that your ruling stands or you can have - vote for those who approve or those who oppose.

Mayor - But I am not calling for a vote to appeal it.

Att. May I make a point of clarification that may be helpful I believe you are making a motion- as parliamentarian until I'm removed - its in the sample rules of order say a motion may be made by a member who voted with the majority and must be made the same or next succeeding meeting

VA - I rose a Point of order

A I am supporting what you are saying, I'm actually saying

may be made by a member who voted with the majority in the last meeting. You are making a motion According to the sample rules of order A motion may be made orally or in writing, however a motion shall be reduced to writing at the request of any member of Council and then a motion to reconsider must be made by a member who voted with the majority and it appears that the since the vote was unanimous when you came out of executive session that you would be with the majority same or next succeeding meeting- At this point it appears you certainly have the authority to make such a motion I apologize just by going by the sample rules of order

Mayor aren't they a sample, not voted in as rules of order for the Town of Chapin.

A Well they are basically Roberts Rules of order if there is something different for the Town of Chapin I have not been provided anything that says that. I certainly would not want to advise the council wrong or different I can only go with the information that I have. But currently the ordinance book has stufall over the place so I am just going with the sample rules of order provided by the Municipal Association that appears to be the proper way to proceed. So I apologize I just felt like As a parliamentarian that I needed to step up and say that.

Clerk - It is the Roberts rules of order that we follow.

Mayor - You can have your vote

Kay H - What are we voting for?

V Atkins - We are voting - do you want to handle it?

Mayor - go ahead you are making the motion aren't you?

V Atkins - No I have already made the motion and your ruling is that my motion is out of order.

Mayor - Yes Mam

V Atkins - and that so those for your ruling will vote and then

Mayor - The appeal has to be in writing

V Atkins - no it doesn't according to this

Attorney - no -what it says is that a motion may be made orally or in writing however a motion shall be reduced to writing at the request of any member of Council. Your motion to reconsider is based on what actually occurred in the previous Council meeting and you did vote with the majority so you were in line to make the motion for reconsideration which is what sounds like you are wanting to do

V Atkins - I am not voting for reconsideration, I am voting that the laws be followed. That we present your name and the whole bit.

Attorney - I understand

V Atkins - I am not against you please understand

Attorney - oh I don't think you are

Mayor - Ms. Howland did you not also say the if another member of Council requested the motion be reduced to writing that it be done that way?

Attorney - any member of Council can request that a motion made orally be reduced to writing. - anyone can- so if you are wanting Ms. Atkins, Councilman Atkins to clarify her motion anyone can request that but she certainly must be allowed a few moments to put her thoughts together. To produce that.

Mayor - OK

Attorney - if that's the Mayor's request otherwise it may be done orally.

V Atkins - However the ruling is still for his, the Mayor's ruling, we have to vote for that too. Right?

Attorney - no I don't think that is what has occurred. I think what you have brought is a motion for reconsideration based on a formal Council action, is what I am hearing you say and then that motion needs to be voted on and if I'm hearing what you say - I wasn't at the last meeting so

Mayor - and I think if I may speak to it - I think-asking the request to be in writing to give clarification only suits the purpose of what she is asking for. Since there is confusion as to what she has asked orally, I am simply requesting that it be put in writing. That's all.

Attorney - All I am here to do is to let you know what the rules are and the rules are you are certainly able to make a motion orally or in writing which you have done, you were with the majority previously so you have standing to do that and then at this point if another council member is requesting clarification on a motion and asking you to reduce it to writing that's an allowable procedure too.

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V Atkins - But it's my understanding that the ruling is the Mayor has ruled against me so we have to have a vote

Attorney - I think that he has withdrawn his ruling against you because he realized that now you are making a motion that is appropriate - That is what I think. I think that that is where we are we are at the point where you are clarifying your motion and we are going forward on that. I think that is where we are.

Mayor - That is all I am asking - that you just put it in writing.

K Hollis Are we all going to wait while you are writing or are we going

Attorney - It would seem that if you've got the motion and he has asked it to be reduced to writing, so if you are able to reduce it to writing that either I or Ms. Thompson, Town Clerk can run out and make copies of your motion. It has been reduced to writing so everybody knows specifically what it is and they have in front of them.

V Atkins - OK

Mayor - are you preferring to do that? Put it in writing at this time

V Atkins - If I can do a handwritten thing

Attorney - there is nothing that says it has to be typed

V Atkins - and you can read my handwriting too.

Now do I put it as a point of order or as a motion?

Attorney - it would appear to me that this actually follows, that it is a motion for reconsideration.

Not a point of order - actually a motion. This may be something that Jeff, Mr. Shacker would like to comment on.

Is anyone going to analyze my handwriting?

V Atkins - Ms. Howland, I want you to understand that this is nothing personal against you.

Attorney - I understand - I am a Lawyer and we do not take things personally.

(THE MOTION WAS WRITTEN COPIED AND DISTRIBUTED)

The motion read: **I MOVE TO ANNUL THE 1/16/2014 CONTRACT FOR INTERIM ATTORNEY SERVICES DUE TO THE FACT THE SUBJECT WAS NOT NOTICED ON ANY AGENDA, NOR NOMINATIONS MADE, NOR VOTE TAKEN AND NO CONTRACT TERMS INCLUDING COMPENSATIONS HAVE NOT BEEN APPROVED BY COUNCIL.**

Mayor - Have you all had time to read this - I do have one question. We had two motions, a first and second on the bench, but your motion says to annul the contract but under the sample rules of order is a motion to reconsider as you stated earlier. I am not sure what you are asking.

V Atkins - I rose to a point of order that she had never been on the thing, and then I was asked to write a motion.

Mayor - but are you asking to reconsider the motion and the order that was made

V Atkins - I am asking for you first to make a ruling on the point of order

Mayor - and I indicated that I wasn't making the ruling

V Atkins - so then I made a motion to annul the contract.

Mayor - in order to annul the contract or suspend it you need an ordinance and meeting according to the rules of order.

V Atkins - we never had an ordinance to begin with to hire, we agreed to an interim attorney but the interim attorney was never approved by Council, her contract was never approved by Council, her compensations were never approved by Council.

Mayor: The interim Attorney was approved.

V Atkins - The interim attorney per se, but not the person exactly.

Mayor - That is not required

V Atkins- Yes it is. Her name was never on the agenda at any point.

Mayor - You need to have an ordinance in place in order to rescind it or suspend it.

V Atkins - well according to Robert's rules, I appealed, and a rise to a point of order-you chose not to address the point of order, opposed or unopposed, so then I was appealing the ruling- you chose not to have a vote , those for the ruling or those opposing the ruling so then you asked for a motion, and that is why I did the motion.

Mayor - Ms. Atkins, I did not ask for a motion. Your motion was to reconsider the ruling.

V Atkins - We never had a vote on the ruling.

Mayor - I am not ruling on this. I am not calling for a vote.

V Atkins - we can call for a vote - THOSE IN FAVOR of the motion

K Hollis - What are we voting on?

G White - we havn't had a final discussion We had a motion and a second - we did not have any discussion on it.

Mayor - But you are asking to annul this and you cannot do this.

V Atkins- Well you haven't done anything you were suppose to do according to Robert's either.

Mayor - Ms. Atkins,

V Atkins - I appealed it because you refused to make a ruling so I appealed it

Mayor- and I am accepting your appeal to reconsider

V Atkins - and we had a second on the appeal so those in favor

Mayor - But you are asking two things - You are asking to appeal which I accept and now you are writing down a motion to

V Atkins - I was told to do that

Mayor - I am saying you are writing down

V Atkins - if you want to tear that up, that's fine but we are still in discussion and we have not had a vote

Mayor - you cannot

V Atkins - I can make a motion too - if that's what you want

Mayor -you can not unless you have an ordinance - you can ask for a motion to reconsider the decision but you can not annul it- an order unless you have an ordinance in place.

V Atkins - but I am appealing your ruling that you would not even consider

Mayor - I told you that I accept your appeal to reconsider and you take the vote based on the motions, but you cannot annul the order. If you are asking to appeal and reconsider

V Atkins - What about asking to appeal and reconsider your ruling that you would not even consider it?

Mayor - Ma'm

V Atkins - I ask you

Mayor - I'm saying you can ask for reconsideration of the order that was made to appeal it and that could be voted on. But you cannot say something and then write something down to annul the contract. It can be reviewed and consideration can be made but you cannot annul it.

V Atkins - I don't understand-

Mayor - you are saying one thing and you are writing down something else.

V Atkins - you are saying one thing

Mayor to Attorney - Do you have the sample rules of order?

V Atkins - I made a Point of Order and asked you for a vote on the ruling And then I appealed the ruling.

Mayor - Look at 6B let me read what it says - a motion must be made orally or in writing and then the motion can be reduced to writing - we have done that - A motion to reconsider must be

made by a member who voted with the majority and must be made at the same

V Atkins - we haven't had any votes

Mayor - May I finish please - A motion to reconsider must be made by a member who voted with the majority and it must be made at the same or next succeeding meeting. Robert's rules allow a motion to reconsider only on the same day the vote is taken. Allowing a motion to reconsider at the next meeting is suggested as a local rule.

So your motion to reconsider

V Atkins - we haven't had a vote yet

Mayor - you can't have a vote on something that is voluntarily accepted

V Atkins - I am appealing the ruling that you said you are not going to consider and I am asking that it be considered.

Mayor - your motion to reconsider has to be at the next meeting. And I said you can reconsider

V Atkins - no it does not have to be at the next meeting

Mayor - Ma'am we are at the next meeting now ok

THE PEOPLE IN ATTENDANCE CRIED OUT VOTE! VOTE!

Mayor - Please - can I just ask you not to comment! Just for some order please out of respect.

And I'm just saying that you can make the motion but you cannot write something down and voting to null the contract at the same time.

V Atkins - I was told by your Parliamentary Person

Attorney - It's not his Parliamentary Person, I am the Town's Parliamentary person.

V Atkins - I understand

Attorney - If we can get some clarification - I am not the brightest person but I am really confused now.

V Atkins - Thank You

Attorney - My understanding is in the procedure where we are at, you have a motion for the Council to reconsider the decision to hire an interim Town attorney. Is that where we are at?

V Atkins - No - we agreed to the interim Town Attorney, we did not agree on the contract, on who what, where, however and that's what I have on the floor.

Attorney - Ok The issue then is the validity of the person who is currently occupying the role of Interim Town Attorney, and whether the Mayor had the authority to accept the contract between that person and the Town.

V Atkins - exactly and offer her compensation and everything else because that is a budgetary issue.

Attorney - so that's the issue

V Atkins - yes

Mayor - but that is not what you wrote down

Attorney - So if I may, as long as I am currently serving that role - one moment - Ok keep in mind I want to be sure that I don't appear to have a conflict because I am advising the Town on a situation that affects me directly, I need to disclose that from an integrity standpoint, but I do believe at this time you need to go into executive session and discuss this personnel contractual issue. That is what I recommend.

Mayor - do we have a motion to go into Executive Session to discuss this issue?

G White - I will move that we go into Executive Session

Mayor - I will second it

Attorney - Because it is a contractual personnel issue, I think Executive session is appropriate and

I want everyone to be very clear that this is a matter that involves me so I will not go in - I do not want to have any appearance at all of.

V Atkins - I appreciate that and if that is the case then I move we go into Executive Session to discuss other contractual issues and personnel issues.

Attorney - That is what I am recommending as the interim Attorney and I am recommending that I probably don't need to be in there. I am more than happy to be present but I think it is important to be very clear about who I am and where I fit in to all this.

V Atkins - However can I ask this-can we have another legal Attorney in there as my personal representative?

G White - I will not agree to that.

Attorney - I don't know if there is anyone present that would be - but I think going into Executive Session is the first step.

V Atkins - can we move then that we have Executive session next week, next Tuesday night with proper legal council?

Mayor - we've got two motions to go into Executive session to address this issue. Can we have a vote please to go in.

G White - I think we need to go into Executive Session for this Contractual Issue we need to resolve it. It is not good for a Town to be without an Attorney, I am not sure what the circumstances are or who the Attorney may be, but I think it is important that the Town is represented by Legal representation going forward. I know that if we have to go into Executive Session to discuss it, a contractual matter, we should do that to benefit the Town. We are not going to agree with it or may not agree on anything but I think we should discuss it and go forward.

Mayor- OK we have two people voting G. White, Mayor Wilson. Are you all objecting? "Yes" OK then the issue is not resolved.

G White - so we are not going into Executive Session

So no decision is made

Mayor - no decision is made

V Atkins I would like it on record that we did in Executive session last time agree to look into hiring an interim Attorney, however we did not agree on who, what, where, compensation or anything else and it's never been on the agenda.

Mayor - Ok then we will move forward

G White -Let me offer a statement - The Town not being represented by an attorney, now I don't care if we take it before the Council as far as a vote, and decide who we are going to do , but for us not being represented and have legal council going forward is a disservice to our Community.

V Atkins - I understand that and if you realize the last Town Council meeting that was my major objective we needed an interim Attorney before anything else it was a major issue, I know we can't discuss Executive Session but that can go on record too.

G White-I understand that but I think its one of the issues that we do need to resolve

V Atkins - As I said last time, I agreed with that last time that was my major issue last time, I need it on record that it is still my major issue

G White - Well is there any way we can resolve it by having Executive session for the betterment of the Town

V Atkins - The Executive session last time did no good so no!

G White - I think it did some good, we came out with some positive aspect of it, I wouldn't say we came out all negative there was some positive aspect to it but to leave the Town in limbo, with

no legal representation is not for the benefit of the Town and not what we were elected to do. And I agree that we should have some discussion about contract, who what when where how and how much, but we need to do that in Executive session because it is a contractual issue, and if we need to do it tonight, we need to do it tonight.

V Atkins - but it has already been done and it was not discussed at Town Hall at the Council meetings or anything else and so evidently although it was suppose to be done in Executive Session, the powers that be decided to go on their own and do it

G White - We could resolve that if we had some discussion, I don't think at least I am open to having a discussion on a contractual issue and personnel.

V Atkins - We need legal council too so table it for now

G White - I have no problem with the current

V Atkins - so we have a motion to table it

G White- Let me get this right, you are saying no Executive session , no Legal Council for the Town of Chapin - that's my understanding

Mayor - We do have current legal representation at this point - only identify that Executive session will not go forward so therefore it cannot be discussed, which it needs to be discussed - it can't be discussed out in the open, it has t be discussed in Executive Session, so you have a choice to discuss it tonight or we can discuss it at the next Town Council meeting.

V Atkins - well it was discussed at last Executive session and the powers that be moved on and without Town Council approval or anything else, contracts were signed

Mayor- we hear your point, but the point to go forward is it still needs to be addressed, by refusing to go discuss it, at what point and when do you plan on discussing it.

V Atkins - we have already discussed it

Mayor - to address the issues of your concern, they can only be discussed in Executive session. If you choose not to do it tonight than we just go forward as status quo. We can do it next month or next Council meeting or we can do it tonight - I mean it is up to you but unless we go into Executive Session to discuss it, we are just going forward with the issue. So tell me what you want to do. Would you like to do

V Atkins - we are tabling it

Mayor - so we are just going to go forward with this - Status quo

OK Thank you for your patience.

5. The Utility Report - submitted in writing will answer questions if any. Accepted as information.

Mayor I would like to address the Utility Attorney David Webster Knight, he has submitted his report, dated January 2nd, item one is Old Forge Road sewer extension, he indicated he filed an easement, I'm not sure if this was - on which date, nothing was brought before the Council on this, it probably should have been filed as an ordinance - I would like to make reference to that on item 1. Item 4 which was the issue addressing Mr. Colley's property that has indicated a \$10,000. Fee to him issued a permit to keep the old easements, this is in negotiation and at this point it has been reduce to \$5000. So I would like to make that adjustment.

6. The American Legion Report - Presented in writing continue to be very active. Building being used as Short wave radio in case of a disaster.

7. Second reading on the Lease for 103 Columbia Avenue. Mayor advised only two small

changes. This has gone back and forth, I have given Council an updated copy and the only change is on item 7 where the 120 days has been changed to 180, and item 8 from 120 days to 180. Only referencing that is the building was damaged by a fire or flood or any type of unavoidable cause, the Landlord could proceed to repair the damage and they gave us 180 days vs 120.

There was some discussion as to whether this would be second reading on the original contract or a first reading on this contract as it had been changed. It was agreed this would be a second reading on the amended first contract. Vivian Atkins moved to approve the first lease. After some discussion Gregg White moved to accept the first lease with the amendments days. This was seconded and approved by all.

8. Jeff Shacker, our field representative with the Municipal Association of SC was present for a training session for the Town. Mr. Shacker represents 106 of the 207 Municipalities in SC. Highlights of his presentation that influence the Town are as follows:

Forms of Government

In the Mayor- Council form of Government are two main areas - Policy and Administration

Policy is the responsibility of the Council

Administration is the responsibility of the Mayor

Out of 270 Municipalities, 145 have the Mayor -Council form of Govt. And 207 are less than 5000 in population

Mayor is a member of Council and executes the powers of the Council

Council is the Legislative body and determines policy for the City.

Mayor is the Chief Administrative Officer and responsible for preparing the financial reports and annual Budget and reporting them to Council.

Council approves the Annual Budget

Mayor is the presiding Officer at Council Meetings

Mayor is responsible to oversee day to day operations of the Towns departments.

It is Mayors responsibility for faithful execution of the laws and local ordinances.

Mayor has personnel authority except for the positions of Town Clerk, Town Attorney & Judge, which are required by State law and they are appointed by Council.

No one member can execute the authority of Council - this is decided by majority

Mayor can hire if he complies with the process to hire:

Must have existing position on staff

resources must be budgeted -

Council makes the decision of funding the position

Any contract of the Town has to be approved by Council and any appropriations have to be budgeted.

Mayor may have an Administrator, however the Administrator has to be hired by Council

State Law requires you have an Attorney and Town Clerk appointed by Council

Terms of the Attorney should be spelled out in a contract by Council approval.

Any decisions growing the size of the Budget have to be approved by Council

All positions should have classification, job description and a comp. plan. If unbudgeted, it must be spelled out and approved by Council.

Personnel Policies have to be followed.

Must have Positive majority - total members of Council must be present to approve

If three members of Council are present at the same place, the media must be notified.

E-mails requesting action by Council if all notified and copied should not be sent

No direction of Council can be taken in response to an e-mail

Votes have to be out in the open

Beware of conflict of interest

Mayor pro tem has to be chosen at least every two years, however the same person can be chosen over again.

Mayor can make a motion and must vote unless there is a conflict of interest

Clerk notifies media 24 hrs in advance of meetings and posts time and place at Town Hall

Agendas should not be amended within 24 hours of the meeting.

FIVE (5) TYPES OF MEETINGS

1. Regularly scheduled meetings
2. Emergency meetings
3. Executive Sessions
4. Public Hearings
5. Special Meetings

Work sessions are considered a special meeting and meet all requirements of a regular meeting.

If you are going to take action, do not call it a work session - call it a special meeting and it has to be put on an agenda.

Do not call a special meeting while in a workshop - you still have to give 24 hr. notice.

Publish Calendar at beginning of the year showing all regularly scheduled meetings

State Law cites consistent must have Rules of procedure adopted by Ordinance

Robert's Rules can be adopted as a first or secondary guide.

If council members are a part of a committee they cannot exercise any more authority than any other person at the meeting.

AGENDAS

Mayor does Agenda with the input from the Clerk

Agendas are required for all meetings

consistent format should be followed

assign priorities

Procedural matters

Variable items

Mayor is the individual responsible for requests for agenda items

Request items are usually handled as presentations- can have deadline for submission

Agendas can be done by the Town Clerk

must provide ability for Council members to add items for the agenda

rules of procedure dictate - recommend they are codified and in one place in the Town Code Book

There should be a clear description of items under a broad heading

Council should be able to weigh in on items considered for the agenda

deadline for receiving the Council packet can be set in Town Code

cannot amend agenda within 24 hrs of the meeting

do not act on an item not listed on the agenda - postpone to a future meeting

have an Attorney review your rules of procedure

conveying property right (granting an easement on public property)is done by ordinance and has two reading with the location of the property stated.

Accepting an easement or entering into a lease or purchase of a piece of property not owned by the Town, an ordinance is not required.

Public Participation and Hearings

Give consideration to date time and location

You can allow time for public response

Can limit only agenda items

Can have sign in

Can limit to 3 minutes (or some time limit)

Treat everyone the same way

Have Effective communication with the media

Minutes:

Can be general

What actions were taken by Council

Not include opinions or flowery phrases

Reports do not have to be typed in but can be referred to

Majority of Council should approve revisions

Can use recordings but are subject to FOIA - can put on website and be downloaded

People can come in and film minutes or electronic record

Minutes should be kept in a Public Book and retained forever

Agenda packets are subject to retention

Can attach reports to the minutes

Recordings two years retention

Packets given to council should be retained unless FOIA exempt info requires blacking out. Sealed packets should be given the clerk copies prior to the meeting to be retained.

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ORDINANCE VS. RESOLUTIONS

Ordinances is a law - not restricted to adopting law

Ordinances have to be used to nullify an existing ordinance

Resolutions should be used for temporary items can be verbal

Resolutions can be a single vote of council

Annexation by ordinance

Elections by ordinance

Pay raises for Council and Mayor by ordinance

Purchasing by ordinance

Zoning by ordinance

Fine or penalty by ordinance

Budget by ordinance

Grant or extend franchise ordinance

Borrow money by ordinance

Selling leasing any public lands by ordinance

Codified and be available for inspection (state law)

Should contract with third party (municode) and published on line

Ordinance Introduced in final format

6 days between readings for ordinance

Amending ordinance has to be done by ordinance

Must comply with State Law

Council is responsible for having the Code Book updated – no time limit but suggest yearly update

Standard Codes adopted by ordinance

Rules of procedure by ordinance

Amending code by ordinance

Levy of taxes – ordinance Attorney can draft ordinance or use internet being careful with State Law.

CONVEYING PROPERTY RIGHTS (GRANTING AN EASEMENT ON PUBLIC PROPERTY) IS DONE BY ORDINANCE AND HAS TWO READINGS WITH THE LOCATION OF THE PROPERTY STATED. ACCEPTING AN EASEMENT OR ENTERING INTO A LEASE OR PURCHASE OF A PIECE OF PROPERTY NOT OWNED BY THE TOWN, AN ORDINANCE IS NOT REQUIRED.

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After the presentation by Jeff Shacker the following occurred:

Kay Hollis advised "I rise to a point of order." I would like to make a motion to schedule a hearing to determine the qualifications of Mr. Wilson for the office of mayor of Chapin and to appoint and employ special Council Danny Crow to conduct the hearing. The proposed date would be Thursday February 20 at 7:00 Pm. Robbie Frick seconded the motion. Mayor Wilson advised it is not on the agenda to be addressed. Ms. Hollis advised it is a point of order. Mayor Wilson advised he is not recognizing the point of order at this time-no.VA but as mayor pro tem I can order a vote. Mayor- no mam not recognizing the point of order. KH Mayor Refuses the Mayor pro tem call for a vote. No mam not on the agenda this point in time .Kh- A point of order does not have to be on the agenda. Gregg White " There is no public notice given for this and I think it is an issue that has major Implication without Public notice I think it would be a violation of the FOIA act. The Town would be liable for the action that is a very strong violation of the FOIA Act. I don't know where the recommendation is coming from and that is not in the best interest of the Town. Att. Howland I'm going to have to say it would be a violation of the FOIA Act. If three of the Council members would like to establish a special meeting to put this on the agenda, that would be the appropriate approach to take. VA I make a motion to schedule the special meeting next - Mayor We can do this after we get to the end of the agenda. VA- Ok

9. The 2012 audit report recommendations and budget update were next on the agenda. The audit was done by Matthew Brown, CPA who was not in attendance. Mayor Wilson advised each Council Member to adopt each and every recommendation from the Audit Report. No other information was given on the audit and nothing specific was mentioned. Clerk Thompson advised this had been a vote by email and not acceptable. Mayor- Is there a motion on the table to accept the audit report with the recommendations presented to accept them and implement them. Gregg White advised he would be glad to make a recommendation since we had an audit with some very detrimental aspects to the accounting procedures of the Town. Gregg White moved to accept the recommendations; this was seconded by Mayor Wilson. Vivian Atkins voted to accept the recommendations. Robbie Frick and Kay Hollis were opposed.

Clerk Thompson advised she has a Budget update presentation for the Town. Mayor Wilson advised it is not on the agenda. Clerk Thompson advised it was on the agenda as a Budget update. Mayor Wilson refused to allow the report on the budget. Clerk Thompson advised that as the Town was making many decisions concerning financial matters it is important to know just where the Town stands financially. Mayor Wilson advised he is responsible for the budget and if there were any reporting he would do it, however not at this time. Mayor insisted that the budget update listed on the agenda specifically was to address the 2012 audit. However, not one figure was mentioned and nothing budgetary was mentioned. Attorney Howland agreed with Mayor Wilson that it was the responsibility of the Mayor meant to deal with the audit report and not to give an accounting to the Town or Council. Mayor Wilson advised he will not hear it. Attorney Howland advised State statue 5930 sub section 5 states it is the responsibility of the Mayor to present the Budget to the Council. Clerk Thompson asked to go on record

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saying, "You have denied this Town the opportunity to be advised exactly where we stand." Mayor Wilson advised, "We will do that. You have my word on that".

Councilwoman Atkins advised she would like the report. Mayor Wilson advised we were already beyond that item and this was just referring to the audit.

10. Next on the agenda was the appointment of the Mayor to the Central Midlands Council of Govt. Board to represent Chapin. Gregg White moved to appoint Mayor Wilson to the Board in the form of a resolution. Mayor Wilson seconded the motion. There was no discussion. Mayor called for the vote which was 2 for Mayor Wilson and 3 opposed. There will not be representation from Chapin on the Council of Government Board unless Council agrees to appoint someone at a later date.

11. Penny for Progress rankings and Town Council approval. Councilwoman Atkins requested the Lexington Ave. Sidewalks be Martin Chapin Parkway project would be taken off to give a higher priority to the Martin Chapin Parkway. After some discussion it was decided that the Martin Chapin Parkway be placed ahead of the Sidewalk project on the list, however not to remove the sidewalk project as it might have a chance as a smaller project. Vivian Atkins moved to approve the priority and project list with the changes. This was seconded by Gregg White and approved by all. A copy of the projects can be obtained from the Town Clerk.

12. Mayor Wilson advised that as a result of a Town wide traffic study being done by Mead & Hunt, no action should be taken to close any roads until this study was complete. The Lexington County Public works department made the same request. This is just for informational purposes. Arnold Roberts addressed the Council and requested that a Public Hearing be scheduled for input on the closing of a portion of Clark Street. Mr. Roberts stated it would be a 300 foot redirection of a road and not a complete closing. Councilman White advised he is against the closing of any roads, and advised this would affect traffic in that area. Many residents around the area this affects were present to support the project and were anxious for Council to proceed with a Public Hearing. Mayor Wilson advised this hearing could be scheduled in 30 days. Vivian Atkins moved to establish a Public hearing which was seconded by Gregg White and approved by all. The Public Hearing was scheduled for March 4th at 6:00. All approved this motion.

14. Under Public Comments Laisha Huffstetler compliment Clerk Thompson for being an asset to the Town. The council was also compliment Council on their years of service and dedication to the Town. Ms. Huffstetler, advised that the correct procedure for the hiring of Karen Owens was not followed. There were more statements on the actions of the new Mayor and the procedures he seems to be refusing to follow.

Judy Dominick was next to speak. Judy is a longtime resident who owns a property that would be affected by the proposed Commercial development. Ms. Dominick had many comments on the positive effects of the project and what a boost it would be to the beauty and economy of the Town. She requested the project be supported by the Mayor and Council.

Kay Gordon was next to speak. Kay is a reporter who resides just outside the Town Limits. Kay had questions on transparency and presented a list of questions under FOIA for Mayor³ Wilson to respond to.

Vivian Atkins moved to schedule a special meeting next week to address Ms. Hollis motion. Mayor Wilson advised this has to be presented in writing and after it was received in writing, and once this would be done he would rule on it. Mayor Wilson advised they would have to go into executive session to rule on this. Attorney Howland advised a special meeting could be scheduled to address this. Vivian Atkins made a motion to schedule a special meeting Feb. 12th at 7:00 to address any items not addressed on this agenda and the request made earlier by Ms. Hollis. Agenda Items should be submitted to Mayor Wilson. There will be an executives session followed by a regular meeting.

This meeting was adjourned at 9:55.

PERSONNEL MANUAL

Policy Number 2-1

Effective Date: July 1, 1998

SUBJECT: Recruitment

SECTION I - POLICY

1. JOB VACANCY ANNOUNCEMENTS.

Except as otherwise provided for in policy, all vacancies which occur will be publicized in a job vacancy announcement posted at the Town Hall and published in local newspapers.

2. CLOSING DATE OF ANNOUNCEMENT.

In order to assure sufficient response time of interested applicants, job announcements will remain open for a minimum of two weeks from date of distribution of the announcement.

3. DISTRIBUTION OF JOB VACANCY ANNOUNCEMENTS.

a. Announcements Open to the General Public

It is our policy to assure the widest publicity possible of all job announcements that are open to the general public.

In recognition of the benefits of offering a promotion from within policy (see Policy Number 6-1), some job vacancies can initially be announced for current employees only. Job announcements in this category will be distributed only in the internal locations.

4. ADVERTISING IN NEWSPAPERS.

All advertisements must carry the statement "An Equal Opportunity Employer."

PERSONNEL MANUAL

Policy Number 2-2

Effective Date: July 1, 1998

SUBJECT: Employment Interviews

SECTION I - POLICY

1. SELECTION OFFICIAL.

- a. The Mayor will designate the selection official for the vacant position. The selection official is normally the department head or appropriate supervisor within the work unit involved.
- b. The selection official is responsible for contacting applicants for interviews, interviewing applicants along with the Mayor and, possibly, members of the Town Council, and notifying all interviewees (by letter) of the selection decision.

SECTION II - PROCEDURES

2. INTERVIEW.

- a. The goal of the interview is to identify the best candidate for the job.
- b. The selection official should use a structured interview, with specific questions to ask, and information to obtain from all applicants. The specific job involved will dictate the type questions and information needed to make a choice. The selection official should, as a minimum, obtain and examine carefully:
 - (1) Current and previous jobs (last three or past five years), employer and actual dates, duties and responsibilities, and accomplishments.
 - (2) Examine gaps in employment.
 - (3) Reasons for leaving current job.
 - (4) Reasons why the applicant is interested in the vacancy.

- (5) Specific knowledge, skills and abilities the applicant has.
- (6) Ask if there are any objections in contacting current or previous employers.
- c. The selection official should start the interview by explaining the nature, duties and responsibilities of the job and how it fits into the organization. This allows the interviewee to understand what the job involves, and time to relax and feel comfortable.
- d. The selection official will only ask those questions that are directly related to the specific job in question. During the interview, do NOT ask questions related to:
 - (1) Applicant's age or date of birth, unless there is a minimum age requirement.
 - (2) Religion, names of ministers, etc.
 - (3) Father's surname.
 - (4) Female applicant's maiden name.
 - (5) Marital status.
 - (6) Roommates.
 - (7) Names of or how many children he/she has.
 - (8) Ages of children.
 - (9) Child care of children.
 - (10) Working status of parents or spouse
 - (11) Ownership or renting place of residence.
 - (12) Previous garnishment of wages or salary.
 - (13) Record of arrest.
 - (14) Type of military discharge (honorable, dishonorable, etc.).
- e. Use the appropriate form to record your data, impressions, and reasons for acceptance or rejection.

PERSONNEL MANUAL

Policy Number 2-3

Effective Date: July 1, 1998

SUBJECT: Pre-Employment Reference Checks

SECTION I - POLICY

1. GENERAL POLICY.

Members of the Selection Committee are responsible for checking the references of those applicants who have been interviewed and are being considered for the vacancies.

SECTION II - PROCEDURES

2. SOURCES OF PRE-EMPLOYMENT REFERENCES.

- a. Current employer (with permission of applicant).
- b. Previous employers
- c. Personal character references provided by the applicant (note: often these may not be satisfactory in that the applicant would not provide a reference that would provide negative information).
- d. School teachers/instructors (for current/recent students).

PERSONNEL MANUAL

Policy Number 2-4

Effective Date: July 1, 1998

SUBJECT: Documenting the Selection Decision

SECTION I - POLICY

1. GENERAL POLICY

- a. The selection committee will briefly document, in writing, the reason each applicant interviewed was either selected or rejected. This may be in the form of an interview sheet used in the interview process. This documentation will be appended to the applicable application and filed in the related job application file.
- b. If a suitable candidate is not found from the applicants, the position will be re-announced.

SECTION II - PROCEDURES

The selection committee will complete the personnel action form, indicating the individual selected. This form and selectee's application form will be forwarded to the Clerk/Treasurer for administrative processing.

Mayor's Message

I want to congratulate Police Chief Troy Crump for his bravery and continuing community service. A couple of weekends ago, he took the Lake Murray Polar Plunge with 150 other law enforcement professionals to help raise awareness and money for the SC Special Olympics. Troy raised \$1000, through pledges and selling special buttons for cups of Bojangles coffee. Overall, \$30,000 was raised to develop programs and activities here in the Midlands. Thanks to Troy and all who supported his efforts on behalf of the Special Olympics.

We are getting Channel 2 back up and running and need your news and announcements! Please send community events, birthdays and anniversaries, and other news that members of our community need to know to Channel2@chapintv.com. Please include with your announcement any special directions and timeline for being on air. We look forward to getting the word out to the Chapin community!

We have also created an official Town of Chapin, South Carolina Facebook page. Be sure to check this out for updates on Chapin meetings and events, community news and of course, information about our town government, departments and services.

Kari Pepper McKeone is looking for volunteers to help coordinate the Community of Character Service Day on Saturday, April 12. If you would like to get involved, please contact Kari at 932-2222 or kari@justinpepper.com. We look forward to having an awesome day of volunteerism and community pride and want you to be part of the fun!

As always, thank you for your efforts to make Chapin a great place to live, work and play!

Together We Stand!

Mayor Skip Wilson

Did You Know...

...that the Town of Chapin's annual budget can only be increased with town council approval?

I'm happy to say that the Chapin Town Council has not received any requests this year from anyone to increase or amend the 2014 annual budget.

A Positive Character Trait - Respect

By: Faith Stanberry
Chapin Elementary School

Respect is when someone is showing integrity- doing something good when no one is looking. Respect is the way you act and even the way you express yourself. You know the way soldiers talk to their leader? They talk with respect - "Yes Sir," and "No Sir," They go by the golden rule.



'Take 5 for Lexington Heart Fair

When was the last had your blood pressure Did you know that exercises help your heart the proper way to perform Come to Lexington Center's free interactive heart on Sunday, March 2 from 5:00 p.m. at the Double Hilton at 2100 Bush River Columbia to learn about your health. The event is free to the public.

Find out how to reduce risk of developing cardiovascular disease by participating activities, such as massage, healthy food tastings, pressure screenings and rel training. You'll discover the cardiovascular technologies diagnostic, interventional surgical procedures. You can hear from Lexington Medical Center physicians and clinicians they discuss heart health including nutrition, heart and stroke. The Heart Fair includes activities for children, too. Kids learn how to grow vegetable begin spring planting.

The Heart Fair marks culmination of Lexington Medical Center's "Take 5 for Heart Health" campaign, encouraging community members to take time for their health with five key elements: Right, Chill Out, Get Moving, 911 and Learn CPR. Lexington Medical Center partnered with Midlands businesses to provide heart health events including exercise classes and stress reduction activities throughout the month of February.

The idea was to educate the community about heart health and encourage people to lead a healthy life through exercise, education and minimizing stress. Heart disease is an epidemic in South Carolina.

Windy - 345-1125

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Vivian Atkins, Robert P. Frick, and Kay) Civil Action No. 2014-CP-32-00697
Hollis, in their official capacities as)
members of the Town Council of the)
Town of Chapin,)

Plaintiffs,)

vs.)

AFFIDAVIT

James R. Wilson, Jr., in his official)
capacity as Mayor of the Town of)
Chapin; Gregg White, in his official)
capacity as a member of the Town)
Council of the Town of Chapin; and the)
Town of Chapin,)

Defendants.)

I, James R. Wilson, Jr., do swear and testify under penalty of perjury as follows:

1. I give this affidavit by my own free will based upon my personal knowledge and recollection of the facts set forth below.

2. In November 2013, I was elected Mayor of the Town of Chapin. I am a defendant in the above-captioned lawsuit.

3. On March 18, 2014, the Court issued an order declaring that the Chapin Town Ordinances vest the mayor with the authority to approve or reject items on the Chapin Town Council's agenda. The Court held as follows: "As part of his authority regarding Council meetings, Ordinance § 2.206(b) provides as follows: 'The agenda shall be approved by the Mayor, prior to distribution.' This 'approval' authority is unambiguous—the Mayor must sign off on the agenda prior to its distribution to Council,

and there is no requirement that the Mayor place items on the agenda that he believes do not merit Council's consideration."

4. On March 31, 2014, Plaintiffs filed a motion for the Court to reconsider that ruling, which the Court denied.

5. Despite the Court's March 18th Order, Plaintiffs, in conjunction with the Chapin Town Clerk, issued a notice on April 7, 2014, of a "special" meeting to be held on April 10, 2014, with an agenda that was never presented to me for my review and approval.

6. Because Plaintiffs were taking action directly contrary to the Court's March 18th Order, my counsel filed a motion to enforce the Court's earlier order. In response to that motion, the Court issued a letter to the parties stating that if Plaintiffs went forward with their meeting as notice, that meeting "could be illegal and of no force and effect." A copy of that letter is attached as Exhibit A to Defendants' Motion for Civil Contempt.

7. Approximately 36 minutes after the Court issued its letter to the parties, counsel for Plaintiffs sent an email to my counsel stating that Plaintiffs intended to go forward with their meeting despite the Court's warning. A copy of that correspondence is attached as Exhibit B to Defendants' Motion for Civil Contempt.

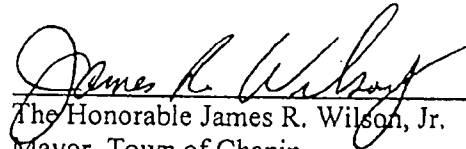
8. My counsel subsequently emailed counsel for Plaintiffs indicating that Defendants would not have any choice but to file a motion for civil contempt if Plaintiffs held their meeting in violation of the Court's March 18th Order and follow-up letter. Counsel for Plaintiffs responded that "the Court did not actually order us to do or not do anything," so Plaintiffs intended to move forward with their meeting. These emails are

also included in the correspondence that is attached as Exhibit B to Defendants' Motion for Civil Contempt.

9. I have learned that Plaintiffs did in fact hold a meeting on April 10, 2014, and attempted to take action on the two items that were identified in the agenda that was issued in violation of the Court's March 18th Order.

10. I did not attend or participate in the April 10th meeting because of the Court's earlier warning that it was "illegal" and that any product of that meeting could be "of no force and effect."

11. I declare under penalty of perjury that the foregoing is true and correct.


The Honorable James R. Wilson, Jr.
Mayor, Town of Chapin

Sworn to before me this 14th day of April, 2014


Notary Public for the State of South Carolina

My Commission Expires: 10/13/15

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS

2014 APR 21 A 11:12

ELEVENTH JUDICIAL CIRCUIT

Vivian Atkins, Robert P. Frick, and Kay Hollis, in their official capacities as members of the Town Council of the Town of Chapin,

Plaintiffs,

vs.

SUPPLEMENTAL AFFIDAVIT

James R. Wilson, Jr., in his official capacity as Mayor of the Town of Chapin; Gregg White, in his official capacity as a member of the Town Council of the Town of Chapin; and the Town of Chapin,

Defendants.

I, James R. Wilson, Jr., do swear and testify under penalty of perjury as follows:

1. I give this affidavit by my own free will based upon my personal knowledge and recollection of the facts set forth below. This affidavit supplements my previously-filed affidavit and describes events that have occurred after my initial affidavit was filed. It is offered in support of Defendants' pending Motion for Civil Contempt.

2. On April 14, 2014, Defendants filed a Motion for Civil Contempt with the Court to enforce its prior rulings in this matter.

3. Plaintiffs, in conjunction with the Chapin Town Clerk, issued a notice of another "special" meeting to be held on April 17, 2014, with another agenda that was never presented to me for my review and approval.

4. In order to preserve the record, I sent an email to the Town Clerk indicating that the agenda for the April 17th "special" meeting had not been issued

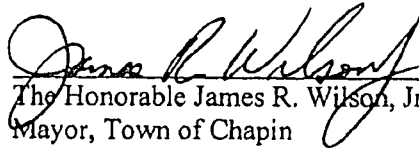
consistent with the Court's earlier rulings and the governing town ordinances, and asked her to remove items from the agenda. The Town Clerk responded the next morning by email, copying Plaintiffs, stating her refusal to comply.

5. On April 16, 2014, my counsel sent a letter to counsel for Plaintiffs requesting that the parties work together to maintain the status quo until the Court has an opportunity to hear and rule on the pending Motion for Civil Contempt. A copy of this letter is attached as Exhibit A to this supplemental affidavit. Counsel for Plaintiffs responded to that letter by describing the motion as "frivolous" and rejecting the request for the parties to maintain the status quo while the motion is pending.

6. I have learned that Plaintiffs did in fact hold a "special" meeting on April 17, 2014, and attempted to take action on the items that were identified in their second agenda that was issued in violation of the Court's March 18th Order.

7. Just as with the April 10th "special" meeting, I did not attend or participate in the April 17th meeting because of the Court's earlier warning that any meeting held in violation of the Court's rulings "could be illegal and of no force and effect."

8. I declare under penalty of perjury that the foregoing is true and correct.


The Honorable James R. Wilson, Jr.
Mayor, Town of Chapin

Sworn to before me this 21st day of April, 2014


Notary Public for the State of South Carolina

My Commission Expires: 10/13/15

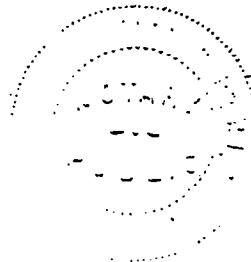


Exhibit A to Supplemental Affidavit

April 16, 2014 Letter to Plaintiffs

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Vivian Atkins,)
Robert P. Frick, and)
Kay Hollis,)
in their official capacity as)
members of the Town Council)
of the Town of Chapin,)
Plaintiffs,)

vs.)

AFFIDAVIT OF VIVIAN ATKINS

2014-CP-32-0697

James R. Wilson, Jr. in his)
official capacity as Mayor of the)
Town of Chapin, Gregg White)
in his official capacity as a)
member of the Town Council of)
the Town of Chapin and the)
Town of Chapin,)
Defendants.)

PERSONALLY BEFORE ME, SPENCER ANDREW SYRETT, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, APPEARED VIVIAN ATKINS, WHO, BEING DULY SWORN, SAYS AND DEPOSES:

1. I am one of the above named Plaintiffs.
2. I have served as a member of the Chapin Town Council since 1999.
3. I executed an affidavit for the hearing before Judge Cooper and incorporate the matters set forth therein into this Affidavit.
4. After I received a copy of Judge Cooper's Order, I discussed possible courses of action with our attorney, Spencer Andrew Syrett.
5. Although Judge Cooper indicated that we could add items to a regular meeting agenda as provided in ordinance §2.206, I believed that trying to add matters to the agenda would be a problem for two reasons:
 - a. First, I did not believe that Mayor Wilson would allow any such motion to be

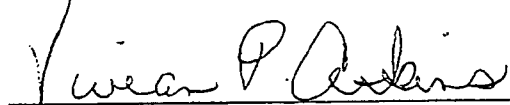
made, much less considered at a regular meeting.

- b. More importantly, I believe that the procedure would violate the Freedom of Information Act (§30-4-10, et seq.) in that it would add items to the agenda that had not been disclosed to the public.
6. I asked my attorney to find another way to allow the majority of Council to have a say in how Chapin is governed.
7. My attorney advised me that he saw a possibility in having a special meeting as provided in §2.202.
8. I reviewed §2.202, and instructed him to prepare a Notice calling for a special meeting. I advised him that I wanted to limit the meeting to the two items set forth on the agenda we published.
9. After he prepared the Notice, he e-mailed me the notice and I went to Councilman Frick's house on April 5, 2014, and discussed it with him. He agreed and signed the Notice at 3:30 P.M.
10. The next day, I went to Councilwoman Hollis' house and discussed my plan with her. She agreed with me and signed the Notice at 1:00 P.M.
11. I took the Notice to Ms. Thompson on Monday April 7, 2014, and asked her to post the meeting at the Town Hall, post it on the Town's website and notify the news media. At the special meeting, she announced that she had complied with our instructions and notified "everybody."
12. At no time did the three of us meet together as I believe that such a meeting could have violated the Freedom of Information Act.
13. My attorney also notified Mr. Carroll and advised Mr. Carroll that if the Mayor attended the special meeting, he would be entitled to preside but that the agenda would have to be followed.
14. The Mayor and Councilman White did not attend the special meeting on April 10, 2014, nor the special meeting held April 17, 2014.
15. As Mayor pro tempore, I presided at both special meetings.
16. I repeated the same procedure for the notice of the special meeting held on April 17, 2014. The Town Clerk took the same actions as she did for the first special

meeting..

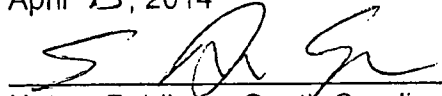
17. The second meeting was necessary because any change to an ordinance required two readings at least 6 days apart.
18. At the second meeting, we also took action on three other matters but each was on the published agenda.
19. It is my belief that both meeting were held in complete compliance with the Freedom of Information Act and the applicable Ordinances of the Town of Chapin.

THIS COMPLETES MY STATEMENT.


Vivian Atkins

SWORN TO BEFORE ME

April 23, 2014



Notary Public for South Carolina

My Commission expires: 11/14/2015

Subject: RE: FW: Chapin

From: "Cooper, G. Thomas" <GCooperJ@sccourts.org>

Date: 4/28/2014 11:20 AM

To: "Andy" <syrettlaw@sc.rr.com>, "Carroll, Todd" <Todd.Carroll@wcsr.com>, "Cooper, G. Thomas Law Clerk \\\(Brandon T. Reeser\\)" <GCooperLC@sccourts.org>

The sooner you get me your proposed orders, the sooner I can rule on the pending motions. I am not assigned this week but will come in to review your orders and make a decision. GTC

From: Andy [syrettlaw@sc.rr.com]

Sent: Monday, April 28, 2014 10:24 AM

To: Carroll, Todd; Cooper, G. Thomas; Cooper, G. Thomas Law Clerk (Brandon T. Reeser)

Subject: Re: FW: Chapin

Dear Judge Cooper:

I will not engage in an extended post-hearing argument about the merits of the various positions taken by the parties. Nor do I think such extended argument is proper even if opposing counsel is copied. A new hearing would be required.

That being said: A status conference may well be in order but given the status of the case (dismissed), I not sure that any judge has the power to do anything at the present.

Andy

Spencer Andrew Syrett
712 Richland Street Suite E
Columbia, SC 29201

Reply to
P.O. Box 7403
Columbia, SC 29202-7403

803-765-2110
FAX 803-765-9950

On 4/28/2014 10:01 AM, Carroll, Todd wrote:
Dear Judge Cooper and Mr. Reeser:

Thank you again very much for your time and consideration of our litigation. We appreciate the Court's attention to the various arguments presented on Friday afternoon, but we feel like we have no choice but to re-engage Your Honor for two reasons. First, we need to clarify a point that came up during that hearing. Second, for the reasons discussed below, we believe that a status conference may be essential to ensure that the Town is able to conduct its business in an orderly way without the

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specter of ongoing litigation.

As the Court will recall, I pointed out during Friday's hearing that Plaintiffs' lawsuit was designed to oust Mayor Wilson from office less than four months after he was sworn in. When Your Honor questioned Plaintiffs' counsel on this point, I did not understand the response to be committal one way or the other. However, early Saturday morning, I received the email below from Plaintiffs' counsel indicating that he will advise Plaintiffs to call another "special" meeting to remove Mayor Wilson "from office in the most expedient manner possible." Also attached for the Court's review are documents from February and March where two of the plaintiffs requested that removal of the mayor be placed on Council's agenda.

Plaintiffs' counsel also has indicated Plaintiffs will seek a status conference with the Court if the mayor does not reinstate a former town employee to her job by 10:00 am today. Though this employment issue has nothing to do with the agenda issues before the Court, I agree that a status conference might be of some utility. As it stands, the Town has a regularly scheduled meeting on May 6, 2014, but no one has any idea how the agenda for that meeting should be prepared.

Plaintiffs take the position that they have control over the agenda because of their post-judgment efforts to rewrite the very ordinance that they asked the Court to interpret. My clients take the position that Your Honor's earlier ruling and the Town Ordinances make clear that the agenda is subject to the mayor's approval, and there is no support in the State Code or the Chapin Town Ordinances to support Plaintiffs' attempt—as Plaintiff Atkins put it in Paragraph 6 of her April 23rd affidavit—to "find another way" around the Court's order.

If the Court does not invalidate Plaintiffs' post-judgment conduct, the Town will truly be in a quagmire—my clients will be forced to file a separate lawsuit regarding Plaintiffs' behavior, and there is no telling how much of the Town's business would be improperly done and how heavy the effort would be to unwind all of their conduct (including unlawfully ousting the Town's Chief Executive) as time marches on in a separate lawsuit. On the other hand, if the Court grants my clients' motion, Plaintiffs can accept that ruling or appeal it concurrently with their pending appeal of the Court's earlier order. The Court of Appeals would then be presented with a clean case with limited issues to resolve, the Town's business could proceed just as it always has with the mayor approving agenda items, and the matter would be out of the Circuit Court system altogether.

If Your Honor is willing to hold a status conference, we are pleased to make ourselves available at the Court's convenience. We recognize that this is an atypical case and that Your Honor has been generous with the Court's time thus far, and we very much appreciate the Court's help with this matter.

By copy to opposing counsel, we are informing him of this communication.

Very truly yours,

Todd

Todd Carroll
Attorney at Law

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RE: FW: Chapin

Womble Carlyle Sandridge & Rice, LLP
1727 Hampton Street | Columbia, SC 29201
T 803 454 7730 | F 803 381 9130 | todd.carroll@wcsr.com <<mailto:todd.carroll@wcsr.com>>
Firm Website<<http://www.wcsr.com/>> | My Bio<<http://www.wcsr.com/lawyers/todd-carroll>> |
VCard<<http://www.wcsr.com/lawyers/todd-carroll?vcf=true>>

From: ANDY [<mailto:syrettlaw@sc.rr.com>]
Sent: Saturday, April 26, 2014 1:18 AM
To: Carroll, Todd
Subject: Chapin

Dear Todd:

If by 10 AM on Monday April 28, 2014, the Mayor does not rescind the punitive actions he took on Friday against Ms. Thompson and reinstate the receptionist he terminated without cause on Thursday, I will recommend to the Mayor pro tempore that that she initiate action to hold a special meeting of Council as soon as possible to initiate the steps necessary to consider the Mayor's qualifications to hold office and to explore whatever steps that are available to remove him from office in the most expedient manner possible.

Further it is now quite clear that attempting to mediate any dispute with the Mayor would be a pointless exercise. On Monday i will request a status conference with Judge Cooper to advise him of the latest developments.

I suggest that you also consider whether or not it is appropriate for you to continue to represent both the Mayor and Councilman White as I believe that their interests may soon be in conflict.

Andy

--

Spencer Andrew Syrett

Attorney at Law

712 Richland Street

Columbia, SC 29201

P.O. Box 7403

Columbia, SC 29202

telephone 803-765-2110

Fax 803-765-9950

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by a lawyer. It may contain information that is confidential, privileged, proprietary, or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy or disseminate this message, any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

CHAPIN TOWN CODE

3

ARTICLE II. THE CODE

Editor's Note. This article derives from Section 1, Article 1, entitled "THE CODE," of the 1980 Chapin Code of Ordinances, with additions.

1.201. HOW CODE DESIGNATED AND CITED.

The ordinances embraced in this and the following chapters and sections shall constitute and are designated as "The Code of Ordinances for The Town of Chapin, South Carolina" and may be so cited. They may be cited also as the "Chapin Town Code."

1.202. PROVISIONS CONSIDERED AS CONTINUATION OF EXISTING ORDINANCES.

The provisions appearing in this code, as far as they are the same as those ordinances existing at the time of the adoption hereof, shall be considered as a continuation thereof and not as new enactments.

1.203. SEVERABILITY OF PARTS OF CODE.

It is hereby declared to be the intention of the Mayor and Council that if any section, paragraph, sentence, clause or phrase of this code shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this code since the same would have been enacted without the incorporation in this code of any such unconstitutional phrase, clause, sentence, paragraph or section.

1.204. CATCHLINES OR CATCHWORDS OF SECTIONS.

The catchlines of the several sections of this code printed in capital letters, a different type or underlined are intended as mere catchwords to indicate or emphasize the contents of such sections, not as any part of the section, nor unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or re-enacted.

1.205. DEFINITIONS.

In the construction of this code and all other ordinances, the following definitions shall be observed, unless the context clearly requires otherwise:

AND, OR The word "and" may be read as "or" and the word "or" may be read as "and" where the sense requires it.

BOND Where bond is required, an undertaking in writing shall be sufficient.

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ARTICLE II. MEETINGS OF COUNCIL

2.201. MEETINGS. REGULAR. PLACE.

a. The regular meetings of Council shall be held at the Town Hall on the first Tuesday of each month, at 7:30 p. m., unless otherwise set by the Mayor. If so, a reasonable notice shall be given to each available Council member and a notice posted on the town's bulletin board at Town Hall at least twenty-four (24) hours prior to the meeting.

b. In the event an official town holiday falls on the first Tuesday, the regular meeting will be held on the following Tuesday.

2.202. SAME. SPECIAL.

Special meetings may be held:

1. whenever called by the Mayor in cases of emergency, or;
2. when, in the judgment of the Mayor, the good of the municipality requires it, or;
3. by a majority of the members of Council.

2.203. SAME. NOTICE OF CHANGE.

Notice of all changed meetings and special meetings shall be given to all available members and the news media by the Clerk/Treasurer.

2.204. SAME. OPEN TO PUBLIC.

All Council meetings shall be open to the public, as required by the Freedom of Information Act.

2.205. SAME. MAYOR TO PRESIDE.

The Mayor shall preside at all Council meetings. In the absence of both the Mayor and Mayor Pro tempore the duties of the Mayor shall be performed by such member of the Council as the Council may designate.

(1976 SC Code §5-7-190 §5-7-250, §30-4-80)(Ord. #18 6-15-92)(CQ 6,7)

2.206. AGENDA.

a. Matters to be considered by the Mayor and Council at a regular meeting shall be placed on a written agenda and publicly posted at least twenty-four (24) hours prior to the meeting. Matters not on the agenda may be considered upon request of a member unless at least two (2) members object.

(1976 SC Code §30-4-80)(CQ 8)

b. The agenda shall be approved by the Mayor, prior to distribution. It shall be prepared under the supervision of the Clerk/Treasurer.

2.207. MINUTES OF COUNCIL MEETINGS.

a. The Clerk/Treasurer shall attend all meetings of the Council and keep the minutes of all public meetings of the Council which shall be a matter of permanent public record. At each regular Council meeting, the minutes of the previous meeting or meetings shall be presented for approval. Minutes shall not be considered the official record of a meeting until approved by the Mayor and Council.

b. Any member of Council desiring to express a position in the minutes on a matter voted upon by Council may do so by presenting the position in writing to Council not later than the next regular meeting.

c. No person shall make any change in the minutes or remove same from Town Hall, without prior approval of the Mayor and Council.

(1976 SC Code §30-4-90)

2.208. QUORUM.

a. A majority of the Council shall constitute a quorum for the conduct of business at any meeting.

(1976 SC Code §5-7-160)

2.209. RULES OF ORDER. PARLIAMENTARIAN.

a. Except as otherwise provided by state law or this code, all proceedings of Council shall be governed by Robert's Rules of Order.

b. The Municipal Attorney shall act as parliamentarian. In his absence, all questions of order shall be decided by the Mayor or, in his absence, the presiding officer, without debate, subject to an appeal to the Council.

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ORDINANCE NO.: 7/203AN ORDINANCE TO CHANGE THE REQUIREMENTS FOR
OBJECTION TO ADDITION TO AGENDA BY COUNCIL MEMBERBE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF CHAPIN,
SOUTH CAROLINA:

Section 1. Subsection a. of Section 2.206 of the Chapin Town Code is hereby amended by deleting the words "at least two (2) members object " and inserting in lieu thereof the words "a majority of council objects", so that as amended a majority vote is required to block an item from the agenda.

Section 2. All ordinances in conflict with this ordinance are hereby repealed to the extent of such inconsistency.

Section 3. This Ordinance shall become effective upon its final adoption.

First Reading

May 2, 2000

Mayor

Second Reading

June 6, 2000

ATTEST:

Clerk/Treasurer

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CHAPIN TOWN CODE

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ARTICLE IV. OFFICERS AND DEPARTMENTS

2.401. AUTHORITY TO ESTABLISH OFFICES AND DEPARTMENTS.

The Mayor and Council may create and establish such town offices, departments and sections as they may deem proper for the orderly and efficient government of the town.

(1976 SC Code §5-9-40)

2.402. MAYOR TO BE CHIEF ADMINISTRATIVE OFFICER.

The Mayor shall be the chief administrative officer of the town.

(1976 SC Code §5-9-30)

(Editor's Note. See also §2.105, this code.)

2.403. APPOINTMENT. SUSPENSION.

Except as otherwise provided by this code, all officers and employees of the town shall be appointed by the Mayor. They shall be subject to suspension by the Mayor, who shall report any suspension of an officer or employee at the next meeting of the Council.

(1976 SC Code §5-9-30)(Article IV, this chapter.)
(Appendix C, this code.)

2.404. SAME. COMPENSATION.

The compensation, as appropriate, of all appointed officers and employees of the town shall be fixed by the Mayor and Council and incorporated in the annual budget.

2.405. RESISTING OR INTERFERING WITH OFFICIALS OR EMPLOYEES.

It shall be unlawful for any person to resist or interfere with any municipal officer or employee in the discharge of his official duties.

2.406. ENFORCEMENT OF ORDINANCES, LAWS, ETC.

All officers and employees shall enforce obedience to all state statutes, provisions of this Code or any resolution, rules and regulations or orders issued thereunder by lawful authority by instituting such procedures as may be necessary to such enforcement.

2.407. RIGHT OF ENTRY.

Subject to lawful entry requirements, whenever any officer or employee is required to enter any premises or vehicle as authorized by statute, the provisions of this Code or any ordinance, resolution, rule, regulation or order issued thereunder, he shall have the right to enter any such premises or vehicle at any reasonable time.

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CHAPTER 8. FINANCE, BUDGET AND TAXATION

ARTICLE I. BUDGET AND FINANCE

Editor's Note. This article derives, as amended, from Section 3, Article I, entitled "ADOPTION OF BUDGET AND PROPERTY TAX LEVY," of the 1980 Chapin Code of Ordinances, and pertinent additions by the editor, consistent with practices currently followed by other towns in this state.

8.101. FISCAL YEAR.

The fiscal year shall begin on the first day of January of each year and shall end on the last day of the following December.

(CQ 33)

8.102. BUDGET AND ACCOUNTING YEAR.

The fiscal year shall constitute the budget and accounting year.

8.103. ANNUAL BUDGET. CAPITAL PROJECTS. SUMMARY. TAX RATE.
CLERK TO NOTIFY COUNTY.

a. Before the beginning of the budget year, the Mayor shall submit a proposed budget to the Council for the ensuing year. When adopted the Mayor may transfer funds within and between departments as necessary to achieve the goals of the budget.

(1976 SC Code §5-9-30.5)(CQ 34)

b. For such purpose, the Mayor may submit to the Council estimates of expenditures and such other supporting data as may be needed together with estimates of all capital projects pending or which he believes should be undertaken within the budget year and within the next five (5) succeeding years.

(1976 SC Code §5-9-30)

c. The budget summary shall be in sufficient detail and summarized as to income and expenditures in such a manner as to present to Council and to the taxpayers a simple and clear summary of the budget.

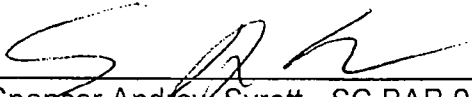
d. The annual budget ordinance shall state the tax rate which shall be sufficient to produce revenue necessary to fund the general operations and debt service requirements of the municipality.

e. It shall be the duty of the Clerk/Treasurer to notify the appropriate county officials of any change in the tax millage rates.

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CERTIFICATE OF COUNSEL

The undersigned certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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March 2, 2015